



NATIONAL ASSEMBLY LIBRARY

ACCESSION No.

LOCATION No.

LEGISLATIVE COUNCIL
DEBATES, 1935

VOLUME I

KENYA NATIONAL ASSEMBLY LIBRARY

Accession: 10006861

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List of Members of Legislative Council

President :

His Excellency the Acting Governor, (1) A. de V. Wade, Esq., C.M.G. O.B.E.

Ex-Officio Members :

Colonial Secretary, (2) Hon. H. G. Pilling, C.M.G. (Acting).

Attorney General, Hon. W. Harragin, K.C.

Treasurer, Hon. G. Walsh, C.B.E.

Chief Native Commissioner, (3) Hon. S. H. La Fontaine, D.S.O., O.B.E., M.C. (Acting).

Commissioner for Local Government, Lands and Settlement, Hon. W. M. Logan, O.B.E.

Director of Medical Services, Dr. the Hon. A. R. Paterson.

Director of Agriculture, Hon. H. B. Waters.

Director of Education, Hon. E. G. Morris, O.B.E.

General Manager, Kenya and Uganda Railways and Harbours, Brig.-Gen. the Hon. Sir Godfrey D. Rhodes, C.B.E., D.S.O.

Director of Public Works, Hon. H. L. Sikes.

Commissioner of Customs, Hon. G. D. Kirsopp.

Nominated Official Members :

Hon. T. Fitzgerald, C.M.G., O.B.E., Postmaster General.

Hon. H. R. E. E. Welby, Provincial Commissioner, Rift Valley.

Hon. G. H. C. Boulderson, Provincial Commissioner, Coast.

Hon. T. D. H. Bruce, Solicitor General.

Major the Hon. H. H. Brassey-Edwards, Deputy Director (Animal Industry).

Hon. M. R. R. Vidal (Acting), (4) Acting Provincial Commissioner, Central Province.

Hon. S. H. Fazan, C.B.E. (Acting), (5) and (6) Officer i/c, Masai District.

Capt. the Hon. E. G. St. C. Tisdall, M.C. (Acting) (7) Acting Commissioner of Mines.

Hon. C. J. J. T. Barton, O.B.E. (Acting), (8) Acting Deputy Colonial Secretary.

(1) Vice Brig.-Gen. Sir Joseph Byrne, G.C.M.G., K.B.E., C.B., on leave.

(2) Vice Mr Wade, Acting Governor.

(3) During absence on leave of Mr. H. R. Montgomery.

(4) Vice Mr. La Fontaine, Acting Chief Native Commissioner.

(5) During the absence of Mr. H. M. Gardner, Conservator of Forests, on leave. (6) Mr. C. O. Gilbert, Surveyor General, temporary, 28th June.

(7) During the absence on leave of Mr. E. B. Hosking, O.B.E., Commissioner of Mines.

(8) Vice Mr. Pilling, Acting Colonial Secretary.

LIST OF MEMBERS OF LEGISLATIVE COUNCIL—(Contd.)

European Elected Members:

Hon. F. A. Bemister, Mombasa.

Major the Hon. F. W. Cavendish-Bentinck, Nairobi North.

Hon. Conway Harvey, Nyanza.

Lt.-Col. the Hon. J. G. Kirkwood, C.M.G., D.S.O., Trans Nzoia.

Major the Hon. G. H. Riddell, M.V.O., Kiambu.

Major the Hon. R. W. B. Robertson-Eustace, D.S.O., Coast.

Hon. H. E. Schwartz, Nairobi South.

Lt.-Col. the Hon. Lord Francis Scott, D.S.O., Rift Valley.

Major the Hon. Sir Robert de Vere Shaw, Bart., M.C., Ukamba.

Hon. E. H. Wright, Mombasa.

Indian Elected Members:

Hon. Isher Dass.

Hon. J. B. Pandya.

Hon. N. S. Mangat.

Hon. Shamsud-Deen.

Dr. the Hon. A. C. L. de Sousa.

Arab Elected Member:

Sheriff Abdulla bin Salim.

Nominated Unofficial Members:

Ven. Archdeacon the Hon. G. Burns, O.B.E., Representing the interests of the African Community.

Dr. the Hon. C. J. Wilson, M.C. (Acting) (9) Representing the interests of the African Community.

Hon. Sir Ali bin Salim, K.B.E, C.M.G., Representing the interests of the Arab Community.

Acting Clerk of the Legislative Council:

Mr. J. F. G. Troughton.

ABSENTEES FROM LEGISLATIVE COUNCIL MEETINGS

26th June, 1935.

Hon. S. H. Fazan.

Hon. Arab Elected Member.

Hon. Sir Ali bin Salim, K.B.E., C.M.G.

1st July, 1935.

Hon. Member for Ukamba.

8th July, 1935.

Hon. Member for Aberdare.

Hon. Arab Elected Member.

Hon. Sir Ali bin Salim, K.B.E., C.M.G.

9th July, 1935.

Hon. Arab Elected Member.

Hon. Sir Ali bin Salim, K.B.E., C.M.G.

10th July, 1935.

Hon. Arab Elected Member.

Hon. Sir Ali bin Salim, K.B.E., C.M.G.

11th July, 1935.

Hon. Arab Elected Member.

Hon. Sir Ali bin Salim, K.B.E., C.M.G.

29th July, 1935.

Hon. G. H. C. Boulderson.

Hon. Arab Elected Member.

Hon. Sir Ali bin Salim, K.B.E., C.M.G.

30th July, 1935.

Hon. G. H. C. Boulderson.

Hon. Arab Elected Member.

Hon. Sir Ali bin Salim, K.B.E., C.M.G.

31st July, 1935.

Hon. G. H. C. Boulderson.

Hon. Arab Elected Member.

Hon. Sir Ali bin Salim, K.B.E., C.M.G.

1st August, 1935.

Hon. G. H. C. Boulderson.

Hon. Arab Elected Member.

Hon. Sir Ali bin Salim, K.B.E., C.M.G.

2nd August, 1935.

Hon. Director of Agriculture.

Hon. G. H. C. Boulderson.

Hon. Member for Nairobi North.

Hon. Arab Elected Member.

Hon. Sir Ali bin Salim, K.B.E., C.M.G.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

1935

FIRST SESSION

WEDNESDAY, 26th JUNE, 1935

The Council assembled at 11 a.m. on Wednesday, 26th June, 1935, at the Memorial Hall, Nairobi, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, ESQ., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

The Proclamation summoning Council was read.

OATH OF ALLEGIANCE, ADMINISTRATION OF.

The Oath of Allegiance was administered to :—

Nominated Official Members.

MONTAGU RICHARD REYNOLDS VIDAL.

EDWARD GORDON ST. CLAIR TISDALL.

CECIL JAMES JUXON TALBOT BARTON.

Nominated Unofficial Member.

CHRISTOPHER JAMES WILSON.

COMMUNICATION FROM THE CHAIR.

His Excellency made the following communication from the Chair :

HONOURABLE MEMBERS OF COUNCIL.

Honourable Members will be glad to know that Sir Joseph Byrne has recovered his health and expects to sail from England for Kenya on the 12th August.

Since this Council last met in November and December, 1934, I am glad to say that there is considerable improvement in Government's financial position. In order to arrive at a proper appreciation of the situation, it is necessary to go back to the sanctioned Estimates for 1934. Those Estimates were framed to show an estimated surplus, that is to say, an excess of revenue over expenditure during the year, amounting to just under £11,000. As the year progressed, however, revenue returns were disappointing and it gradually appeared to be more and more certain that the estimated surplus would not be realized. Revised estimates of revenue and expenditure, based on actual returns up to the end of August, led to Sir Joseph Byrne, in his opening address to Council in November, announcing an anticipated deficit of £54,000 on the year's working after making some allowance for departmental savings.

When, however, in March of this year the accounts for 1934 were finally closed, it transpired that as against an estimated deficit of £54,000 there was actually a surplus of £2,144. It may be asked—in fact it has been asked—how it was that even at the end of the year Government still believed that a deficit was inevitable, and the more favourable result has been attributed to some fortuitous circumstance and has been described as "accidental". I think it worth while to examine the factors that contributed to the change, as they have a very material bearing on our present situation and future prospects. In the first place it must be realized that actual figures of revenue and expenditure as at the end of a particular month only become known on receipt of accounts from all local stations and from London and elsewhere and upon analysis of these accounts in Nairobi. There is an inevitable time lag of about two months before the accounts for a month can be made up and of about three months before the final accounts for a financial year can be closed. Information available in the first part of December therefore only covers actual figures up to the end of September; the October returns are not available until the end of the year or the beginning of the following year. What is being compared, therefore, is a revised estimate based on actual returns to the end of August, 1934, with the actual

figures of revenue and expenditure for the year as disclosed four months later. So far as the 1934 position is concerned, departmental savings considerably exceeded the amount anticipated at the time of the last Session of Council. As there is, I think, some misunderstanding among the general public, not of course among hon. Members of this Council, as to what departmental savings mean, I would explain that that is a term used to express the difference between the amount of expenditure authorized under any item by general or special warrant and the amount of expenditure which during the course of the year is actually spent against that item when the former exceeds the latter. If the amount allowed under any item in the general warrant proves to be inadequate, authority for additional expenditure has to be obtained by special warrant. If, on the other hand, it proves unnecessary to spend up to the full amount allowed in the general warrant, or if the additional provision made by special warrant is not fully spent, the difference reverts to revenue and is called departmental savings. The amount by which actual expenditure fell short of the provision made in 1934 in the general warrant and in special warrants not covered by equivalent savings was about £80,000 or about £31,000 more than had been taken into account in the Revised Expenditure Estimates prepared four months previously. In this connection I wish to take the opportunity of conveying to heads of departments and other officers in control of Government expenditure my appreciation of the loyal manner in which they have carried into practical effect Government's declared policy of rigid economy. To have secured savings amounting to £80,000 on the votes allowed to them for the maintenance of services under their control is a most creditable effort which deserves to be publicly acknowledged. This result is all the more remarkable when it is realized that the provision made for Recurrent Services other than under Heads of Estimates relating to Public Debt and Pensions, and after allowing for estimated reimbursements on account of the Northern Brigade, King's African Rifles, and for the Tanganyika Postal Services, was reduced as between 1931 and 1934 by no less a sum than £475,679.

Another factor which contributed to the alteration in conditions was a great improvement in Customs revenue during December, in which month receipts were higher than in any month since April, 1930. The improvement in Customs receipts towards the end of the year led to Customs revenue exceeding the revised estimates and this excess accounted for about £9,000 of the total of about £56,000 representing the difference between the anticipated deficit and the actual surplus for the year. Other factors were increased revenue

as a result of appreciation in the value of Government investments, increased revenue from veterinary inoculation fees and mining fees and sundry other items in the revenue estimates.

A disquieting feature was revenue from Native Hut and Poll Tax which was over £14,000 below the revised estimate, and actually £56,777 less than the original sanctioned estimate. The total realized under this sub-head was £514,480, that is to say, the lowest since 1922. The deficit may be partly accounted for by drought, particularly in the Coastal areas, and partly by the fact that the rains and therefore the native harvests were late, so that many taxpayers were not ready with their money by the end of the year. During this year over £35,000 of arrears of the 1934 tax have been collected.

The improvement in conditions which began to manifest itself towards the end of 1934 has so far continued through the present year. During the first four months of 1935, revenue exceeded expenditure by over £33,000 as compared with a deficit of nearly £41,000 in the first four months of 1934—that is to say, an improvement of about £74,000. Revenue exceeded the revenue for the first four months of 1934 by £84,000, while expenditure was £10,000 higher. This expenditure, however, included the second half-yearly instalment amounting to £17,000 of the sinking fund payments in respect of the 1930 £3,400,000 Loan, contributions to which began in July, 1934. The Railways and Harbours Administration reimburse the Colony to the extent of nearly £6,000 in respect of each of these sinking fund payments. If, therefore, in comparing 1935 and 1934 returns over the first four months of the year, transactions relating to this item are excluded, there has been an increase in revenue of about £78,000 and a decrease in expenditure of about £7,000. On this basis of comparison the position over the first four months of the year is some £85,000 better than it was over the first four months of 1934.

The increase in revenue is mainly attributable to Customs and Native Hut and Poll Tax collections. The improvement in the Customs revenue which was so marked in December of last year has maintained itself at least up to the end of May. Month by month the receipts have been higher than in the corresponding months of 1934. Up to the end of April Customs revenue was about £37,000 greater than in 1934 and the Commissioner of Customs estimates that by the end of May this increase amounted to £50,000. In the light of these returns it is reasonable to expect that the sanctioned estimate for Customs revenue, that is to say, £630,000, will fully materialize and it is not wildly extravagant or fantastic to hope that there may be a not inconsiderable surplus.

Native Hut and Poll Tax collections up to the end of April exceeded those for the corresponding period of 1934 by about £31,000.

These favourable revenue returns lend stability to the 1935 revenue position, but Government fully recognises that the same rigid control over expenditure as has been exercised in the past must still be unrelentingly maintained. The additional provision for expenditure for which sanction will be sought at this Session of Council as shown in the Schedule of Additional Provision No. 1 of 1935, which will be laid on the table, totals £51,148, but of this sum over £2,000 represents additional provision covered by savings, and nearly £42,000 represents additional provision covered by reimbursements to revenue from the Colonial Development Fund and other sources. The Schedule will be referred to the Standing Finance Committee in accordance with the usual procedure.

The value of Kenya exports for the first four months of 1935 shows an increase of more than a quarter of a million pounds over the value of exports for the corresponding period of 1934. The general inference which the Director of Agriculture draws from a study of the export figures to date and of agricultural prospects generally is that the value of agricultural exports during 1935 is likely to reach two million pounds, the sum which was accepted by the Standing Finance Committee as a reasonable estimate.

The increase over the figures for the first four months of 1934 is due mainly to the increased quantities of coffee and maize exported and to some extent to the higher values placed on coffee. The increase in the quantity of coffee shipped is due to the lateness of the 1934-35 crop. Whereas in preceding years half or more of the crop has been exported before the end of the year, less than one-third of the 1934-35 crop was exported in 1934.

After promising rains in the main coffee areas in February there were until recently only local and spasmodic rains, with the result that the coffee situated in the drier areas suffered severely. Thus, while the trees were in excellent condition earlier in the year to bear a record crop in 1935-36, I am informed that only a good average crop may now be expected. The uncertainty as to Brazil's future policy in regard to the control of coffee exports has reacted adversely on the demand for the lower qualities of Kenya coffee, but it is hoped that demands for the better grades will not be seriously affected.

The production of sisal is steadily increasing but values continue low. The recent heavy purchases by America, however, have considerably strengthened the demand for this commodity in the immediate future, and I hope that this may

be reflected in increasing prices. A research scheme with the object of finding new uses for sisal has been inaugurated at Lambeg in Northern Ireland under the control of the Board of Trustees appointed by the Sisal Industry Committees of Kenya and Tanganyika.

The animal and dairy industries are making steady progress, despite the difficulties of the past few years. The importation of pure-bred cattle into the Colony last year exceeded that for the previous year and the importations for the first four months of this year are only a few animals less than the total number for last year. A butter factory has recently been erected, equipped, and is now operating at Eldoret, adding one more to the chain of factories controlled by the Kenya Co-operative Creamery Limited. The value of butter exported last year was £41,269 as compared with £11,329 for the previous year.

In native agriculture rapid progress has been made. Largely increased production is recorded in maize, cotton and wattle bark. This increase is particularly noteworthy in view of the drought conditions which have obtained until recently. The cotton from Nyanza Province has increased from about a million pounds of seed cotton in 1930-31 to nearly eight million pounds and cotton is now also being grown in certain areas in the Central Province, while its cultivation at the Coast is extending.

It is significant of the times that even the Masai are showing a tendency to engage in agriculture and maize plantations, cultivated by young warriors, are becoming an increasing feature in the Reserve. The general enthusiasm for agriculture and for the economic development of their lands is probably responsible to a great extent for the diminution of political agitation among the native peoples. At any rate, I am glad to be able to report an atmosphere of harmony and goodwill and an increasing desire to co-operate loyally in the common welfare. This was very apparent during the recent Jubilee Celebrations throughout the Colony and Protectorate.

The Royal Agricultural and Horticultural Society's Show last December was a decided success. It is particularly gratifying to be able to state that, as I am informed, the entries for the Society's Show to be held in Nairobi this next week constitute a record. The Colony is much indebted to the Society for its admirable work for the benefit of agriculture, and I take this opportunity of wishing the forthcoming Show the triumphant success which its promoters deserve.

I am glad to be able to report that the mining industry continues to progress satisfactorily. The most significant

development is the recrudescence of activities in the Southern Goldfields at Gori River and Lolgorien. A year ago the outlook there was not very encouraging, but although there have been no new finds of first-class importance, the introduction of fresh and adequate finance and reorganization have entirely changed the situation. At Kakamega, the leading companies are preparing for large scale production towards the end of the year, and two of them expect to be treating an aggregate of over ten thousand tons per month by that time. Developments in No. 2 Area are similar to those in the Kakamega Goldfield. Companies of standing are examining prospects and taking options to an encouraging extent, but there is still much prospecting to be done.

On the subject of public health I have little to say except that the position seems to be fairly satisfactory.

The smallpox epidemic, which was still present when Council last met, and which had been responsible earlier in the year for some hundreds of deaths in the Northern Frontier, on the Tana River, and in the Coast Province, has subsided and, so far as is known, the Colony is now free from that disease. In the course of the preventive campaign over 400,000 vaccinations were performed.

The fears that the prolonged drought followed by irregular rains might result in severe outbreaks of malaria have fortunately not materialized to any great extent except in Nairobi and in the Masai Reserve. In the settled areas, I understand there has been no notable increase in the disease, and I should like to think that in one of those districts at least which I recently had the pleasure of visiting this is in no small measure due to the active interest which the farmers take in its prevention.

The outbreak in Nairobi has involved Government in some expenditure on which the Director of Medical Services will have something to say in the course of this Session, as also on the necessity for the provision of additional funds for the safeguarding of the public health.

The phenomenal increase in the numbers of Africans who now come to hospitals and dispensaries for medical or surgical treatment is one of the most emphatic signs of progress among our African peoples. It means that the power of the witch doctor is yielding to the power of science. A few years ago it was difficult to induce a native to come to a hospital. Last year the Medical Department provided treatment for over a million natives and in our native hospitals between five and six thousand operations were performed under anæsthetics. To this result this House may well be proud to have contributed, and may congratulate itself on the success of a policy which it has so consistently supported.

The Select Committee on Economy have now concluded their deliberations and their Report will be laid on the table during the course of the present Session. Changes in the personnel of the Committee owing to departures from the Colony, and sickness, have delayed the preparation of the Report which at the moment is still with the printer, and I and my advisers have not yet had an opportunity of considering the recommendations of the Committee. I can assure hon. Members, however, that the Committee's recommendations will receive the most careful consideration.

The Report of the Economic Development Committee will be laid on the table this morning. It is now some months since it was published, and during the interval the recommendations embodied in the Report have been thoroughly examined. In order that the attitude of Government to the Report may be generally known, a paper setting out the views of Government will be laid on the table. Two of the major recommendations of the Committee are for the appointment of a Standing Board of Economic Development and for an increase in the capital of the Land Bank. Hon. Members will observe that Government endorses both these recommendations.

Government has recently been reconsidering the allocation of the balance of money still available under loan, and after full consideration has come to the conclusion that it is desirable to suspend temporarily work on the Central Offices, the construction of which had been approved. Hon. Members are aware of the present state of boarding accommodation at the European Girls' Secondary School and of the accommodation of the Native Hospital in Nairobi. The necessity for the erection of suitable buildings to replace these inadequate, insanitary and time-expired structures is so urgent that Government has decided to give them priority over the Central Offices. (Hear, hear.) Accordingly, with the approval of the Secretary of State, a financial resolution will be submitted to this Council during the present Session seeking sanction for the allocation of loan funds for the construction of new boarding accommodation for the European Girls Secondary School, Nairobi, a grouped hospital in Nairobi, an extension which is badly needed to the Mathari Mental Hospital, and the reconstruction of the market at Kisumu which had to be demolished. In passing, I should like to pay a tribute to the magnificent work that is being done at Mathari Mental Hospital, and I can assure hon. Members that the plain evidence of progress will well repay a visit to that institution which owes so much to the energy, foresight and wisdom of one of our own citizens, Dr. Gordon. It is realized that Central Offices are definitely required on the grounds of efficiency and economy, but Government feels that

the buildings which I have mentioned are more urgently necessary, and unfortunately there are not at present sufficient funds for both in our loan balances.

While on the subject of loan balances, I may mention that correspondence is proceeding with the Secretary of State as to the possibility of raising additional loan funds for the proposed increase in the capital of the Land Bank and for a new water supply scheme for Nairobi estimated to cost £112,000.

Hon. Members will have seen from announcements in the Press that we have been granted two loans from the Colonial Development Fund, one of £64,000 for road development in the mining areas and another of £35,000 for the construction of an all-weather road from Kericho to Lumbwa. Both these loans are free of interest for five years, thereafter bearing interest at $3\frac{1}{2}$ per cent.

The programme of construction is at present under detailed consideration by the Central Roads and Traffic Board.

The Imperial grant of £50,000, given in connection with the Land Commission Report, was received in March and is being held on deposit in London. Proposals for expenditure against this grant will be placed before Council in due course.

Hon. Members have already received the Annual Report for 1934 of the hon. the General Manager of the Kenya and Uganda Railways and Harbours. This Report discloses the fact that the finances of the Administration have been fully restored and that it was found possible to eliminate completely the deficit of £317,946, leaving a small balance of £26,708 with which to re-open the Reserve Account. Hon. Members will agree with me that this is most satisfactory, particularly as it has been brought about largely by a reduction in working costs.

To the end of April this year Railway revenue returns show a surplus over estimates of some £105,000. This is due largely to the fact that the Railway has been able to move the export traffic this year more rapidly than in previous years, and the resulting revenue has been collected rather earlier than usual. There is reason to believe, however, that this favourable position will not deteriorate unduly during the remainder of the year. Should this prove to be the case, it will be clear that some permanent improvement will have taken place, and on this assumption the General Manager has already prepared a case for consideration by the Railway Advisory Council at their next meeting for granting relief to Railway users by means of rates reduction to operate from the beginning of 1936. A final decision on this point cannot of course be taken until later in the year, but it must be some

Secretary of State's decisions on the recommendation of the Bushe Report on the administration of justice.

The Sale of Pyrethrum Bill provides for the establishment of an agency similar to the wheat agency with the object of controlling the marketing of pyrethrum and maintaining high quality of exports by uniform grading and packing.

I will conclude by referring to the outstanding event, or rather series of events, which has taken place since we adjourned last December. That is to say, the celebration of His Majesty the King's Silver Jubilee. Telegrams and loyal messages and addresses were sent to His Majesty by the Colony and by many bodies, associations and communities within the Colony. The local celebrations were worthy of the occasion, and it is a matter for universal gratification that all creeds, races and communities in Kenya were in complete unity and unanimity in giving expression to their loyalty and devotion to His Majesty's person and throne. (Applause).

MINUTES.

The minutes of the meeting of the 22nd December, 1934, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table:—

BY THE HON. THE ACTING COLONIAL SECRETARY:

Schedule of Additional Provision No. 4 of 1934 (1st October to 31st December, 1934).

Schedule of Additional Provision No. 5 of 1934.

Schedule of Additional Provision No. 1 of 1935 (1st January to 31st March, 1935).

Statement required under section 150 of the Electric Power Ordinance for the year ended 31st December, 1934.

Report on Reconditioning in the Kamasia Native Reserve. Prisons Department Annual Report, 1934.

Judicial Department Annual Report, 1934.

Papers regarding the death of Mr. T. L. Powys.

Report of H. M. Eastern African Dependencies Trade and Information Office, London, 1934.

Report of the Economic Development Committee.

Government Press Annual Report, 1934.

Annual Report on Statistics of Migration through the Port of Mombasa, 1934.

Sessional Paper No. 1 of 1935—Action taken on the Report of the Economic Development Committee.

BY THE HON. THE ATTORNEY GENERAL :

Report of the Select Committee appointed to examine the provisions of the Legislative Council Ordinance (Chapter 24 of the Revised Edition of the Laws of Kenya).

BY THE HON. THE TREASURER :

Report of the Board of the Land and Agricultural Bank of Kenya, 1934.

Colonial Loans—Statement submitted to Legislative Council in June, 1935.

Financial Report and Statement for the year 1934.

BY THE HON. THE ACTING CHIEF NATIVE COMMISSIONER :

Native Affairs Department Annual Report, 1933.

Summaries of Local Native Fund Accounts, 1934.

BY THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT :

Returns of Lands Grants under the Crown Lands Ordinance—

1st October to 31st December, 1934.

1st January to 31st March, 1935.

Report of the Select Committee of Legislative Council appointed to report on certain financial questions in connection with the sale of Crown land in Townships.

BY THE HON. THE DIRECTOR OF MEDICAL SERVICES :

Medical Department Annual Report, 1933, including the Medical Research Laboratory Annual Report, 1933.

BY THE HON. THE DIRECTOR OF AGRICULTURE :

Department of Agriculture Annual Report, 1933.

BY THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS :

Report of the General Manager on the Administration of the Railways and Harbours for the year ended 31st December, 1934.

BY THE HON. THE DIRECTOR OF PUBLIC WORKS :

Public Works Department Annual Report, 1934.

BY THE HON. THE COMMISSIONER OF CUSTOMS :

Annual Trade Report of Kenya and Uganda, for the year ended 31st December, 1934.

BY THE HON. T. FITZGERALD :

Abridged Annual Report of the Posts and Telegraphs Department, 1934.

BILLS.**FIRST READINGS.**

On the motion of the hon. the Attorney General, seconded by the hon. T. D. H. Bruce, the following Bills were each read a first time :—

- Marketing of Native Produce Bill.
- Tribal Police (Amendment) Bill.
- Coir Fibre Industry Bill.
- European Officers' Pensions (Amendment) Bill.
- Non-European Officers' Pensions (Amendment) Bill.
- Native Tribunals (Amendment) Bill.
- Employment of Women, Young Persons and Children (Amendment) Bill.
- Sale of Pyrethrum Bill.
- Asiatic Widows' and Orphans' Pension (Amendment) Bill.
- Promissory Oaths (Amendment) Bill.
- Criminal Procedure Code (Amendment) Bill.
- Asian Civil Servants (Proportionate Pensions) Bill.
- Explosives (Amendment) Bill.
- Penal Code (Amendment) Bill.
- Juveniles (Amendment) Bill.
- Expulsion from Proclaimed Areas Bill.
- Native Hut and Poll Tax (Amendment) Bill.
- Liquor (Amendment) Bill.
- Mining (Amendment) Bill.
- Civil Procedure (Amendment) Bill.
- Licensing (Amendment) Bill.
- King's African Rifles (Amendment) Bill.
- Dangerous Drugs (Amendment) Bill.
- Legislative Council Bill.
- Local Government (Municipalities) (Amendment) Bill.
- Harbours Regulation (Amendment) Bill.
- Excise Duties Bill.

Notice was given to move the second reading of each of these Bills at a later stage of the session.

*Council adjourned until Thursday, the
27th June, 1935, at 10 a.m.*

THURSDAY, 27th JUNE, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, the 27th June, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

OATH OF ALLEGIANCE, ADMINISTRATION OF.

The Oath of Allegiance was administered to :—

Nominated Official Member :

SIDNEY HERBERT FAZAN.

The minutes of the meeting of the 26th June, 1935, were confirmed.

NOTICE OF MOTION.

Notice of the following motion was given :—

BY THE HON. J. B. PANDYA :

“That the following amendment to the motion to be moved by the Hon. Isher Dass be made :

‘And that the inquiry should include the circumstances leading to the preferring of a criminal charge against Dr. A. U. Sheth and others at Mombasa and to report thereon.’ ”

ORAL ANSWERS TO QUESTIONS.

IMPERIAL AIRWAYS LTD. LANDING FEES.

No. 5.—THE HON. CONWAY HARVEY asked :

“With reference to the first portion of the hon. the Colonial Secretary’s reply to Question No. 104 on the 21st December, 1934, will he please inform the House what has been the result of correspondence with the Sudan Government on the subject of the extortionate fees charged by Imperial Airways Ltd. for the use of landing grounds at Juba and Malakal?”

THE HON. THE ACTING COLONIAL SECRETARY (MR. H. G. PILLING) : The Sudan Government has informed this Government that the fees charged by Imperial Airways at the landing grounds at Juba and Malakal were approved by the Air Ministry and has indicated no intention of amending them. The matter is now the subject of correspondence with the Secretary of State.

THE HON. CONWAY HARVEY : Arising out of that answer, Sir, will Government make every effort in the interests of Kenya citizens to remove the disability imposed by this iniquitous brigandage?

THE HON. THE ACTING COLONIAL SECRETARY : I am directed to reply that Government has made and is making every effort.

BURSARIES FOR EUROPEAN CHILDREN.

No. 15.—LT.-COL. THE HON. LORD FRANCIS SCOTT asked :

“What scheme has now been settled on by Government for the scholarships for which money was voted in the 1935 Estimates, viz. £100, Item 29, Head VIII?”

THE HON. THE DIRECTOR OF EDUCATION (MR. E. G. MORRIS) : Rules to provide the machinery for granting bursaries for European children in accordance with the principle approved by the Legislative Council were considered and approved by the Governor in Council in November last.

The Rules are now under consideration by the Secretary of State for the Colonies who has not yet signified his approval of the expenditure involved.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Arising out of that answer, may I ask if Government will ask the Secretary of State to expedite his approval so that the benefit of these bursaries may be taken advantage of for the next October term?

THE HON. THE DIRECTOR OF EDUCATION : Yes, Sir.

JUDGMENT *Re* FRAUDULENT TRANSFER OF BUSINESSES ORDINANCE, 1930.

No. 16.—CAPT. THE HON. H. E. SCHWARTZE asked :

“(i) Has the attention of Government been drawn to the judgment of the Supreme Court in Civil Appeal 11 of 1935?

(ii) In view of this decision and the necessary effect it may have on the operation of the Fraudulent Transfer of Businesses Ordinance, 1930, will Government appoint a small Select Committee of Council to consider and report on what (if any) amendments to the Ordinance are necessitated by the judgment in question?”

THE HON. THE ATTORNEY GENERAL (MR. W. HARRAGIN) :

(i) The answer is in the affirmative.

(ii) It is considered that no good purpose would at present be served by the appointment of a Select Committee of Council on the lines suggested.

The matter has been referred to the Law Society of the Colony of Kenya and to the Mombasa Law Society.

CAPT. THE HON. H. E. SCHWARTZE : Arising out of that answer, may I take it that, if these Societies consider that certain amendments are necessary, Government will consider appointing a Committee or that the hon. and learned Attorney General will agree to meet representatives of these Law Societies for the purpose of suggesting amendments to Government?

THE HON. THE ATTORNEY GENERAL : The answer to the second part of the question is certainly in the affirmative.

EX GRATIA GRANT TO MRS. SEMINI.

No. 13.—LT.-COL. THE HON. LORD FRANCIS SCOTT asked :

“In view of the quite exceptional circumstances of the case, the great damage caused to Mrs. Semini’s health, and the generous response of the public, will Government make an ex gratia grant of money to Mrs. Semini, without prejudice to any other case that might arise?”

THE HON. THE ACTING COLONIAL SECRETARY : Government much regrets that it is unable to accede to this request.

STANDING ORDERS SUSPENDED.

THE HON. THE ATTORNEY GENERAL moved that Standing Orders be suspended to enable the Excise Duties (Amendment) Bill and the Customs Tariff (Amendment) Bill to be passed through all their stages without due notice.

THE HON. T. D. H. BRUCE (SOLICITOR GENERAL) seconded.

The question was put and carried.

Standing Orders were suspended.

BILLS.

FIRST READING.

THE CUSTOMS TARIFF (AMENDMENT) BILL.

THE HON. THE COMMISSIONER OF CUSTOMS (MR. G. D. KIRSOPP) moved that the Customs Tariff (Amendment) Bill be read a first time.

THE HON. THE TREASURER (MR. G. WALSH) seconded.

The Bill was read a first time.

SECOND READING.

THE HON. THE COMMISSIONER OF CUSTOMS : Your Excellency, I beg to move that the Bill be read the second time.

This Bill, Sir, and the complementary Bill to amend the Excise Duties Ordinance which it is proposed to introduce to-day at a later stage, are agreed measures under the terms of the Customs and Excise Agreements, and parallel legislation is being enacted in Uganda and Tanganyika Territory.

The purpose of these measures is to protect, as far as possible, the Customs and Excise revenue derived from manufactured tobacco and cigarettes from shrinkage due to the displacement of the imported article by the article of East African production.

The Customs duty on imported cigarettes and tobacco is at present Sh. 2/40 per lb, or alternatively 62½ per cent *ad valorem*, while the corresponding Excise duty is Cts. 75 per lb, without any alternative rating in the case of cigarettes, and Cts. 50 per lb in the case of manufactured tobacco.

In face of the steady expansion in the consumption of East African tobacco, this disparity between the Customs and Excise ratings is necessarily giving rise to a progressive loss of revenue. The swing over from imported to East African cigarettes and tobacco has been much more pronounced in the other two territories than in Kenya, but the movement in this Colony has become by no means negligible. In the year 1934 the Excise duty on East African tobacco and cigarettes consumed in Kenya was £2,180; the Customs to-day on an equivalent consumption of imported tobacco and cigarettes would have been £7,920; so that the apparent revenue loss on account of the difference between the two rates of duty was £5,740. As there is every reason to believe that the trend of consumption will continue to favour tobacco of East African production, it is clear that the stability of receipts from this important revenue source is likely to be seriously threatened unless safeguarding measures are taken.

The Bill now before Council represents the first step in the scheme of duty revision which it is proposed to enforce in order to meet the situation which I have explained. It seeks to amend the Customs duty by increasing the specific rate on cigarettes and tobacco from Sh. 2/40 to Sh. 2/65, i.e. an increase of Cts. 25 per lb, and the alternative *ad valorem* duty remains unchanged.

This is a very modest adjustment in the existing basis of assessment, but Government has been anxious to avoid the risk of advancing these duties to a point which would be likely to disturb the existing retail selling price and react adversely

on the volume of consumption. It is believed that this relatively small increase will not disturb, to any appreciable extent, the selling prices of these articles, and that there will be no adverse reaction on consumption.

The advance of the specific rate of Customs duty will, in the first place, result in some increase in receipts and, in the second place, it will enable a correspondingly larger duty to be levied as Excise on locally manufactured tobacco.

So far as the increased yield of Customs duty is concerned, it is estimated that, on the basis of 1934 consumption, additional receipts will amount to approximately £4,750 a year, while the current year's revenue is likely to benefit by about half that amount or £2,375.

THE HON. THE TREASURER seconded.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, the European Elected Members are forced to oppose this motion on the general principle that it does entail increased taxation, and on the second principle that when a local industry is established it should not immediately be penalized.

Though there may have been a certain loss in revenue from importations of tobacco into the country, it must be remembered that with the establishment of a local industry the money is kept in the country and is circulated and has corresponding results in increased revenue from other sources. It is said that this change will involve an increase in revenue of some £4,750 a year. Presumably somebody has to pay that, and therefore it does come under the heading of increased taxation. On the general principle we must oppose this Bill.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I am also opposed to the Bill for the reasons stated by the Noble Lord.

I should also like to take this opportunity of pointing out that in this instance Government has consulted the importers but they did not consult the European Elected Members, nor the Elected Members generally in this Council, until a few minutes ago. I can definitely state that in a previous Council it was the procedure to call the Elected Members of the Council to Government House and notify them of Government's proposals. It had the advantage that it gave the members an opportunity of thinking matters over and deciding what action they should take.

I would request that in future longer notice be given to Elected Members; at least the same consideration should be given them as to the unofficial importers.

SECOND READING.

THE HON. THE COMMISSIONER OF CUSTOMS : Your Excellency, I beg to move that the Bill be read a second time.

This Bill, Sir, represents the second step in the scheme of duty revision which has been devised to counteract the shrinkage of Customs and Excise revenue due to the expanding consumption of East African Tobacco.

The East African tobacco industry has enjoyed a substantial measure of fiscal protection during the early stages of its development. Since the year 1931, the Excise duty has remained fixed at Cts. 50 per lb. in the case of tobacco and Cts. 75 per lb. in the case of manufactured cigarettes, as compared with the flat rate of Sh. 2/40 charged as Customs duty on the imported article of similar quality. The present margin of tariff protection, therefore, represents Sh. 1/90 per lb. for manufactured tobacco and Sh. 1/65 per lb. for cigarettes.

The rapid progress which the local industry has recently achieved indicates that the stage has now been reached when this fiscal advantage can be curtailed without impeding future development.

After a comprehensive investigation of the position from both the revenue and industrial standpoints, the Governments concerned all agreed that the margin in favour of Excise can now safely be reduced to Sh. 1/40 per lb. in the case of both cigarettes and tobacco. Allowing for the Cts. 25 increase to be effected in the Customs duty, the present Excise duties may thus be raised to the flat rate of Sh. 1/25 per lb. in lieu of the present rates of Cts. 50 per lb. on manufactured tobacco and Cts. 75 per lb. on cigarettes. The Bill now before the House seeks to impose this higher rating, and as hon. members are already aware concurrent legislation with a similar purpose is being enacted to-day in Uganda and Tanganyika Territory.

So far as this Colony is concerned, the resulting gain to the revenue is estimated, on the basis of 1934 consumption, at about £2,000 per annum, the current year's yield being likely to benefit by about £1,000.

It is now proposed to apply the same rate of Excise duty to cigarettes and to manufactured tobacco, whereas hitherto the duty on tobacco has been at a lower rate than the duty on cigarettes. The principle of the common rating of these two forms of the same article has been applied satisfactorily for some years by the Customs tariff, and it is only proper that the same principle should be applied in fixing countervailing duties of Excise. In this territory, the great bulk of manufactured tobacco reaches the actual consumer in the shape of hand-made cigarettes, and there is no substantial reason

why the consumer of this type of cigarette should make a smaller contribution to the revenue than the consumer of the machine-made article.

In conclusion I would refer to clause 2 of the Bill. The principle Ordinance imposes Excise duty on all exciseable manufactured articles, but omits to provide for the application of altered rates of duty to stocks already manufactured and held in bond on factory premises. Clause 2 amends section 7 of the principle Ordinance so as to make the new rates of duty applicable to such "in bond" stocks, in accordance with what is generally accepted practice.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Our attitude to this Bill, Sir, is exactly the same as with regard to the previous Bill, and I shall not take up the time of the House by reiterating our arguments.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL moved that the Council resolve itself into a Committee of the whole Council to consider clause by clause the Customs Tariff (Amendment) Bill and the Excise Duties (Amendment) Bill.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Council went into Committee.

In Committee.

His Excellency in the Chair.

THE CUSTOMS TARIFF (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 2 was moved by the hon. the Attorney General.

THE HON. CONWAY HARVEY: I am at a loss for a word, Mr. Chairman—strange though it may seem—and perhaps the hon. and learned Attorney General will tell us if a sign or small symbol has not been omitted from the clause after the figures "62½". I shall be grateful if he can tell us the right word to describe what I mean—“(or *ad valorem* 62½ —).”

THE HON. THE ATTORNEY GENERAL: Per cent is omitted.

THE HON. CONWAY HARVEY: Thank you.

CAPT. THE HON. H. E. SCHWARTZE: The hon. and learned Member has not answered the question of the hon. Member for Nyanza. What do you call those two little twiddles if you don't put in the words "per cent"?

THE HON. THE ATTORNEY GENERAL: There is no objection to putting in the words "per cent".

CAPT. THE HON. H. E. SCHWARTZ: I am trying to find out what you call it—a symbol, or what. We are genuinely anxious to ascertain what it is called.

HIS EXCELLENCY: Percentage symbol is, I think, the right expression.

CAPT. THE HON. H. E. SCHWARTZ: I am grateful to you, for I see the hon. and learned Attorney General does not know! (Laughter.)

THE HON. THE ATTORNEY GENERAL: I beg to move the amendment suggested by the hon. Member for Nyanza so happily, in that the percentage symbol be inserted after the figures "62½" and before the word "whichever" in the last line of the clause.

The question was put and carried.

THE EXCISE DUTIES (AMENDMENT) BILL.

The Bill was considered clause by clause without amendment.

THE HON. THE ATTORNEY GENERAL moved that the Excise Duties Bill be reported to Council without amendment, and that the Customs Tariff (Amendment) Bill be reported to Council with amendment.

THE HON. THE TREASURER seconded.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY informed Council that the Customs Tariff (Amendment) Bill had been considered clause by clause in Committee of the whole Council and had been reported with amendment, and that the Excise Duties (Amendment) Bill had been considered clause by clause in Committee of the whole Council and had been reported without amendment.

THIRD READINGS.

THE HON. THE ATTORNEY GENERAL moved that the Customs Tariff (Amendment) Bill be read a third time and passed.

THE HON. THE TREASURER seconded.

The question was put and carried.

The Customs Tariff (Amendment) Bill was read a third time and passed.

THE HON. THE ATTORNEY GENERAL moved that the Excise Duties (Amendment) Bill be read a third time and passed.

THE HON. THE TREASURER seconded.

The question was put and carried.

The Excise Duties (Amendment) Bill was read a third time and passed.

STANDING ORDERS RESUMED.

Standing Orders were resumed.

BILLS.

SECOND READINGS.

PENAL CODE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill to amend the Penal Code be read a second time.

The Bill which is now before the House, as hon. members are probably aware, is the result of the Bushe Committee which sat in this country and the neighbouring territories during 1933. After the Committee had reported there was considerable discussion between the Colonies concerned and various despatches passed between the Governors and the Secretary of State. Those despatches, together with the Report, were duly laid on the table of this House at the last session.

Opportunity has also been taken naturally, as we had to amend the Code, to remove anomalies and to clarify any sections which had been pointed out to be difficult of construction. I will, however, only refer to those amendments which I consider to be other than verbal in the Bill before you, and in considering this Bill I hope hon. members will remember that I circulated, two or three weeks ago, some further amendments which they no doubt have before them.

The first section to which I would refer you, Sir, is section 3 of the Bill as printed, which merely makes provision for two additional forms of punishment which may be administered in this country, namely, detention instead of imprisonment. In the section which we are amending you will notice that its purpose is to set out various forms of punishment and actually detention is omitted. There is a further amendment necessary to that clause, because, in a later clause in this same Bill, you will find that provision is made for the suspension of the certificate of a motor driver who drives to the danger of the public thereby committing some offence against this particular Code.

The next section 4 deals with two points: the first is making provision that where the Court has awarded costs and/or compensation against any accused person, it provides the scale of imprisonment which may be given in default of distress being successful in producing the money. The second point deals with the scale of imprisonment which shall be given in lieu of a fine. This I know will receive the support of hon. members on the other side of the House because it is partly due to a suggestion which came from that side of the

House when the 1934 Bill was being considered that we have now adopted the scale which is at the moment in force in Tanganyika.

Section 5 deals with the particular type of punishment which I mentioned a moment ago, namely, the suspension of a certificate of competency where the driver of a vehicle has been guilty of an offence and the court is of the opinion that his licence should be suspended. The reason why this is being inserted is because there has always been a difficulty in a case such as manslaughter, which is a most usual form of case where a motorist is brought into contact with the public. Where we charge a man with manslaughter it is most invidious to have to add some trumpery charge under the Traffic Ordinance. At the moment the certificate or licence can only be suspended under the Traffic Ordinance, the result being that there have always had to be two counts in the information laid and if by any chance one is left out the most important part of the punishment, i.e. to prevent the driver from driving again, has been unable to be inflicted by the court hearing the case.

Section 6 deals with infanticide and if I may put it very shortly—it is not worth going into in detail—it merely says that where an unfortunate woman is charged with murder and the court or jury come to the conclusion that she is guilty of infanticide, that verdict may be brought in. It also provides that the information may be laid for infanticide right away instead of laying, as has to be done at present, the usual charge of murder. There are also two clauses dealing with the infliction of capital punishment on pregnant women. It is laid down already that no pregnant woman shall be sentenced to death but the procedure has never been clear as to how this is discovered and investigated by the court which has the trying of the case. As a matter of fact it usually comes out afterwards and has to go to the Governor in Council and we now make provision for the court which tries the case to go into the question whether the woman is pregnant and if she is not to inflict the penalty prescribed by law for murder.

Section 7 is merely verbal but very necessary because as it reads at present it is quite possible that a person might be charged—though I do not think they would ever be convicted—with trespassing on their own land. A slight amendment made to that section makes it clear that only those who are trespassing without authorized authority will be capable of being convicted.

The further amendments which I mentioned earlier I might as well deal with at this stage lest any hon. member would like to comment on them. They refer to intoxication.

This is a model clause which has been sent out for all the East and Central African colonies. It is the codification of the law on this subject in England to-day and I think I can say that in practice it is the law which is administered by the courts at the moment. However, I think it is very desirable that it should be laid down actually in legal form and not left to the interpretation of the individual judge, though they have never failed us yet, and the model clause has been adopted. There is also an important amendment in sub-section 5 which deals with drugs and narcotics, making it clear that they come under the same heading as drink.

The only other clause worthy of mention deals with section 35A of the Code and it merely clarifies the position with regard to sentence after escape. As at present worded it is somewhat archaic and difficult of construction by the court and it has been suggested that the position should be rectified so that magistrates will know exactly what they are entitled to do when they are sentencing a prisoner for the crime of escape whilst in custody.

Those are I think the only important amendments. I beg to move.

THE HON. T. D. H. BRUCE : I beg to second, Sir.

The question was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

THE HON. THE ATTORNEY GENERAL : I beg to move that the Penal Code (Amendment) Bill be referred to a Select Committee consisting of the following members :—

The hon. the Attorney General (Chairman).

The hon. the Acting Chief Native Commissioner.

The hon. T. D. H. Bruce.

The hon. Member for Nairobi South.

The hon. Member for Ukamba.

The hon. Member for the Coast.

The hon. N. S. Mangat.

The hon. the Ven. Archdeacon Burns.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

SECOND READING.

LOCAL GOVERNMENT (MUNICIPALITIES) (AMENDMENT) BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LAND AND SETTLEMENT (MR. W. M. LOGAN) : Your Excellency, I beg to move that the Bill to amend the Local Government (Municipalities) Ordinance, 1928, be read a second time.

This Bill deals entirely with the question of control of ferries. Hon. members may remember that as a result of the Port Inquiry Commission in 1926, the Port management was taken over by the Railways and Harbours and in 1928 statutory authority for that Administration to establish and maintain ferries was conferred in the Harbours Regulation Ordinance, and from that year until the present time ferries at the Coast have been managed by the Railways and Harbours Administration. During the last two or three years that Administration has made representations to Government that ferries should no longer be run by them but should be taken over by some other authority. In the principal Ordinance passed in 1928 power was conferred on Municipal Authorities to establish and maintain ferries and it appears that if the ferry at Mombasa is to be transferred to any other authority it should be transferred to the local authority on whom powers for that purpose have been conferred. The Mombasa Municipal Authority has considered this question for some time and its principal pre-occupations have been, firstly, whether if they take the service over it will pay them to do so. During the consideration of that aspect of the question—hon. members will probably be aware that a bus service is about to be established in Mombasa and it appeared possible that a similar procedure in connection with running ferries would be a suitable thing to have. They therefore represented that power should be given in an amending Ordinance to permit them to lease out the ferry on terms much on the same lines as operate in Nairobi and elsewhere in connection with bus services. Therefore, we have put into this amending Bill, Sir, provisions analogous, *mutatis mutandis*, with the provisions that were made recently to enable the licensing of bus services in Nairobi and other municipalities.

From the point of view of protection to the local public this measure, of course, is purely an enabling Bill and any proposal to enter into a lease requires the approval of the Governor and requires to be notified in the usual way for purposes of publicity.

The second point that occupied the attention of the Mombasa Municipal Authority was whether, if they took the service over, they would be adequately protected from competition. The competition might come from two sources: one from the Railway itself and one from the private ferries. In so far as Railway competition is concerned, that is dealt with in the next Bill on the Order of the Day this morning, and so far as competition from other sources is concerned, provision has been included in sub-clause (c) of sub-section 48 of section 52 to enable a Municipal Authority to prohibit

the carrying on of a ferry boat service within specified areas. Again, I am to call attention to the fact that this cannot be enforced without the specific approval of the Governor.

In clause 3 of the Bill by an amendment to section 69 of the principal Ordinance power is given to the Board to make by-laws for regulating and licensing ferry boats, for fixing licence fees to be paid and the charges and so on and also for regulating or prohibiting the use of landing places, approaches and ramps maintained in connection with any service of ferry boats. So that if there appears good reason to the Board to do so, they may submit a by-law for the Governor's approval in order to prohibit competition from private ferries.

I understand, Sir, that it is desired that this Bill should be referred to a Select Committee and I have Your Excellency's authority to say that that course will be adopted.

There is one particular point which should be referred to the Committee, made by the Board, and that is a suggested amendment to the definition of a ferry boat which is I think primarily a Select Committee point.

THE HON. T. D. H. BRUCE seconded.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE: Sir, as the hon. the Commissioner for Local Government has explained, this Bill affects particularly the Likoni Ferry, which, as we all know, runs between Mombasa and the mainland. For many years the rates on this ferry have been a very serious drain on the resources of people shipping goods not only to Mombasa but also down the harbour at Kilindini. The rates are very high—a good deal higher than other ferries. There is a large amount of produce now coming in of sugar, cotton, sisal and various other articles of produce which all have to pay a very heavy rate for coming into Mombasa. For many years we on the Coast have been living in the hope that some day this Likoni Ferry might be made free. It is after all part of the road. From the south access to Mombasa is free over the Macupa bridge, so that they have a considerable advantage over us. It is not possible to make a road from the main road south to join on to the Macupa bridge as there is a tremendous detour to be made.

At the last meeting of the Coast Agricultural Advisory Board the following resolution was put up, namely: That the principle of free ferry services set out in resolutions from this Committee on the following dates—29th November, 1932, 26th May, 1933, and 2nd November, 1933—be accepted as the goal to be gradually achieved. This, I think, Sir, has

also received sympathetic consideration by Government on various occasions, but they ask that in the meantime the following be put into force: The Likoni ferry charges to be the same as the north coast ferries; that a lower scale for the carriage of goods be introduced now; that season tickets be issued on all ferries to large users and that lorries returning empty pay half fare; that ferry charges be revised every three years and that any contract to let ferries should not be for a period of more than three years; that pending realization of the eventual free ferry service, Government should subsidize the carriage of goods and commercial vehicles to enable a substantial reduction in fares to be made.

Further, Sir, it is proposed that this particular ferry should be handed over to the Municipality of Mombasa who are to have the right to sub-let it. That will certainly put back the principle of free ferry service for many years, if ever. We cannot, therefore, agree to that at all. If it should be necessary to lease the ferry to somebody else, we consider that it should be the duty of Government to do it and they should do it under such terms as would suit the people down there.

I trust, Sir, that this Bill may be sent to a Select Committee and that we may have an opportunity of discussing it in Mombasa with the Chamber of Commerce and others who are vitally affected by this.

THE HON. F. A. BEMISTER: Sir, it is a terrible source of regret to me that I should have lived to be in a representative House that could bring in such a reactionary suggestion as is in this Bill. Just for a moment examine the previous history of this ferry. In 1926 or thereabouts when we were all as anxious to hand over everything in comfort to the Railway, it was decided they should take over the ferries, foreshore rights and every other convenience at that time under the central Government. It is only since there has been a suggestion of real economy in the Railway and at a time when they have had to examine every source of expenditure and revenue that it has been found that it was doubtful if the ferries at Likoni paid them, and then their anxiety was at all costs to push them on to somebody so long as it was not themselves. The Government, throwing over their responsibility for maintaining the main trunk roads of the Colony free (that is the essential duty of Government; it is admitted) have, shall, we say, quietly persuaded the Local Government Board to consider pushing it on to the Municipality which is already supplying £20,000 to £30,000 out of their water to the Central Government revenue. Is it to be believed, Sir, that really and actually this Government even considers the possibility of such a Bill going through with the consent of any

THE HON. J. B. PANDYA : Your Excellency, I am in sympathy with what the hon. Member for the Coast and the hon. Member for Mombasa have said in regard to this Bill. Surely the principle in regard to ferries should be that they must form part and parcel of the road scheme, and the progressive realization of free ferries as suggested by the hon. Member for the Coast is very essential for the development of markets and for the natives.

The principle in this Bill is that the ferries should be handed over to municipalities. I should not object to that, because so far as Mombasa is concerned the Municipal Board is the road authority there. But we are opposed to the scheme mentioned in the Bill, that the Mombasa Municipality should give an exclusive licence to some firm to treat the ferry as a business concern. If that happens, then the progressive realization of free ferry services is very difficult to obtain, and from this point of view I think a Select Committee on the Bill can, in my opinion, change the Bill so that it will not allow the Municipality to issue an exclusive licence for any ferry. The principle is this. That if the public road authority controls the ferries, then the people have certain opportunities of complaining to them about the running and management of the ferries and also of demanding from them reduction of rates and the opportunity to ply ferries as they do near the Nyali Bridge; but if a private company is going to operate the ferries then I am quite sure it will inflict very great hardship on the users of the ferry system and it will retard the progress of development, which I think would be unfortunate. From that point of view I do hope that in select committee this Bill will be so altered as not to allow the issue of an exclusive licence or inflict any hardship on the people of Mombasa and the Coast.

VEN. ARCHDEACON THE HON. G. BURNS : Your Excellency, I have not very much to say with regard to this Bill except that there are two or three points which I should like made clear.

This Bill refers not only to the Likoni Ferry but to all ferries on the Coast, and the points I should like made clear are these. Will such a Board as may be appointed with regard to these ferries have unrestricted powers concerning the prices both for goods and passengers? The second point is, supposing the ferries are let out on contract to some person, will they have power to close down any existing ferries without making adequate provision for the people at the present time using them? I refer more particularly to the ferry running between Freretown and the Island.

The hon. Member for Mombasa has referred to the injustice to the company which built the Nyali bridge when other ferries were competing with them at that place. I am speaking from the point of view of those who use that ferry from the Island across to the mainland.

THE HON. F. A. BEMISTER : On a point of explanation, I did not say that at all ; I had no intention of saying anything of the kind.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE : The Bill refers only to ferries in municipal areas.'

HIS EXCELLENCY : That is a point of explanation?

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE : Yes, Sir.

VEN. ARCHDEACON THE HON. G. BURNS : The Municipality of Mombasa, I understand, extends beyond the creek into what is known as Freretown and some miles into the interior of the mainland including, I believe, I am not quite sure, the new village of the people who were settled there recently.

The point I want to make and to be sure about is that the people who at the present time are using the ferry from Shimoni across to Freretown will not be deprived of it and compelled to use the Nyali Bridge willy-nilly, whatever the consequences may be. It would involve very serious hardship on those people, because it would mean for some of them a walk of over two miles, apart from paying a heavy fee to cross on that bridge, so that if a ferry is to be let out on contract I should like it made perfectly clear that contractor—or whoever gets the privilege of running these ferries—is not put in the position that he can close down ferries which at the present time are beneficial to natives on the mainland passing to and fro to the island.

THE HON. SHAMSUD-DEEN : Your Excellency, I must say that I entirely agree with the view expressed by the hon. Member for Mombasa as regards any rights being given to any private companies by sub-letting the rights of these ferries. I also feel that at the present moment the ferries being controlled by a Government department is not a very satisfactory state of affairs. I should be inclined to hand the ferry over to the Municipality in which the people have their own representatives and where they can better express their views on the subject.

Of course, the desideratum should be that natives should be carried on that ferry free of charge. I am not at all impressed by the analogy of the hon. the Commissioner for Local Government when he says it is the same as the buses in Nairobi, because the buses do take people who are not likely to make use of the roads. But that does not apply to the Likoni Ferry. People are definitely willing to walk over the road or bridge, but in the absence of either they are compelled to make use of the ferry because Government has not been able to establish other communications with the mainland.

Therefore I should like to see this Bill either thrown out or amended to such an extent that if the ferry is handed over to the Municipality the aim should be that natives should have free use of it and others who carry goods on the ferry must pay for it. I think that the present charge of Sh. 2 a car to cross over and back is simply atrocious, and something has to be done, although I do not like the idea of a ferry being handed over to the municipality who in turn may hand it to someone else.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, this is not a question which I know very much about, but I suggest that if there is this very strong—and it seems almost unanimous—feeling of opposition in Mombasa and on the Coast, Government would be wise to drop the Bill altogether for the time being and carry on as we are at present, the Railway authorities dealing direct with the local people as to any improvements they may be able to make in the way of charges or services.

You must remember that when the Railway took over these ferries it was at the original demand of the Railway Administration, who said they must have control of all the waterways around Mombasa. If there is this great opposition to this proposal, as I understand from what I have heard this morning, and if the municipality is not prepared to take it over except on the terms put forward in the Bill, I suggest that Government would be wise to reconsider the position and carry on as we are until perhaps a more satisfactory solution may be found with the general agreement of the people concerned. (Hear, hear.)

Council adjourned for the usual interval.

On resuming.

THE HON. SIR ALI BIN SALIM: Your Excellency, I have been asked to give some information about these ferries. It is not quite clear to hon. members of the House that these ferries, and there is quite a number, were originally private

ones, and Government took them over on the understanding that they would be improved. Up to now Government has made no improvements. For the people using the ferries there has been no improvement, and particularly in connection with the ferrying of motor cars, which are often damaged. I do not think it would be right if Government were to hand the ferries over to private companies. Personally, I believe they should be continued to be run by Government, and improved according to the needs of the people, and the money derived from the ferries should not go into general revenue but used for the improvement of the ferries. (Hear, hear.)

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I rise to oppose this Bill as it stands before the House. I think it would be very much better if the ferry was allowed to carry on under the present organization, under the present authority, or else it should be run by Government, for I have a definite objection to the grant of the exclusive licence contemplated in section 2 (c). If that part of the Bill was withdrawn, a good deal of my objection would disappear.

If the municipality is to take it over, whether they sublet it or not, provided the ferry is run in open competition with the native boats or any other ferries and under any schedule that may be arranged, my objection would be withdrawn. But I am definitely objecting to a ferry under an exclusive licence, which means an exclusive toll on a main thoroughfare.

CAPT. THE HON. H. E. SCHWARTZE: I had not intended to intervene in this debate, but I do so merely for one purpose.

Quite apart from the provisions in this Bill for the leasing by the municipality or the granting of an exclusive licence or otherwise—which I think is a matter worthy of most careful consideration by select committee—I cannot subscribe to a doctrine which states that it would be better for the ferry or any other such concern to be run by Government than by the local authority. (Hear, hear.) It has been part and parcel of the policy of members on this side of the House to press for a greater measure of control in local affairs by duly constituted local authorities, and I cannot help feeling that to suggest that a proposal made by Government to grant certain powers to a local authority should be cancelled or revoked in favour of granting such powers to Government must be a retrograde step and quite possibly might be quoted as a precedent against our desire to see local authorities in all parts of the country have the widest possible powers. (Hear, hear.)

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, the opposition to the Bill seems to fall into two categories: one, the opposition

to the principle that the local authority is the right body to operate the ferries—and in that connection I am very grateful to the last speaker for replying so effectively on my behalf to that point, and I need add nothing to what he said; the second objection seems to be levelled at the control of the ferry. I might suggest that that perhaps is not absolutely germane to the enactment of the Bill, which is purely an enabling measure, but as there has been so much opposition to the suggestion in the Bill that a municipality, if it took a ferry over, might make arrangements by way of an exclusive licence for some agency to run the ferry on its behalf, Government is prepared to further consider that in select committee and, if necessary, to take more evidence on the spot on that point.

I should be lacking in my duty if I did not point out to the House that the measure has the full concurrence of the local authority in Mombasa. I do not wish to be taken to mean by that that they have actually pressed to take the ferry over, but they recognize it is one of their normal functions to perform this duty, and subject to safeguarding their own revenue they are willing to perform that function. There are, I suggest to the hon. Member for Mombasa, on the local authority equally sound and sensible members of the community as himself, and we have their backing behind us in asking that this measure be passed.

However, I think if this course is taken and the select committee do definitely address themselves to considering the clause of the Bill dealing with exclusive licences, Government will retain the principle that a local authority is the proper authority to manage the ferry, and I trust that in that event we shall obtain agreement on the point.

The question was put and carried.

SECOND READING.

THE HARBOURS REGULATION (AMENDMENT) BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: I beg to move that the Harbours Regulation (Amendment) Bill be read a second time.

Your Excellency, this is purely a complementary measure

LT.-COL. THE HON. LORD FRANCIS SCOTT: On a point of order, are we not going to appoint the select committee for the previous Bill?

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: I intend to do that afterwards.

This is purely complementary to the other Bill, and merely enacts that whenever a local authority is the authority established to run ferries the Harbours Administration will not exercise the powers bestowed upon them in the principal Ordinance. That forms part of the protective measures to which I alluded in my speech on the previous Bill.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS (BRIG.-GEN. SIR GODFREY RHODES) seconded.

THE HON. F. A. BEMISTER: Your Excellency, I only rise to give myself the opportunity of pointing out that I have never suggested that other than the municipality was the correct authority to run or to take over these ferries, but it was the idea that Government should maintain the road. That was all.

The question was put and carried.

SELECT COMMITTEE APPOINTED.

THE HON. THE ATTORNEY GENERAL moved that the Local Government (Municipalities) (Amendment) Bill and Harbours Regulation (Amendment) Bill be referred to a Select Committee consisting of the following:

- The hon. the Commissioner for Local Government (Chairman),
- The hon. the Commissioner of Customs,
- The hon. T. D. H. Bruce,
- The hon. G. H. C. Boulderson,
- The hon. the Member for Mombasa,
- The hon. the Member for the Coast,
- The hon. J. B. Pandya,
- The hon. Sheriff Abdulla bin Salim.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT seconded.

The question was put and carried.

SECOND READING.

THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Criminal Procedure Code (Amendment) Bill be read a second time.

As hon. Members are well aware, this is a sister Bill to the one which I moved earlier this morning. I may also say that it originated from the same Commission, and all the general remarks which I made with regard to the Penal Code are equally true with regard to this Code.

The first amendment, in clause 2, deals with the extension of the jurisdiction in which criminals may be tried. Cases have occurred, and one simple example will explain the point to this House, where it has been extremely inconvenient to everybody concerned to have a criminal tried at the place where, under the present law, he had to be tried, namely, where the crime was committed. For instance, let us take a stock theft. Let us say an animal was stolen in Naivasha; it may be taken a hundred miles away. When the accused is eventually tracked, both animal and man have to be driven—and taken!—back to the court at Naivasha. Clearly this is a state of affairs extremely inconvenient, and we now make provision that the man may be tried where he is caught.

Section 3 deals with the court's right to call witnesses at any time, together with safeguarding provisions with regard to cross-examination of these new witnesses by counsel on both sides. Instances have occurred where important witnesses whom the judge considered would be able to give enlightening evidence have not been subpoenaed by either side, and it is thought that in the interests of justice a court should have the right to call them in order that the court may be sure all the evidence possible is before them. I think you will all agree that the safeguarding provisions with regard to cross-examination make it clear that no injustice can occur.

Section 4, which deals with confessions to the police need not, I regret to say, worry hon. members, because in view of the representations made to Government and in view of the fact that we understand the whole of the European Elected Members are opposed to this section, and in view of the fact that His Excellency himself, in giving evidence before the Commission a year or two ago was also opposed to this section, it will in due course be withdrawn in the select committee to which this Bill will be referred. (Hear, hear.) I may say that the inclusion of the section was not an invention of mine, although I would have supported it very heartily, but it was actually the recommendation of the Bushe Commission.

The next section, 5, merely deals with imprisonment in default of distress where costs and compensation have been awarded, and limits the amounts of such imprisonment or detention to three months. It is the necessary corollary to the section to which I referred in the Penal Code this morning.

Sections 6 and 8 may appear to some hon. members to be rather grandmotherly legislation, but they can do no harm! Regarding section 6, in practice, there is no doubt that all magistrates in the country are already doing it *sub*

rosa—namely, provision is made for reconciliation being arranged in court between the parties by the magistrate without having to record any criminal sentence or finding whatsoever. This, of course, can only happen in trivial cases. There is a mistake—I apologize for it—in the “objects and reasons”, where I state with regard to this section that it was only done by the Supreme Court; actually it can be done by any court, and in fact it is done more by subordinate courts than by the Supreme Court.

Clause 7 remedies a redundancy, while section 8, which I referred to a moment ago as grandmotherly legislation, is a suggestion of the Bushe Commission. At the end of the case for the prosecution in the lower court, when a person has to be committed to the Supreme Court for trial, certain words which are printed on the opposite side of the page to section 8 have to be read out to the accused. The Commission was of the opinion that those words were too archaic and that a more simple form should be produced, and the simple form is in the Bill before you. Whether or not the Swahili interpreters will be able to translate it in exactly the form given here is a matter for those who are more conversant with Swahili than myself!

Section 9 and the following section merely deal with the preparation of the jury list. The Registrar has pointed out that it is quite unnecessary every year to print the whole of the jury list all over again. It takes a lot of time and in most cases is a repetition, and it also costs a lot of money. We therefore make provision that there shall only be a complete revision every three years, but that the Registrar may from year to year strike out or add persons to the list; when he does so, he has to publish them in the same way as if he were making out a new list. This list will be exposed in the usual places, at the District Commissioner's offices.

Section 12 will be very welcome to most members of the public, because it provides for a longer exemption from serving on a jury than at present exists. For some reason, when the principal Ordinance was passed originally, exemption was limited to one year, and although some jurors may have served for two or three weeks, whatever it might be, the judge had only power to exempt them for one year. This clause merely gives power to the court to exempt for longer than one year.

Section 13, a verbal amendment, to add the word “rape” to the words “treason and murder” which appear in section 277. It was obviously a mistake when the Ordinance was originally passed because, as you know, the death penalty can be inflicted for rape, and there is no reason why the form of trial should be in any way different to murder or treason.

Section 14 is again a recommendation of the Bushe Commission, and deals with the reading of depositions of absent witnesses and enlarges the scope of the existing section. It enlarges it to this extent, that in future—and of course this is subject to the permission of the court, which is not always a very easy thing to get—with that permission it will be possible to have read the depositions or evidence of witnesses who cannot be found since their appearance in the lower court. It often happens, as you know, that witnesses give evidence in the lower court and, whether it is that they think better of it or lose interest, they disappear, and are never to be found again to repeat that evidence in the higher court. Provision is also made for the reading of depositions of witnesses who are incapable for some reason of giving evidence, and also where unreasonable expense would be incurred. I can only repeat again, that this will all be subject to the sanction of the court, and it will be within the court's discretion as to whether they allow the depositions to be read or not. The usual conditions with regard to depositions are naturally repeated.

Clauses 15, 16 and 17 merely remove ambiguities, such as the substitution of the word "warrant" for the word "order", and clause 18 provides that where a man is on bail, that that period should not count towards the sentence he is serving. At present, from the moment the court has delivered its sentence, the time begins to run. We also extend the provision with regard to bail. The papers for an appeal cannot be prepared in a moment so that pending appeal either to the Supreme Court or to the Court of Appeal for Eastern Africa bail may be granted. It is obviously ridiculous when you think that it is possible that the Court of Appeal cannot sit for some months, that all that time the sentence should be said to be running. We therefore make provision for suspending the sentence.

Section 19 deals with a verbal error. It states that an appellant who is in custody shall have the right to appear on an appeal.

Section 20 deals with the granting of bail where a man is convicted and is appealing to the Supreme Court.

Section 21 permits, and I want to emphasise that word "permits", one judge under certain circumstances, when he is directed by the Chief Justice, to hold an appeal from a subordinate court. The reason for that is that it would facilitate litigants very much in the Supreme Court if one judge, when going round on circuit, was able to hear appeals instead of having to come up to the Supreme

Court and possibly having to wait for that judge to return to Nairobi in order that the necessary quorum can be formed.

Section 22 deals further with the granting of bail by the judge if the case is going to the Court of Appeal for Eastern Africa. At present it is impossible for a judge who sentences a man, although he knows he is appealing, to grant that man bail. He has to wait until he can get a quorum of the Court of Appeal for Eastern Africa to assemble before he can apply to them for bail and very often it is not granted then.

Section 23 is an amendment at the request of the judges because, as they point out, section 364 (b) puts them in a very invidious position. As you see in the last line it says that the judge may allow an appeal to go to the Court of Appeal which involves a question of fact alone and yet the judges have quite rightly pointed out that if it is a question of fact alone and they have some doubt on the question, clearly the man would be acquitted. Therefore it is completely redundant to say that on the question of fact alone the court may allow an appeal. Of course we reserve the right in the Court of Appeal to permit an appeal from the judge on the question of fact, but we do not place it on the judge to say that "although I have convicted you, I have a doubt."

Section 24 is a necessary amendment which should have been made in 1934 when we amended the main section of the Ordinance.

I think those are all the important amendments in this Bill and now that section 4 has been removed, I do not think that any hon. member will find anything very contentious.

I beg to move.

THE HON. T. D. H. BRUCE seconded.

CAPT. THE HON. H. E. SCHWARTZE : There are only four sections with which I propose to deal briefly and I would like to say that the reason there are only four sections which I wish to discuss is because of the way in which my hon. and learned friend, the Attorney General, met the Law Society, represented by Mr. Figgis and myself, with regard to a number of representations which we put to him and which appeared in the original draft Bill which he was good enough to let us see and which have been altered in accordance with representations made to him. I should like to express my own gratitude to him for the attitude he took and also that of the Law Society.

There is however one point before I deal with the specific amendments to the four sections in question, and that is in connection with the withdrawal of the obnoxious section 4, for which I gather we have to thank you, Sir, in no little degree, and I think I can say that every judge and every magistrate and every practising barrister who knows anything about criminal law in this Colony, will be glad to know that this section is to be deleted in Select Committee. (Lord Francis Scott: And the Elected Members). Naturally I include the Elected Members. I did not mention it because my hon. friend said that the chief reason it was withdrawn was because it was the unanimous wish of the Elected Members it should be deleted.

The first section to which I invite the particular attention of the Select Committee is section 14. In my view the amendment is an enlargement of the powers of the court and entirely wrong. At present, if you will refer to the clause on the left hand side of the paper, you will see that "where any person has been committed for trial for any offence, the deposition of any person taken before the committing subordinate court may, if the conditions hereinafter set out are satisfied, without further proof be read as evidence on the trial of that person". Sub-clause (a) which it is proposed to amend is that "the deposition must be the deposition either of a witness whose attendance at the trial is stated to be unnecessary in accordance with the provisions of section 227, or of a witness who is proved at the trial by oath of a credible witness to be absent from the Colony or dead or insane, or so ill as not to be able to travel, or to be kept out of the way by means of the procurement of the accused or on his behalf". Now that is being enlarged to say that it will also apply to any witness who cannot be found or a witness who is incapable of giving evidence, or a witness whose presence cannot be obtained without an amount of delay or expense which the court considers unreasonable. I do want hon. members of this House to realize that we are dealing with a man who is in peril on a criminal charge and may be charged with murder. It may be that a witness has given evidence at the proceedings before the magistrate and in that inquiry no cross-examination of that witness took place because, as my hon. friend will admit, on any occasion of any importance at all it is practically the invariable practice of the defending advocate not to cross-examine but to reserve their defence and to reserve their cross-examination of the prosecution witnesses until the case comes up before the Supreme Court for the actual trial. It may be that a most important witness has given evidence at the inquiry and the court can say: "Oh, we do not think it right that Government should be put to unnecessary expense

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in bringing this man and we therefore let his evidence be read out at the trial." Now that man's evidence, not subject to cross-examination, will go in as evidence against an accused person. It may well be—it happens in as many cases as it does not—that searching cross-examination of that witness might very materially weaken, or I will go so far as to say make of no effect, the evidence which he actually gave. The whole basis of a man's evidence, whether in criminal or in civil cases, is that that evidence should be tested by cross-examination and when it has been tested by cross-examination and by re-examination, then and then only you get the true value of the evidence he has given. It is quite right that, as my hon. friend says, this provision is subject to the court's discretion—the court has the right to say whether they consider the expense and inconvenience reasonable or not under the circumstances, but after all we are dealing in criminal matters and I do suggest and request that the Select Committee should consider this matter most carefully and in considering it to refer to what my hon. and learned friend referred to as "grandmotherly" legislation and that is clause 8. There you have a native and you tell him—if he is told anything like what is written here and I quite agree he probably will not be—all the witnesses who appear here will appear before another judge and you will be able to cross-examine them, and then further on you make the provision that it is not at all necessary that those witnesses should appear. It does seem a contradiction in terms, to say the least.

The second section I wish to mention is section 16 and I only do that because I am not quite clear, not having the whole Procedure Code before me, whether there is anything in this which deprives the right of the advocate for the defence, subject to the formal right of the law officers, to the last word if no evidence is given on behalf of the defence, because at the end of that section it says: "If such accused person says that he means to give evidence or make an unsworn statement, or to adduce evidence, the court shall call upon such accused person to enter upon his defence." I do not think it does affect that, but I would ask for an assurance from the hon. the Attorney General that the same provision will apply that if no one except the accused person is called on behalf of the accused, then in that case the last word rests with the defence.

Section 19—my hon. friend says that the amendment does not make much difference and that it was obviously nonsense as it stood. I suggest with respect that it is nonsense as it stands and that it was not nonsense as it stood. As it stood, it said "an appellant who is in custody shall be entitled to be present at the hearing of an appeal unless his appeal is being conducted by an advocate". Now what that meant was—it

did not mean that an appellant who was not in custody was not entitled to appear. You cannot debar a free man from walking into a court if he wants to. What it meant was, and has always been interpreted to mean, that an appellant who is in custody shall not be entitled to appear if his appeal is being conducted by an advocate, but if it is not being conducted by an advocate then in that case, if he is in custody, he should have the right to appear, and that is obviously correct. You may take a case, the vast majority will refer to native appeals, and there can be no object whatever in the case in which a man, whether native or Indian or European, where his appeal is being conducted by an advocate, there can be no real use for him to be present at the hearing of the appeal. He takes no part in it. It is conducted by his advocate and there is not the slightest use of him staying there. In many cases if he does not speak English he does not understand what is being said, but by the amendment he has the right to demand to be present at the hearing of the appeal even though his appeal is being conducted by an advocate, so that if a man at Kisumu is convicted by a magistrate and sentenced to a year's imprisonment and he appeals and that appeal is being heard by two judges at Nairobi or Mombasa, that man can insist on being brought down from Kisumu at Government expense—I should say the taxpayers'—to listen to his advocate saying something he does not understand and then being taken back and we were told in the objects and reasons that if the provisions become law there will be no expenditure of public money. Again, I would ask the hon. the Attorney General, if he is not too bound by the Bushe Commission recommendations, to agree when the Select Committee meets that this provision should go back to what it was originally. It was sensible originally.

Finally, with regard to section 23, I would ask the Select Committee to consider this because although there is a great deal in what the hon. the mover said, it is not quite so simple I think. In a case with a jury who are the sole judges of fact, the judge may convict a man and that man may wish to appeal and the judge may well consider that it is a case which would justify an appeal on fact alone and no one is more able to grant a certificate in a case like that, than the trying judge. I quite agree if the judge is trying the case with assessors, when he is the judge of fact and is not bound by the opinion of the assessors, the position is different. If the judge sums up in favour of an accused person and the jury convict, surely it should be right for the judge to grant a certificate that it is a fit case for appeal on fact alone. I think this is a case where the hon. mover and myself could come to an agreement with a slight amendment of the section. The difficulty is that you have to wait for the Court

of Appeal. In effect you file an appeal and at the same time an application for leave to appeal and you may go to Mombasa, Kampala or Zanzibar, or wherever the appeal is heard and what is heard is your application and you do not know in fact whether if your application for leave to appeal is granted the appeal will be heard forthwith or not, so that you have in fact to appear and be ready to argue the actual appeal if the court grants your application and decides it will go on with the appeal at the same session. It would be much better that where it is reasonable to do it an application should be made to the trying judge and if granted then you know that you can file your appeal with the certainty that your appeal will be heard at the next session on its merits.

Those are the only points. I am certain that as usual my hon. friend will see that the Select Committee will consider these points, none of which are entirely without substance.

THE HON. N. S. MANGAT: Your Excellency, the deletion of clause 4 will be a matter of utmost gratification to the Elected Members and I hope to all those concerned in the administration of justice and especially those who defend the accused. Clause 4 in my submission went even beyond the recommendations of the Committee. It not only provided for admission of written confessions but the admission of verbal confessions and nothing could be more dangerous than taking the evidence of a police officer as to a verbal confession and I hope that even in the future it will never be found necessary to introduce such a clause as this the passing of which will be a serious inroad on the rights of the accused.

The hon. Member for Nairobi South has dealt with certain clauses and I will only touch on one or two more which in my submission may be taken in consideration by the hon. the Attorney General.

Clause 6 which provides that the court may promote reconciliation is very necessary and it is invariably found that in cases especially where Indian people are concerned, they take the advice of the court more readily than the advice of their own advocate, but where the words "may thereupon order the proceedings to be stayed" appear in the last line, here I feel that this leaves the case without final disposal. As soon as the compensation awarded by the magistrate is paid the suit should be dismissed and the accused acquitted or discharged. As it stands at present it means that the suit will stand undecided for ever.

The second thing is in clause 8 where the words that the magistrate has to announce to the accused at the time of committal are provided. I feel that in the last sentence: "I will take it down and it may be used as evidence at your

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trial" the word "may" should be changed to the word "will", because that will not leave any doubt in the mind of the accused. Section 289 of the Criminal Procedure Code reads "When the evidence of the witnesses for the prosecution has been concluded, and the statement of the committing court has been given in evidence" so the statement of the accused person is known to whatever he says will be given as evidence in the Supreme Court and, therefore, presumably may be used as evidence against him when he is on trial.

The next section, 14, has been dealt with thoroughly by my learned friend. The only thing I wish to add is this that in the lower court it is not usual to cross-examine, because the cross-examination of the witnesses means the disclosure of the defence case. You cannot cross-examine a witness unless you show on what line you are defending the case. Either we have to cross-examine or be under the constant apprehension that some witness who is very materially important to be cross-examined may be absent. It would be very detrimental to the accused if this amendment is allowed.

The next section is section 18 where it is proposed to add the words "except in case of admission to bail or suspension of sentence as provided in section 342 hereof" to section 317. In my submission, Sir, these words should not be added because although a provision has been made that the convict will be allowed on bail he cannot be allowed on bail until the appeal is actually filed and it takes at least three or four days for the appeal to be filed and so the sentence has actually started. It would make a difference if the application had been allowed there and then when he has not been in prison, but in this case where the application has to be filed he has to wait, and actually is serving the sentence when the application for bail comes up.

Section 20 which deals with section 342 of the Code has been considerably amended but I feel that after reading the section the hon. the Attorney General will agree that the last portion of clause (1) is not very definite, that is, "or if such person is not released on bail shall order that the execution of the sentence or order appeal shall be suspended pending the hearing of his appeal." This imports, in my submission, that even if the application for bail is dismissed then even if the convict is not released on bail his sentence has to be suspended. Sentence can be suspended in two ways, that is, supposing the sentence has been suspended and the convict is still in gaol, if he is not to be put on his hard labour it does not mean any use to him because he is still in custody, but if you want to suspend his sentence he must be

...amended out.

Those are a few of the observations I have to make and I hope the Select Committee will give them consideration.

THE HON. SHAMSUD-DEEN : Your Excellency, I have only one observation to make about clause 14 which has already been dealt with by the hon. members Mr. Schwartz and Mr. Mangat. I think that sub-section (a) should be further amended in a manner that a person who is really absent from the Colony should not have his depositions read at a trial. This constitutes a very dangerous procedure, for very incriminating evidence might have been given against an accused in the lower court, but when the depositions of the witness are read in the higher court the accused has no opportunity for cross-examination because the witness has elected to take a trip to Canada or India or Europe; hence there is no opportunity to test that evidence by cross-examination. At the same time, I realize that some such provision is absolutely necessary, because many witnesses such as medical practitioners, have often to be brought great distances merely to repeat what they have said in the lower court. That could easily be met by another proviso to the section to the effect that such evidence by means of depositions will only be admitted provided the witness was subjected to cross-examination in the lower court or that in the opinion of the judge it was unnecessary to bring that witness from a distance; even though it might not be a great distance it would obviously be superfluous to bring such a witness to the high court merely to repeat his evidence. If, however, this proposed condition is allowed to remain in the Bill, in practice it will have serious results to individuals who may be brought to court after the passage of this Bill.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I have on more than one occasion paid tribute to the assistance given to me in my office by the hon. Member for Nairobi South, and also by the Law Society of Kenya. I did not mention his assistance to me before lest he might think I was trying to cramp his style in criticising anything in the Bill! Actually, in all these Bills I have received the greatest assistance not only from the hon. and learned member to whom I have referred but from the Law Society, and that accounts for the fact that there are so few amendments as a rule moved in this House to technical Bills of this description. Naturally we do not agree on some points, because whereas I feel his mind is running on a case from the point of view of the defence, mine is running on it from the point of view of the prosecution!

Thus, for example, I have no doubt that as a defending counsel I should object very much to the reading of any depositions that I could find any chance whatever of cutting out, but I do think that in a country like this you have got to show some confidence in the discretion of the judge. This was recognized by the Bushe Commission, and as I mentioned in my opening speech the object of the amendment of section 14—it is really only section 14 that offends as far as I can see—is that so often witnesses disappear. It is impossible in a country like this to keep witnesses taped. They disappear into the reserves and you cannot possibly find them, and although their evidence might be entirely formal, the identification of the body or some such evidence, in a murder case the accused might be able to walk away with a decision and clearly gross injustice would be done.

However, as hon. members are well aware, every point made out by any hon. member will be considered very carefully before Select Committee to which I will move in a moment that the Bill be sent.

There is only one other point to which I should like to refer, and that is with regard to the presence of an accused at his appeal. Again I feel that the hon. and learned member is thinking of a poor, illiterate native who may or may not be able to assist his advocate in arguing his appeal before the court. For example, an unfortunate native say at Kisumu hears that there is an appeal in his behalf and hears that the hon. and learned Member for Nairobi South is arguing the appeal for him; the native is most anxious to instruct him as to the various details that he would like brought out, and is most anxious to be present in order to hear that he is getting his money's worth! (Laughter.) Under the present law, the prosecution has got him safe at Kisumu leaving the hon. and learned member ignorant of some important point for the defence.

But you have to think not only of the ignorant native but of other people who may be convicted at Kisumu, and I do think it is a point of great importance that a man should know that he is getting justice. He has not the faintest idea if he remains at Kisumu whether his advocate gets up for two words or speaks for two hours, and Government keeps him there until he is told whether the appeal is dismissed or not. Much as I would like to save the country the expense of bringing him down, if he demands it it should be permissible to bring an accused down and really feel he has had his appeal put forward.

The other points are entirely committee points, and we will go into them in committee. I do not agree for a moment with some of the interpretations put upon some. Let us take

for example section 18. However, this is a small point, and I have no doubt that we shall be able to thresh it out in committee. Several other points such as section 8, which was criticised, I may say at once that I shall be able to accept in committee.

The question was put and carried.

SELECT COMMITTEE APPOINTED.

THE ATTORNEY GENERAL moved that the Criminal Procedure Code (Amendment) Bill be referred to a Select Committee consisting of the following:—

The hon. the Attorney General (Chairman).

The hon. the Acting Chief Native Commissioner.

The hon. T. D. H. Bruce.

The hon. Member for Nairobi South.

The hon. Member for Ukamba.

The hon. Member for the Coast.

The hon. N. S. Mangat.

Ven. Archdeacon the hon. G. Burns.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

SECOND READING.

THE TRIBAL POLICE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of the Tribal Police (Amendment) Bill.

This Bill of just one section is merely to legalize an existing practice. In point of fact, in the committee stage I am going to move one or two small amendments even to this one section Bill.

The object of the amendment is to permit tribal police to carry arms under such circumstances and subject to such conditions as the officer in charge of the superintendence of the tribal police may prescribe. We all know in point of fact that even now these police carry arms, occasionally firearms, and it is the intention of the Bill to make this legal, for the simple reason that if by any chance in arresting a criminal a tribal policeman happened to damage that criminal, he might be liable to an action in court, or possibly a criminal prosecution, unless there is legal sanction for the carrying of arms.

THE ACTING CHIEF NATIVE COMMISSIONER seconded.

The question was put and carried.

SECOND READING.

THE COIR FIBRE INDUSTRY BILL.

THE HON. THE DIRECTOR OF AGRICULTURE (MR. H. B. WATERS) : Your Excellency, I beg to move the second reading of the Coir Fibre Industry Bill.

This Bill provides that coir fibre factories may be established only under licence. Before any person can manufacture coir by machinery, it will be necessary for him to obtain a licence with the approval of the Governor in Council, who may refuse to issue a licence on the ground that a sufficient number of licences have already been issued or on any other sufficient grounds. The Governor in Council may also prescribe the conditions of the licence.

The intention of the Bill is to give protection to a person who is prepared to put capital and enterprise into the coir fibre industry. No coir fibre factory can hope to be a financial success without an adequate supply of coconut husks, and a factory with supplies from a fairly wide area surrounding the factory could not hope to survive if another factory were allowed to get supplies from the same area. Anyone with the enterprise to erect a factory will be secure in the knowledge that no one else will be able to erect a factory which might compete with his until the Governor in Council is satisfied that the erection of another factory would be in the best interests of the industry.

This Bill will not interfere in any way with the preparation of coir and the manufacture of coir articles by hand process. At the Coast, coir is prepared on a small scale by hand, and it is used for stuffing furniture, and at Lamu for ropes for small seafaring vessels. These small handcraft industries will not be prohibited by the Bill which, according to section 3, applies only to factories the machinery of which is operated by mechanical power. The hon. and learned Attorney General is proposing an amendment in order that the Bill will apply not only to manufactured coir articles by machinery but also to the preparation of coir fibre by machinery. The process in a factory is for the husks to be soaked in large tanks and treated in crushing, extracting and willowing machines. The preparation of coir in this way should be accorded the same protection as the manufacture of coir articles.

This Bill has the support of the Coast Advisory Committee. In fact, the proposal for the establishment of a factory only under licence emanated from that Committee when it considered an application for a factory licence. The applicant would be prepared to erect a factory at the Coast if he were accorded reasonable protection such as would be given him by

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this Bill, and he hopes that it will be of benefit to the coconut planters near the factory. It is hoped that the passage of the Bill will encourage the erection of factories at the Coast which will be of material assistance to coconut planters and lead to renewed interest in coconut planting.

I should mention that many coconut palms at the Coast are owned by Indians and Arabs. It would not be possible to grant an exclusive licence under the Marketing of Native Produce Ordinance if enacted, so that this Bill is necessary to secure the erection of factories at the Coast and if it succeeds it will be of great benefit to the coconut industry.

THE HON. T. D. H. BRUCE seconded.

THE HON. J. B. PANDYA : Your Excellency, I am opposed to the Bill in principle on the ground that it confers the power to restrict the issue of licences to factories. The Director of Agriculture has informed the House that if such licences are restricted it is bound to be beneficial to the interests of the coconut industry and all the other people concerned. I should like to ask if there is any clause in the Bill which protects the consumers or the growers of the coconuts. It confers powers on a concern to do what they like after they have got the benefit of this exclusive licence or restriction of licence. We have had in this country a number of such exclusive licences given where the interests of the growers have been neglected.

While that is one of the points which should be considered by Government, or by the Select Committee, if the Bill goes to one at all, the principle of restricting an industry like this is to my mind unsound, because it must lead to abuse which has always existed where a monopoly is granted. I am not going to enlarge on this principle at this juncture, because I will have an opportunity of dealing with that rather lengthily when another Bill comes up for discussion, but those are the grounds on which I should like to record my opposition to the principle of this Bill.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Your Excellency, I should like definitely to say that I am in total disagreement with the remarks of the last speaker, and strongly support the Bill before the House. The hon. member has said that this restricts industry : the whole object of the Bill is to start an industry, which will not be started unless some such protection is provided. (Hear, hear.) All agricultural pursuits have been very hard hit during recent times, and the coconut industry has not been exempt from that depression, and here is a Bill which is definitely going to give further outlet for that industry which in my opinion deserves every possible support.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE : As a very considerable grower of coconuts, Sir, I wish to support this Bill to the utmost that I can.

THE HON. THE DIRECTOR OF AGRICULTURE : Your Excellency, the hon. Member for the Rift Valley, the Noble Lord, has already dealt very ably with the point raised by the hon. Member Mr. Pandya. This Bill does not restrict in any way. The whole idea of the Bill is to start a new industry.

The question was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

THE HON. THE ATTORNEY GENERAL moved that the Coir Fibre Industry Bill be referred to a Select Committee consisting of the following :—

The hon. the Director of Agriculture (Chairman).

The hon. T. D. H. Bruce.

The hon. Member for Rift Valley.

The hon. Member for Nyanza.

The hon. Shamsud-Deen.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

SECOND READING.

EUROPEAN OFFICERS' PENSIONS (AMENDMENT) BILL.

THE HON. THE TREASURER : Your Excellency, I beg to move the second reading of a Bill to amend the European Officers' Pensions Ordinance, 1927.

This Bill, Sir, introduces no new principle and should be read in conjunction with the Non-European Officers' Pensions (Amendment) Bill, the second reading of which I shall move shortly.

The sole object of this Bill is to place beyond doubt the fact that an officer serving under Asiatic terms of service does not come within the scope of the European Officers' Pensions Ordinance. Hon. members will agree that though the original intention is clear, the law as it stands on this particular point is a little obscure and it is thought desirable that the Ordinance should be amended rather than that the powers of the Governor should be invoked in cases of this sort which are open solely to legal doubt.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

SECOND READING.

NON-EUROPEAN OFFICERS' PENSIONS (AMENDMENT) BILL.

THE HON. THE TREASURER: Your Excellency, I beg to move the second reading of a Bill to amend the Non-European Officers' Pensions Ordinance, 1932.

As stated in the objects and reasons, Sir, under the law as it stands it would be possible for a person serving under Asiatic terms of service to claim that he might be treated for pensions purposes under the European Officers' Pensions Ordinance, 1927. That, obviously, is not the intention and this Bill is designed to remove any possible doubt in that regard.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

SECOND READING.

SALE OF PYRETHRUM BILL.

THE HON. THE DIRECTOR OF AGRICULTURE: Your Excellency, I beg to move the second reading of the Sale of Pyrethrum Bill.

This Bill, Sir, provides for the appointment of an agency by the Governor in Council and prescribes that all pyrethrum shall go to and must be sold to such an agency, which agency in turn must accept all pyrethrum flowers of acceptable quality. It thus provides for a pyrethrum selling pool. In addition the Governor in Council is given power to make Rules relating to the appointment, duties and functions of the agency and for the control of the manufacture and sale of pyrethrum.

The main object of the Bill is to ensure a high quality of exported pyrethrum and thus secure a high price to growers. The importance of high standard quality is self evident. The manufacturers who use pyrethrum prefer to get a standard quality and to obtain such standard quality continuously and they like to contract in advance for their requirements. The Pyrethrum Growers Association have installed an expensive packing and pressing plant at Nakuru where the flowers are graded, packed and pressed for export. Standard grading and packing are essential if the best prices are to be obtained overseas. The high quality of Kenya pyrethrum, which contains a higher percentage of pyrethrin than pyrethrum from Japan or Dalmatia, has already secured recognition in English and European markets and it is essential not only that what has already been gained should not be lost, but also that efforts should be made to secure recognition in other markets. If inferior pyrethrum or pyrethrum of variable quality, not properly graded and inadequately

packed and pressed is allowed to be exported, Kenya pyrethrum will acquire a bad name and the influence of the Pyrethrum Growers Association will be nullified. The danger from inferior produce is very real as a bad reputation once acquired is difficult, if not impossible, to live down, as has been shown with many other products. It is essential that the highest possible reputation should be built up in the infancy of the industry so that it may reap the benefit in the days of maturity. A system of inspection would be inadequate and the reputation of the Kenya pyrethrum can be safely entrusted to the growers' agency.

This Bill has been introduced at the request of the Pyrethrum Growers Association whose membership, numbering 150, comprises some 90 per cent of the pyrethrum growers. The Bill is supported by the Board of Agriculture who not only recommended legislation in November last year for a compulsory pool, sale through an agency, and for the proper preparation of pyrethrum products, but, at the recent meeting in May last, recorded its approval of the principle of the published Bill.

I regard the Bill not so much as Government control as control by the growers, the role of Government being to assist the growers in the organization of their own industry. In this connection I may say that the Bill was drafted in collaboration with the Pyrethrum Growers Association. A large majority of growers, and I know of no pyrethrum grower who is not in favour of this Bill, consider the Bill to be not only desirable but necessary. They are fully convinced that they will market their products more advantageously through an agency in view of the paramount need for the export of standardized products. I share the view held by the Association that the best insurance for the future lies in marketing through an agency.

The organization of marketing is securing more and more attention by farmers the world over. The mistakes which were made in the past have served only to spur them to renewed efforts. A high measure of success has been secured in some countries, especially in Australia and America, and there is every reason to anticipate that the Kenya pyrethrum growers will be assisted in their efforts by this Bill. Although there are several favourable factors which would lead one to believe that the prospects of Kenya pyrethrum are bright, for example, the good yield obtained in Kenya, the high pyrethrin content and the increasing demand for pyrethrum products, the industry may have to face a period of lower prices in its efforts to secure a firm place in the world's market and it is essential that the marketing should be organized on a sound basis. An able memorandum prepared by the Pyrethrum Growers Association concludes with the following paragraph :

“If this potentially valuable industry is to have a chance of surmounting the many difficulties with which it is sure to be faced during its growth, it is essential that the growers’ produce should be pooled and the whole force of the industry directed through one channel.” This summarises the requirements of the Association and I hope that they will receive the support of this House by the passage of this Bill.

In conclusion, I should like to call the attention of hon. members to the objects and reasons, in which it is stated that it is proposed that an Advisory Board to the agency should be appointed. Finally, I have Your Excellency’s permission to inform the House that it is proposed to refer this Bill to a Select Committee. (Applause).

THE HON. THE TREASURER seconded.

THE HON. CONWAY HARVEY : Sir, we are very glad indeed to see the introduction of this important measure, as everyone who studies the subject at all is fully aware that co-operative marketing is one of the keynotes of modern agricultural practice. Such, Sir, must be the case if in these days of keen and acute competition producers in any country are to get the best of their productive efforts. In particular this embryonic industry, so very full of promise, should be given every possible encouragement in its early stages.

There is just one point, Sir, with which users of pyrethrum are concerned, to which I would draw the attention of the Select Committee which I understand is to be appointed to consider the provisions of this Bill in detail. My suggestion, Sir, is designed to allay the suspicions of those who are less trusting than the present speaker. Many users of pyrethrum, are a little bit afraid that they will be called upon by the agency to pay rather more than they consider they should pay for their pyrethrum requirements, which as most people are aware are very considerable, Sir, in Kenya where the destruction of insects is very important in industrial concerns and in people’s houses. My suggestion to the Select Committee is that something on these lines should be inserted possibly following section 9—the maximum price to be charged by the Pyrethrum Growers Agency for pyrethrum powder shall not exceed export parity based on the average London value for the previous three months plus 20 per cent.

I do not think any useful purpose would be served by unduly elaborating that suggestion at this stage but I would commend it to the favourable consideration of the Select Committee.

I most cordially support the measure.

MAJOR THE HON. SIR ROBERT SHAW : Your Excellency, there are only two very small points to which I would like to draw attention and possibly the hon. the mover will be able to deal with them in his reply or possibly it might be as well for them to be referred to the Select Committee.

In clause 4 (2) of the Bill it enables a fee to be charged in order that a pyrethrum grower can register himself as such. As I am sure it will not be the intention of the Bill to impose any burden on any grower of any product in this country, possibly it is a necessary one but I do not remember that the hon. mover explained it in any way and I should be glad to know to what purpose this fee will be devoted.

He has mentioned in the objects and reasons that a Board will be set up to assist the agency and that possibly will be governed by the power of the Governor to make Rules under section 11 (d), otherwise it does not appear to be mentioned in the Bill.

Those are the two points which appear to come together and apparently that charge of Sh. 5 would be to meet the expenses of such Advisory Board. In any case I should like to take the liberty of asking for an explanation on those two small points.

THE HON. THE DIRECTOR OF AGRICULTURE : Your Excellency, this Bill closely follows the Sale of Wheat Ordinance, 1930, in which the same clause occurs, that a fee of Sh. 5 must be paid for registration. Beyond that it has not received any other consideration, and I suggest it should be a point which should be considered by the Select Committee. The second point is also one, I think, for the Committee.

The question was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

THE HON. THE ATTORNEY GENERAL moved that the Sale of Pyrethrum Bill be referred to a Select Committee consisting of the following :—

The hon. the Director of Agriculture (Chairman).

The hon. T. D. H. Bruce.

he hon. Member for Rift Valley.

The hon. Member for Nyanza.

The hon. Shamsud-Deen.

THE HON. THE TREASURER seconded.

The question was put and carried.

SECOND READING.

THE NATIVE TRIBUNALS (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Native Tribunals (Amendment) Bill be read a second time.

This very short Bill provides for two small things, but very important things from the working point of view. The first amendment gives a district commissioner power to suspend or dismiss a member of a Native Tribunal. As hon. members are aware, the district commissioner is the officer in close touch with Native Tribunals. You are also well aware that the Provincial Commissioner often lives a considerable distance away and it takes a long time by post to get a reply from him. It is clearly desirable that where a member of a tribunal misbehaves himself he should be suspended forthwith and that the matter should not have to wait until the Provincial Commissioner has been communicated with and has replied. Actually, with regard to reinstating that member, it will be necessary then for a reply to be received from the Provincial Commissioner giving his approval.

The second amendment deals with townships in native reserves. As hon. members know the Ordinance at the present time does not permit a Native Tribunal being set up in townships. It has been represented to Government that in more ways than one it is on occasions desirable to have these tribunals operating in these townships in native reserves, and this Bill gives the Governor power to include townships when he so desires within the scope of the Ordinance.

THE ACTING CHIEF NATIVE COMMISSIONER seconded.

REV. ARCHDEACON THE HON. G. BURNS: Your Excellency, I only want one point made clear to my own mind. Will that tribunal have power to commit a man to the High Court to be tried for murder, or will such a case not be within the purview of a tribunal? If a man is arrested and is charged before a magistrate with murder, will a tribunal have any jurisdiction in such a case? Do I understand that aright?

THE HON. THE ATTORNEY GENERAL: The answer to the hon. and venerable member is in the negative. Native Tribunals have no right to take the preliminary hearing of cases which are going to the Supreme Court.

The question was put and carried.

SECOND READING.

THE EMPLOYMENT OF WOMEN, YOUNG PERSONS AND
CHILDREN (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of the Employment of Women, Young Persons and Children (Amendment) Bill.

Part 2 of the Schedule and Article 2, which form part of the Ordinance, forbid the employment of young persons under the age of 16 in industrial undertakings, but the proviso we are now seeking to delete partly exempted Part 2 from the provisions of the Ordinance, with the result that children under 16 may be employed in industrial undertakings in this Colony. The Secretary of State for the Colonies has pointed out that this is contrary to the Convention, and for that reason it is necessary for us to amend the Ordinance.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Council adjourned till 10 a.m. on Friday, June 28th, 1935.

FRIDAY, 28th JUNE, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Friday, the 28th June, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, ESQ., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

OATH OF ALLEGIANCE, ADMINISTRATION OF.

The Oath of Allegiance was administered to:—

Nominated Official Member.

CYRIL OWEN GILBERT.

MINUTES.

The minutes of the meeting of the 27th June, 1934, were confirmed.

PAPERS LAID ON THE TABLE.

The following Paper was laid on the table:—

BY THE HON. THE ACTING COLONIAL SECRETARY :

Report of the Select Committee on Economy.

ORAL ANSWERS TO QUESTIONS.

CENTRAL TENDER BOARD CONTRACTS.

No. 10.—CAPT THE HON. H. E. SCHWARTZE asked :

“(i) Is it a fact that the Central Tender Board refuse to allow unsuccessful tenderers to be informed of the prices at which contracts have been placed for advertised tenders?

(ii) Is it a fact that the information referred to in (i) above is disclosed to any interested member of the general public by both the Public Works Department and the Nairobi Municipality?

(iii) If the reply to (ii) is in the affirmative is there any reason why the practice of the Central Tender Board should not follow that of the Public Works Department and the Nairobi Municipality?

(iv) If the reply to (iii) is in the negative, will Government arrange that the future practice of the Central Tender Board in this respect should conform to the Public Works Department and the Nairobi Municipality?”

THE HON. THE TREASURER : (i) Yes.

(ii) No. In the case of the Public Works Department Subordinate Tender Board, it is the practice to read out the tenderer's name and the amount of the tender at the time the tenders are opened. Interested parties can, therefore, by attendance on this occasion, but not otherwise, obtain information as to the prices quoted. The actual letting of the contract is not performed in public and unsuccessful tenderers are not informed of the prices at which contracts have been placed by the Board, except in the case of major building contracts.

In the case of Nairobi Municipality, all tenders received must, by law, be recorded in the minutes of the Council or Committee and the minutes are open to the inspection of the public, but it is understood not to be the practice of the Municipality to divulge the prices quoted at the time tenders are opened or to publish the prices at which contracts are placed beyond recording them in the minutes, and that unsuccessful tenderers are not informed of the prices at which contracts have been placed.

(iii) and (iv) In view of the above reply, questions (iii) and (iv) do not arise, but I may state that the only difference between the practice in the Central Tender Board and that in the Public Works Department Subordinate Tender Board is that in the latter case the amount of the tender is read out when opened and in the case of the Central Tender Board it is not. It would, in fact, be both a laborious and lengthy process to read out the amount of each tender received by the Central Tender Board for yearly and half-yearly supplies of foodstuffs and miscellaneous articles.

The only difference between the practice in the Nairobi Municipality and that in the Central Tender Board is that the minutes of the Central Tender Board are not open to the inspection of the public. It is not considered either necessary or desirable that the minutes of the Central Tender Board should be open to such inspection.

GRADUATED NON-NATIVE POLL TAX ORDINANCE, 1934,
CONTINUATION OF.

No. 18.—MAJOR THE HON. F. W. CAVENDISH-BENTINCK asked :

“In view of the fact that the graduated poll tax was a temporary emergency form of taxation, is it the intention of Government to reintroduce the ‘Bill to make provision for the Levy of a Non-Native Poll Tax at a rate graduated according to the Taxpayers’ Income’ so that it shall remain operative during 1936, or is it Government’s intention to drop this tax after this year?”

THE HON. THE ACTING COLONIAL SECRETARY: Government has not yet formulated its intention with regard to next year's budget.

THE LICENSING ORDINANCE, 1934, CONTINUATION OF.

No. 19.—MAJOR THE HON. F. W. CAVENDISH-BENTINCK asked :

“Is it the intention of Government to reintroduce the ‘Bill to provide for the Licensing of Certain Professions, Businesses, Trades, Arts, Callings and Industries within the Colony and to fix the Licence Fees payable’ so that it shall remain operative in its existing form during 1936, or is it Government's intention to amend this Ordinance so as to reduce the heavy burden of taxation which at present rests on the commercial community?”

THE HON. THE ACTING COLONIAL SECRETARY: Government has not yet formulated its intentions in regard to this Ordinance.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK: In view of the unsatisfactory and indefinite nature of these replies, I beg to give notice of a motion the terms of which I will hand to the Clerk of the House.

NATIVE ARTISANS, EMPLOYMENT BY P.W.D. OF.

No. 26.—MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE asked :

“How many native artisans are employed by the Public Works Department?”

THE HON. THE DIRECTOR OF PUBLIC WORKS (MR. H. L. SIKES): There were fifty-nine native artisans employed in the Public Works Department in May, 1935.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE: Your Excellency, that is a reply to only a portion of my question.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, could it be made clear as to what has happened to the rest of the hon. member's question?

HIS EXCELLENCY: I understand from the Clerk that he thought the hon. member was submitting a series of questions, not one, and that replies to the other parts have not yet been received. They will, however, be given in due course.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE: Thank you.

BILLS.**SECOND READING.****THE LEGISLATIVE COUNCIL BILL.**

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Legislative Council Bill be read a second time.

As hon. members are aware, at the first meeting of Legislative Council last year a Select Committee of the House was appointed to consider the existing Ordinance and the Rules attached thereto. As the result of a lengthy sitting you have the Report which I laid on the table the first day of this session, and the Bill which is now before hon. members follows the recommendations contained in that Report. The result is that nothing I can tell you this morning will be new to any member who has taken the trouble to read the Report. I thought it necessary to have a new Bill, for the reason that although there are so few amendments to the existing Ordinance—only three or four of any importance—attached to the Bill are three schedules which for all practical purposes form part and parcel of the Bill as they have to be passed by the House. In these schedules very definite and considerable amendments are made, and I therefore thought it easier for everyone concerned if we had a complete new consolidating and amending Bill containing everything in one.

The only amendments of importance to the Bill I will deal with very shortly.

The first is with regard to the new Indian electoral area. Under the present law the whole Colony and Protectorate of Kenya forms the electoral area for each and every elected Indian member, with the result that not only does it take an extraordinarily long time, to wit twenty-eight days, for these elections to be held, but if a member is anxious that his constituents shall know his views it is necessary for him to travel all over the country, from one end to the other, to hold meetings in order to lay his views before the whole of the electorate. That entails considerable expense to him, as well as the expense to Government of a lengthy election.

While I am dealing with this point I might refer to a point which really comes in the Rules dealing with the practical application of this new section, and that is with regard to the time which will now be taken over the Indian elections. It is the only point on which there was not complete unanimity in the committee, and actually I mention it because although the Indian members have put in a minority report on this point there was really very little difference between us, in

that the rest of us would have been only too pleased to adopt the suggestion or suggestions of the Indian members if we had thought them practicable. There is no desire on the part of the majority of the committee to insist on an Indian election taking whatever number of days it will take—ten, twenty, or three days—but, having taken evidence, we were advised by those who had held elections in the past that in their opinion—rightly or wrongly—it was quite impossible to get the Indian elections over, even with the sub-divisions to which I will refer in a moment, in one day. We therefore have left it to His Excellency to fix the number of days that the Indian elections will take.

This has two advantages. The first is that the Indian members can rest assured that if His Excellency is advised that the elections will only take one day, he will be only too glad to fix them for one day. If on the other hand that cannot be done, it would be absurd to put it into this Ordinance, as the result would be so serious. Take, for example, the position if we insisted in putting one day in the Bill, and at the end of that day His Excellency was informed that four-fifths of the Indian electorate had not been able to record their votes although they were outside the polling station waiting to get in. As you know, the procedure would be that we should have to wait until this Council reassembled, with no Indian members elected, and then solemnly pass an amending Ordinance. But under the scheme suggested by the majority of the committee, all that will happen in practice will be that someone about midday on polling day His Excellency—assuming for the moment that His Excellency had fixed one day for the Indian elections—if informed that all the Indian electorate would not be able to vote in that one day, would immediately issue a new proclamation extending the time, and giving the necessary time for the votes to be recorded. We should then have the Council properly elected and confirmed at the next meeting of the Council.

The Bill, at least it will be found in the first schedule which forms part of the Bill, divides the Colony into three Indian electoral areas, called East, Central, and West. The committee took the greatest care in setting out the boundaries of these divisions, and I think you will find we were also very careful in seeing that the right proportion of voters is allotted to each area.

The next point, which has already been mentioned by Your Excellency in your opening address and which hon. members are already aware of, is that we recommend that the life of the Council should be extended from three to four years. There may be some surprise why I have not included that in the amendments in the Bill, but the reason was because it

was necessary for the Royal Instructions to be altered in England before that could be done here, as the Royal Instructions laid it down that the life of the Council should be three years. I was therefore bound to leave it at three years until we got news that the Royal Instructions had been altered. I am happy to be able to repeat what Your Excellency has already told us, that the Royal Instructions have been altered, and in the committee stage of the Bill the necessary amendments will be made extending the life of the Council to four years.

There is one other small point, with regard to leave of absence from the Colony. The committee thought that the present twelve months provision which appears in the Ordinance is too long, and that where a member intended to be absent from the Colony for a longer period than nine months he should be called on to resign his seat.

The last amendment is merely clarifying the position with regard to the payment of agents. There appears to have been some doubt in the past as to whether a candidate had to include in his expenses the amount paid his agent during an election, and it is now made clear that that will not form part of the expenses.

The Rules, as I said before, have been varied in many respects. The first amendment is to the schedule which, as I have already explained, deals with the boundaries of the Indian electoral areas. That will be examined again carefully in Select Committee to which this Bill will be referred in due course, but I think it will be found that, except for one or two minor alterations, they are in order.

The next amendment that we make is with regard to the voters themselves in that we give to every voter a number as well as a name. This will facilitate the work of the returning officers, we are informed, particularly with regard to voting by post rules, in that it will be of more use in indentifying voters.

We have made it more simple for a voter to transfer his name from the register of one electoral area to another. At present, what so often happens and which only comes to light when an election occurs, because it is only human nature, is that the ordinary man who is not accustomed to dealing with the law of the land like ourselves and does not worry about these things, moves from one district to another. He forgets to get transferred on the voting lists, and his name is struck off the district which he has left, with the result that when he goes to vote in the new district he finds his name

is not on the register. We have made the procedure more simple in that a voter simply notifies the registering officer and his name is put on the register for that district.

We were told that innumerable frivolous objections were frequently put in to people's names on the registers, and we have therefore inserted in the Rules a fee which the objector will have to pay if his objection is not sustained. The fee at the moment stands at Sh. 5, but I have reason to believe, and Government will not oppose it, that in Select Committee this will be reduced to Sh. 2/50. The procedure will be that when a person makes an objection the fee of Sh. 2/50 will be paid in, and this will be returned if the objection is sustained.

The next amendment is with regard to expunged names, and this really follows on the amendment to which I referred earlier. As it stands, if you leave a district for over a year the revising officer is entitled to strike your name off the roll. That is a very necessary provision, but it can be abused, in that if false information is given and a man has not left the district, the revising officer bona fide strikes his name off which he only finds out when the election comes along and he wants to vote. We now make it incumbent on the revising officer to send a letter to the last known address of the man which, of course, will be the address given in the electoral roll, informing him that his name has been expunged, in order that if it has been wrongly deleted the voter will be able to come forward and have it put right.

We have also provided that candidates for election should make a deposit of £50, which amount will be returned if he obtains more than one-sixth of the total number of votes polled. The question was debated for some time as to whether it should be one-sixth or one-eighth—this procedure is the practice elsewhere as hon. members know—and in Select Committee no doubt that point will be raised again. I can say with safety that Government has no very strong views as to whether it is one-sixth or one-eighth. But we certainly think there should be some rule to this effect, and on this the committee was unanimous, in order to prevent innumerable people putting up without a chance of getting in.

We also make provision for illiterate voters in that we are going to have a symbol allotted to each Indian candidate for election. The best way of doing this was discussed for some considerable time, and the only practical way we could suggest after consultation with the Government Printer was that some small symbol would be placed opposite each candidate's name. Naturally a candidate would be informed what

the symbol was and he would inform his supporters, so that the illiterate voter would know where to put his cross because, although he might not be able to read, he would be able to see the symbol which would indicate to him the man for whom he wished to vote.

The next point is with regard to the voting by post rules. It is thought to be a hardship that a man who happens to leave the Colony, if he is a registered voter, two weeks before an election should be debarred from voting. I do not think there is any strong reason against not putting this in, and the committee as a whole accepted it. Whether as a matter of practical politics more than two or three will be able to avail themselves of this provision remains to be seen, but we make provision that a voter who is out of the Colony can fill in his paper before a notary public; if he can get it to Kenya in time his vote will be duly recorded.

The returning officer for Nairobi wrote in to the committee and complained about the difficulty he had with regard to the giving out of postal ballot papers on the actual day of the poll when, of course, except for the candidates and their agents he is the busiest man in the district. It seemed to us that that might be inconvenient and certainly in some cases it might interfere considerably with the running of the election proper. We have therefore provided that those who wish postal ballot papers shall make application before 4 p.m. on the day before the actual day of the poll.

Those, I think, are all the amendments of the slightest importance in the Bill now before Council, and I beg to move the second reading.

THE HON. T. D. H. BRUCE seconded.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK: Your Excellency, there is only one small point that I should like to touch on, and that is the question of the increase in the life of the Council from three to four years.

If it were not clarified to a greater extent people might be under the impression that the first thing we did on being elected was to prolong our term of office. That, of course, is not the case; I personally did intend not to make that recommendation for this particular Council, but I forgot to put such a proviso in the report. The reason for the extension is, to begin with, that elections are becoming increasingly expensive. They are rather bigger things than they used to be. Secondly, we felt that with a member, a new member especially, it probably takes him the best part of a year to get into the routine and to get the experience that makes him a fairly

useful man. He then has about a year and a half of work, when he must begin to think about the next election. We felt it was in the interests of the country as a whole that the period should be prolonged from three to four years as is customary in most other places.

THE HON. J. B. PANDYA : Your Excellency, there is one point on which I wish to say a few words. In my dissenting minute to the report of the committee I have discussed this point and I am thankful to the hon. and learned mover for the sympathetic consideration and attitude which he has manifested in regard to the number of days to be allotted for the Indian elections, which should be limited to one day the same as for Europeans. It is, however, a point on which I regret it was difficult for the majority of the members of the committee to meet our viewpoint, because they consider that such a period would not be practicable. With due respect to the experience of the hon. and learned Attorney General and other members of the committee who fought the last elections and have experience of procedure and difficulties of such elections should know more about such a thing and we consider one day voting practicable. There was an instance at Mombasa, where the municipal elections held on Legislative Council roll were completed in one day. That is a practical experience. We also know that if the number of days is left open, then the officer in charge is likely to consult his own convenience, and it would not be surprising if he decided on several days, or even two weeks. The attitude of the Government to-day is based on the experience of the returning officer who was in charge of the last elections, and there is the real danger that you allow that decision to be made in the form of a recommendation by one officer of Government and take that recommendation as final. To that, Sir, we are opposed.

We are not going to be very unreasonable and I hope this point will be considered in the Select Committee that we should like to limit the elections to three days, that is, it must not be more than three days in any case.

The point which the hon. and learned Attorney General made in regard to the difficulties if one day was kept, I quite appreciate, but I am unable to understand the meaning which he appears to have given to that clause, which, according to him, as I understand, means that even if the number of days were declared by His Excellency and if those days were found insufficient to record the votes, then subsequently those days would be increased. To that suggestion or implication I am opposed. I think it would be very unfair to put that into practice. The Government must decide in advance, taking evidence or looking into the circumstances as to what number

of days would be sufficient for an election and under no circumstances should the number of days be subsequently increased.

There is only one small point in regard to the deposit payable when lodging objections and I am very thankful indeed for the attitude of Government to consider a reduction in this to Sh. 2/50 in Select Committee. I hope, Sir, that they will go further and make it Sh. 1.

I support this Bill, Sir, wholeheartedly and I hope that the Select Committee will consider these two points.

THE HON. ISHER DASS : Your Excellency, I have to say a few words. First that your Government have recommended to the Secretary of State for the Colonies for his approval the extension of the life of this Council from three to four years. I am very much opposed to such an extension for the reason that a period of three years in a country like this where things change so rapidly is long enough for the members to go to the electorate for re-election.

Another thing is the question of days to be fixed for an election. I am in favour of one day election because previous experience has taught us that four officers with their staff in Nairobi remained engaged for twenty-eight days and had to waste their whole day taking votes. It so happened that some days there were only sixty votes recorded while on other days the highest number reached 300. I would suggest that instead of twenty-eight days there should be only one day. The highest number of votes recorded in this election was 3,000, and if there were a number of polling booths each taking 300 votes in one day the whole thing could be arranged very easily without causing any inconvenience to the voters, candidates and Government.

The third point is that for the last five or six years Baluchis who are a part and parcel of the Indian community have made representations to your Government for their inclusion in the Voters Roll. Sir Edward Grigg, the then Governor, promised to do his best. Since then they have referred the matter to the Indian Association, Mombasa, and the East African Indian National Congress. Both these bodies have promised all sorts of assistance and co-operation. I see no reason why the Baluchis should not be included in the Voters Roll for the Indian Election.

There is one thing in this Bill, I refer to clause 20, and I hope it would be no surprise to the members of this House if I make a suggestion in this connection. It is stated in this clause that if a member absents himself from the Colony Your Excellency has the power to nominate anyone in his

place. I would suggest that the substitute should be appointed on the recommendation of the absenting member. My reason for this is that if a member leaves the Colony he would see that the man he recommended is a man who actually has the same principle of politics as he has because after all the member has fought the election on certain principles and therefore it should be his right or at least he should have the right to make a recommendation for the man to whom he wishes to be appointed and it should not entirely be left to Your Excellency's discretion. I am not suggesting that your Excellency's right should be taken away altogether.

Your Excellency, as this Bill is being enacted now and the old Bill is being repealed and as this Bill is to be referred to the Select Committee I am placing two suggestions before this House which I am sure the Select Committee will consider favourably.

Firstly, in order to create better understanding among the immigrant communities of this Colony the election in future should be held on the system of common roll—(European Elected Members: No. No.)—and if they are afraid of being swamped away by the greater number I would suggest that there should be reservation of seats. This would remove their fears. Even I will go so far as to suggest that the qualifications so fixed can be based on education and property test that there will be a very little number of African voters and this would be a very good safeguard for a long time to come.

Secondly, the native interests have up to now been represented by non-natives. I have nothing personal against those who represent native interests but the greatest admiration. They have done their best but it is impossible for them to consult the different African tribes or African institutions before coming to the Council to speak in their name. I think it is very easy to find some Africans who are in a position to speak and take part in the deliberations of this House and I suggest therefore that there should be a direct representation given to the natives.

I am glad that I will have an opportunity to place my views before the Select Committee to whom the Bill is being referred.

DR. THE HON. A. C. L. DE SOUSA: Your Excellency, I do not think I am called upon to say very much except that in the provision for five Indian members of the Legislative Council the constituencies remain three instead of five, thereby giving a man more than one vote in two of the constituencies. Our objections from the very start have been that the franchise given to the Indian community has not been the same as in the case of Europeans who have only one vote for every man.

as is the universal practice. I understand that there have been difficulties in this respect, but such difficulties have not been experienced in the case of Europeans. In Nairobi, for instance, there are two European constituencies. I am definitely opposed to the present proposals in the case of Indians and do hope that the Indian members of the Select Committee to be appointed will press the case and not allow more than one vote to the Indian elector.

Another point which I am very sorry to note is that although there were Indian members on the committee of the Council, a provision for symbols for the Indian elector has been agreed upon. It means that Indians are not civilized enough to record a vote without a symbol. I take a very strong exception to this. I consider that the Indian members were inspired by similar arrangements for elections in India. Illiteracy in India is great and I admit that it may be necessary to have symbols in that country. But things here are different, especially in Kenya. Illiteracy here may be about 10 per cent of the population. Indians are generally able to read Hindustani, Gurmuki, Gujerati and Hindi, besides English in the case of many, and that is why I think not more than 10 per cent are illiterate. I think, Sir, when we are giving a man the franchise we ought to consider him sufficiently civilized, and if there is any doubt that there is among Indians so large a proportion of illiterates then the franchise should be refused. But I am not convinced that there is such great illiteracy among Indians as to necessitate the adoption of symbols on the ballot paper.

Another point to which I wish to refer, Sir, is the division of the general electorate of the Colony into watertight compartments—European, Indian and Arab—to which I think it proper to refer at this stage. As new legislation is being enacted for elections, I wish to say that we are participating in the new legislation under protest, for our claim has always been one for a common roll, and we do so without prejudice to our claim for that roll in the future.

THE HON. F. A. BEMISTER: Your Excellency, there is one question I want to suggest for consideration of the Select Committee and that is the restriction of voters.

As I take it, Sir, the object of having a Legislative Council is not so much as it is in countries where they have responsible Governments where parties are created, the object of the Government is to obtain as far as possible the views of the greatest number of the people in the Colony. Now, Sir, it is a very difficult thing between elections to get people to register their names on an electoral roll and for this reason—I speak of my own constituency—because men who might be

in Mombasa to-day may be moved to Nairobi a month before the election, so they wait until near the election in order to be on the roll; then may be something happens and in the end they do not get on the roll at all.

It would seem to me the object of the Government is to obtain the views of as many people as possible. There should be some simple method of placing everybody on the electoral roll and I would suggest that that could easily be done through the poll tax, if a man has paid poll tax for at least two years. Exactly in the same way as you get the jurors list. You do not ask a man if he wishes to go on. Could it not be possible to arrange that every man in a given constituency that has paid his poll tax twice in the same constituency, could be entered on the roll; if you like then these Sh. 2/50 gentlemen can object afterwards. I only want it to satisfy a number of people who are moved from Mombasa not by their own wish or else they would not move at all, but they have got other interests and are controlled by other people.

A further point I would like to make, Sir—I do not know if it is at all possible—but I do think some steps should be taken to ensure that everybody who has a vote votes. As I have said before the idea is to endeavour to get everybody's opinion or the mass of opinion, it is not necessary for them to agree with a certain candidate, but it is essential, in my opinion, that so far as possible they should register their preference for either one side or the other, and if means could be found I do think some steps should be taken whereby a person—going back again to the jurors list, if a man does not serve there is a fine. I think the highest privilege of a man is to record his vote on the public questions of the day and if he shirks it should be put down to his discredit.

If those two matters could be adjusted in the Select Committee I should be glad.

CAPT. THE HON. H. E. SCHWARTZE: Your Excellency, certain other points have arisen with which I should like briefly to deal. First of all, with regard to the suggestions made by the hon. Member for Mombasa. While I feel that probably there would be considerable difficulty in making it obligatory on everyone to vote under a penalty, while I am doubtful whether the time will come for that in this Colony—although it is the case in Australia, where it is a penal offence not to exercise your vote—I do feel with him, and have felt for a long time, that some effort should be made to get every eligible voter on the register without the necessity of his applying. People in this Colony are apathetic at times to an alarming degree, and never an election takes place without people saying “I have forgotten to put my name on the roll

so that I can't vote for you or somebody else because it is too late," and so they lose their chance. I cannot help thinking that the difficulties of getting the register of voters automatically prepared would be very much less than is imagined. I feel certain that the Select Committee, at all events, will consider this point and give their views on it.

The point which I originally intended to speak on—and I have been asked to do so by the European Elected Members—is in connection with this deposit of £50. We are not suggesting that that is not a very wise provision, but we do suggest the Select Committee should put in some kind of saving clause giving power to the Governor in Council to remit that penalty if he should consider that very special circumstances existed. I will quote two instances which happen to come into my head where it would obviously be inequitable that a candidate should be asked to forfeit his deposit. The first is that of a man who intends to fight an election with a reasonable chance of success and becomes nominated. Something happens; either urgent business affairs or urgent private affairs compel him to leave the Colony and go home, and as he feels he can therefore no longer conduct a campaign he wishes to withdraw. The provisions of this Bill prevent him withdrawing once nominated. He can, of course, tell people that although legally he is not entitled to withdraw he is not offering himself and nobody votes for him. There were two cases. In my own constituency a certain gentleman first of all signed my nomination paper, then stood against me, and on the eve of the poll withdrew in favour of my other opponent! (Laughter). The other case I believe was in the constituency of the hon. Member for Kiambu at the last election, where a gentleman nominated did withdraw but one person voted for him.

I do not suggest, Sir, that people do become nominated just to create confusion and alarm and then withdraw, but it may be the case where genuinely something happened between nomination and election day justifying a man in withdrawing. That is an instance where special powers should be given to cancel the forfeiture.

Another is the case of a constituency with 1,200 voters, and eight people stand for election, not at all an impossible thing. The successful candidate polls 175, the next six 150, and the last 125. As the successful gentleman comes out, having obtained one of the objects of his life—or what he thought was, but he will not for long! (laughter)—he is told "I congratulate you on succeeding, but you cannot get your deposit back because you have not polled one-sixth of the votes". That would obviously be inequitable, and I ask the Select Committee to make recommendations on that point.

Three points were raised by the hon. Member Mr. Isher Dass, which I cannot leave unchallenged.

The first was with regard to the question of the substitute to be appointed for a member proceeding overseas. As far as I know, certainly with regard to the European Elected Members, I can say quite definitely that only on one occasion has the Governor ever refused the nomination of the member proceeding on leave. He refused it in one case, and I do not believe the public generally thought he was wrong. It is the practice for the Governor, unless some very good reason is given, to appoint as the substitute the person whom the temporarily outgoing member suggests. The latter consults his election committee or representatives of his constituents and tells them whom he proposes to put forward as his substitute to the Governor, and if that is approved the name is forwarded and the Governor accepts it. That is the case in practice, and I did not quite gather whether the hon. member meant the Governor was not to have the power to refuse or to put in someone else to the person recommended. If he meant the latter it is there, and if he meant the former I could not agree, because the Governor obviously must have the right to refuse to appoint a substitute recommended if he considers him completely an unworthy person to be temporarily a member of the Legislative Council.

Both the hon. Members Mr. Isher Dass and Dr. de Sousa raised the question of the common roll. I do not propose to go into a long dissertation on that at this stage. It has been fought out over a period of twelve years: successive Secretaries of State and successive Governments since 1923, whatever Governments they may have been, whatever creed of politics they believed in, have when the arguments were put forward come quite definitely to the conclusion that a common roll was unsuitable to this Colony. And a very good thing they did, because I can say quite definitely that there has never been any real chance in the past, there has never been any real chance now, and there never will be in the future of a common roll in this Colony. (Hear, hear.)

Finally, the hon. Member Mr. Isher Dass, with that astuteness which I envy him so, spoke up for the poor African. (Laughter.) He stated that he had no doubt that there were Africans in this Colony who would be fully able to justify their election to this Council, and would be fully able to add to the worthiness of the debates and to express themselves in a clear, concise manner. If, Sir, the standard to be adopted, the standard of exposition, is that of the hon. member, I have no doubt there is a large number of such Africans. (Laughter.)

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Finally, the hon. Member Mr. Isher Dass, with that astuteness which I envy him so, spoke up for the poor African. (Laughter.) He stated that he had no doubt that there were Africans in this Colony who would be fully able to justify their election to this Council, and would be fully able to add to the worthiness of the debates and to express themselves in a clear, concise manner. If, Sir, the standard to be adopted, the standard of exposition, is that of the hon. member, I have no doubt there is a large number of such Africans. (Laughter.)

VEN. ARCHDEACON THE HON. G. BURNS : Your Excellency, I do not intend to say very many words with regard to this Bill. I think it is excellent in every way, and I think it is one that is going to facilitate things in the future. But as one of the members representing African interests in the Council, there is just one word that I would like to say with reference to the remarks of the hon. Member Mr. Isher Dass. It is that I am convinced from my own knowledge of the attitude of Government towards Africans as well as towards other members of the community that Government has its eyes wide open and is just as anxious as the hon. member—and, if I might be allowed to say so, as anxious as I am—to see Africans represented by members of their own peoples when the time comes that Government believes that they are fit to represent them. I can assure the hon. member and the whole of the African peoples—if the Press gives it publicity, which it doesn't always do!—that I should like to say that no one will be happier than I shall be if I ever live to see that day when I see Africans speaking in this honourable House worthily representing their own people and this honourable Council. (Applause.)

THE HON. THE ATTORNEY GENERAL : Your Excellency, I feel that I owe the hon. Member for Nairobi North an apology if through any words of mine anyone should have imagined that the elected members opposite are entirely responsible for having the three years changed to four years. It was one of those things sticking out a mile the moment the committee met, and I am not at all sure that I was not responsible for having brought it up originally. I should like to associate myself with everything he said in order that the public should not for a moment imagine that Government was jockeyed into this by members who wished to stay in for an extra year, which I very much doubt they wish to do!

With regard to the hon. Member Mr. Pandya, it is extraordinarily difficult to answer him because we are really at heart agreeing. No one is more anxious than Government that the Indian elections shall be over in one day. We merely think as a matter of practical politics that it will not be possible, and therefore we have stated in this rule that the Governor may fix a number of days. It is not closing the door to one day. The Governor, if satisfied by those who know—and the hon. member called the committee to task because we accepted the evidence of only one person in the Colony who could possibly know on this question—can decide on a number of days. I appreciate, and the committee did, that at the municipal election in Mombasa there were wonderful results, and if the Governor is satisfied that those wonderful results can be attained all over the Colony, the hon. member

will find his point met, namely, that one day, and one day only, will be allotted for the election. If the Governor is advised that one day is insufficient, I feel sure that His Excellency will be the first to accept it.

The hon. Member Mr. Isher Dass has put in a plea for the Baluchis. I may say, as far as the committee is concerned this is an entirely new point. It was never before us, was never considered by us, nor brought up by anyone outside the committee, for our consideration. I have no doubt that in Select Committee it will be gone into. It would appear to be a much bigger problem than the Select Committee could deal with in an hour or two, and if there is some big change of that description, bringing people in who have not had a vote before, that will have to be done by some subsequent measure in this House.

I should like to associate myself with the hon. Member for Nairobi South with regard to his remarks on an outgoing member who is going on leave nominating his successor. For innumerable reasons, some of which have been given by the hon. member, it would be most undesirable to give a vested interest to one member who could hand it over at will to any person and for any reason that he thought fit. I think everyone will agree that it is essential the Governor should retain the right in theory—though possibly he will seldom use it in practice—of rejecting the name of a member who has been nominated by a particular member who happens to be going on leave for nine months.

I am extremely sorry, but I could not understand the hon. Member Dr. de Sousa with regard to giving certain Indians more than one vote. As I see it, at present every Indian on the voters roll has five votes, he can vote for five people. It is proposed to divide the area into three water-tight compartments—East, Central, and West—in two of which the voter will have two votes and in one of them one vote. There is no question in any way of altering the standing of the voter. Until the whole principle of elections is changed . . .

DR. THE HON. A. C. L. DE SOUSA: On a point of explanation, I say that in two electoral areas every Indian has two votes, because Government allow two members in one constituency. I don't understand the difficulty of the hon. member.

THE HON. THE ATTORNEY GENERAL: The difficulty is that I have been called to task for not reducing it to one, but I have reduced it from five to two. The hon. member wants it reduced to one.

With regard to the symbols, as the hon. member himself has pointed out, we know that in India they are recognized as the most suitable way for Indians to vote and we have therefore adopted exactly the same method here.

The point raised by the hon. Member for Mombasa is a little more difficult, in that he suggests that someone—I suppose it would be a Government official or some public body—will have to draw up the names of all entitled to vote irrespective of whether they wish to vote or not. This point was considered by the committee, and it is a principle I think admitted all over the world—except perhaps Australia, to which the hon. Member for Nairobi South referred—that voting is a privilege. You have that privilege of voting under certain conditions, and if you are so little interested in public affairs and so ignorant that you will not even take the trouble of writing a letter asking to have your name put on the register, we do not think that person worthy to vote at all. Government agrees in general that it is very desirable that every person entitled to a vote should record their vote and is only too pleased when they do it, but I think it is going a little too far at this stage to put a penalty on them for not voting and at the same time to put them on the list when apparently they do not want to be put on.

The hon. Member for Mombasa mentioned the question of transfer from one district to another, and quoted the case of some of his constituents who refuse to have their names put on the register at Mombasa because they are afraid of being transferred to Nairobi. That is unfortunate, but if when he goes back to Mombasa he will point out that under the new Rules, if they register in Mombasa they will find it simple to have their name re-registered elsewhere should they be transferred, I feel sure that many of them will take that step.

With regard to the question of compiling the register on the poll tax returns, innumerable difficulties occur to me. For instance, if you are going to say that any person who pays poll tax—I think the suggestion was for two years—he should be entitled to a vote. But I shall be in a dreadful difficulty if the House repeals the Ordinance, and I have heard that rumoured and suggested! Immediately I should have to bring in an amending Bill to the Legislative Council Ordinance to provide . . .

CAPT. THE HON. H. E. SCHWARTZE: The hon. and learned member is mixing up the poll tax with the graduated non-native poll tax.

THE HON. THE ATTORNEY GENERAL: It is quite possible that in time the poll tax may be repealed. However, coming to this further point, what about wives who do at present

have a vote? They will not appear in the poll tax book, and we should have to have a special department investigating whether people have wives and having them put down! (Laughter.) It is a policy of perfection that everyone entitled to vote should vote, but I think that at the present stage it would be extremely difficult to go as far as the hon. Member for Mombasa suggests.

With regard to the point raised by the hon. Member for Nairobi South, speaking for myself I will certainly view with much sympathy an amendment which apparently someone will move in Select Committee to the effect that under certain conditions His Excellency should be able to remit the forfeiture of the deposit of £50. I think the hon. and learned member has mentioned two instances which might arise which would certainly be hard cases in which real injustice would be done if the deposit were forfeited. It is a matter that we shall have to go into carefully, for we do not want to nullify the object of the amendment, which is to encourage the responsible to offer themselves for election. If we are not careful in the way we word our amendment we shall make it very difficult for His Excellency to refuse in some cases and permit it in others. I can, however, assure the House that it will certainly receive my serious attention, and I think you will find when the Select Committee reports back that there will be some amendment to meet the hon. Member for Nairobi South.

The question that the Bill be read a second time and passed was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

THE HON. THE ATTORNEY GENERAL moved that the Legislative Council Bill be referred to a Select Committee consisting of the following:—

The hon. the Attorney General (Chairman).

The hon. the Commissioner for Local Government.

The hon. C. J. J. T. Barton.

The hon. Member for Kiambu.

The hon. Member for Nairobi North.

The hon. Member for Nairobi South.

The hon. Isher Dass.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Council adjourned for the usual interval.

On resuming.

SECOND READING.

LIQUOR (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of a Bill to amend the Liquor Ordinance, 1934.

I feel that the House is entitled to some explanation as to why this comprehensive amending Bill should have become necessary within seven months of the passing of the main Ordinance. You will remember that last year a committee was appointed—it was not actually a Select Committee of this House—to consider the then Liquor Ordinance and, having sat in public and heard all the evidence that was available, we tendered our Report and the Bill which is now on the files of the Ordinances of this Colony.

While that committee was sitting we carefully went into every single section that any member of the committee or any member of the public found fault with in any way and we removed—I think everyone will admit—many of the then existing anomalies and injustices. But, by a coincidence, while that Bill was being passed through this House in December last year, for the first time I think in the history of a Bill, the provisions of an Ordinance that had been on the statute book for twenty years were being discussed and decided upon in the Supreme Court of Appeal of this Colony, where an appeal had gone by way of *mandamus* from an order of the Liquor Licensing Court, and it is chiefly as a result of the findings in this case and as a result of the possible findings that might have been made had the case been framed on other lines, that it was put up to Government that further amendments to the Liquor Bill were necessary, which is why you have such a comprehensive Bill before you to-day.

In fact, as so often happens, many of the amendments are only verbal. They have been necessitated because we are making it perfectly clear that when a licence is granted there are in fact two implications in that licence, namely, a licence is granted to a certain person who is named to be the holder of the licence and it permits him to sell liquor on a particular premises which is also named in the licence. In addition to the amendments which have been found necessary as a result of the particular appeal case, there are one or two amendments which have been necessary for other reasons.

The first amendment is with regard to ships. The hon. Member for Mombasa raised the point in debate, you will remember, during the second reading of the present Liquor Ordinance, and he pointed out that in his opinion ships should pay a certain amount of duty for their selling of liquor in

Mombasa harbour. He must not think that because nothing is reflected in this Ordinance of his opinions that they have been set aside. Actually it is possible and probable that at some later stage we may be introducing an amendment to another Ordinance which deals with ships and customs which will possibly carry out his wishes. While we were examining that particular point, I formed the conclusion, and I have no doubt it was right, that for the last twenty-five years ships in Mombasa have been breaking the law of this Colony by selling liquor at all, and it is for that reason that clause 2 of the present Bill appears in which we take out altogether from the purview of this Ordinance, ships lying in Mombasa harbour. What we are going to do with them will be discussed at another time, but it is certainly quite impossible to provide a licence for them under this particular Ordinance that was meant to deal with permanent structures in the Colony and not ships that come and go.

The next point is section 3 which has come up as a result of information from the Secretary of State. Again, the section which is being repealed has been in existence for twenty-five years and was not altered in any way by the committee or in the new Ordinance, but it has been discovered, when the new Ordinance was being vetted at home, that by section 6, under certain circumstances, namely, when the stills were being kept by the owner or occupier of the land for distilling his own liquor from grapes or fruit grown on his own land, that in fact we were offending a Treaty in force for fifteen years whereby some ten or eleven nations agreed that stills would not be permitted except under licence.

Section 4 is merely a verbal amendment, and section 5 is the section that I was particularly referring to when I said that we are making in clear that the holder of the licence is the person responsible and that when we grant a licence to a holder it only permits him to sell drink on the particular premises mentioned in that licence. But there is one very important provision in that amending section and I refer hon. members to sub-section 5 of section 5. As you know, any of you who have looked at the Ordinance as it stands to-day, the section 10 we are amending is an extremely long one and that it why it appears the amendments are so extensive for one particular section. It deals with all the licences that can be issued under the Liquor Ordinance, and this particular section 5 is deleting a proviso which has existed, again for twenty-five years, with regard to clubs. That proviso may have been very necessary in the old Ordinance because no effort was made in the old Ordinance to deal with clubs at all. In fact, hon. members are aware that clubs

were not provided for in the old Ordinance whatsoever, whereas to-day long provisions are made with regard to clubs and the selling of liquor in clubs. The proviso that is being deleted is the following :—

“Provided that no place of accommodation, entertainment or refreshment shall be considered to be a club where persons other than members or the invited guests of members are allowed entry or accommodation, or where persons other than members are charged or permitted to pay for any refreshment or accommodation they may obtain therein.”

I can only believe that the reason why that proviso has been permitted to remain for such a long time in the law is few people knew of its existence, because the effect of that proviso, if carried out, would be that no one except a member, and when I say member I use the word in this respect including temporary and honorary members, no outsider could go and watch a cricket match although his team happened to be playing, he would not be allowed on the premises and would not be allowed to buy a bun.

This is a Liquor Ordinance, and I think we all agree that those who pay the licence should be the only people to be permitted to sell liquor, but it has nothing whatever to do with the supplying of teas and things of that description. It would be manifestly unjust and a hardship, particularly in the country districts of this Colony, if no one except a member was ever to be allowed on the premises on the club at all. It came very clearly before me during the recent jubilee celebrations where the only possible place in certain districts to have an entertainment was at the club. No one in the world wanted to sell drink there; they merely wanted to permit the children to have a meal and take part in the celebrations, and actually in the proviso it said that was not possible. For that reason we are suggesting that that be deleted as we consider that the provisions now existing in the liquor law provide all the necessary restrictions which the trade could demand from clubs.

The next sub-section of any interest is sub-section 8 which deals with corporations; it merely facilitates the secretaries and managers of bodies coporate to whom a licence is granted to have the licence in their name and have it transferred from one to the other when you change the secretary or manager without having to appear before the licensing court.

Section 6 is perhaps the most controversial section in the Bill. Hon. members are all aware that under the existing law the Municipal Board or Council have the right to

nominate a member to serve on the licensing court and the Governor is bound by law to accept that nomination. Under the law in another section the Municipal Council also has the right to detail its Town Clerk to appear and oppose any licence that is coming up for consideration before the licensing court. It has been pointed out to us with some force, I think you must all agree, that in effect what you are doing is you are appointing from the Municipal Council one of the judges and also the prosecutor. I have no doubt that in the course of this debate someone will say: "But surely this happens in England". Well, it does in this way: what corresponds to the Board or Council in England certainly has the right to object, and it is also a fact that every mayor of every town has a right to sit on the Board or Council by virtue of the fact that every mayor is a justice of the peace and the court consists of justices of the peace. But in practice I can inform the House that what happens when a question comes before the court in which the Municipal Council is interested is that that member always withdraws from the case so that in effect, though he has the right to sit on all other cases, where the Municipal Board is, so to speak, the prosecutor, he withdraws.

That has not been the practice in this country. I am not suggesting that the section as drafted when it comes to the Select Committee will be permitted to stay exactly as written, because since I drafted it it has been pointed out to me that in addition to this one member who is nominated by the Municipal Board to sit on the court as a rule two or three members of the court are in fact town councillors, as, for example, the District Commissioner of Nairobi is a town councillor and also Chairman of this Board, and as the Bill is printed it would mean that he himself would have to withdraw whenever the town council were taking exception to some licence. It will, therefore, be necessary to make some slight amendment to this section and it will probably be on the lines that it will only be the nominated representative of the Town or Municipal Council who will have to withdraw when the application is being considered.

Section 7 is merely an alteration of the dates upon which the licensing court will sit. The difficulty arose in that same case that I referred to because under the law as it stands at present the court sits on the second Monday every June and December. When there is an appeal, as there was in December of last year, it was quite impossible for the appeal to be heard and disposed of by the 1st of January, with the result that when the 1st of January arrived the particular licences could neither be granted nor did we know whether they were going to be refused. It has been suggested that it

would be more convenient if the court sat a little earlier in November and in May rather than the present dates in order to allow sufficient time for any appeals to be disposed of.

Section 8 is really only verbal, and it becomes necessary because under the new Ordinance the Governor may appoint a special session at which if he thinks fit any particular application may be considered. As the law stands at present, it would mean this—that the special session sat and let us say they grant a licence to an applicant that the applicant must apply again at the next ordinary meeting. That is manifestly absurd because the same court has sat say in the same February or March and you solemnly say in the law that the man should make further application when they sit again in June. All that the amendment says is that once you have the licence from the court that will carry you on to the end of the year.

Section 9 contains merely verbal amendments. The word “temporary” has been left out of the list of members. Clearly it was always meant to be in. We also make it clear in sub-section 3 that where you apply to a licensing court for one type of licence, say a grocer’s or any other, you are not allowed to demand as of right a wholesale licence at the next licensing court. In other words, that when you have been granted one type of licence, if you want a new type you have to make a new application. The proviso makes it quite clear that you are not going to be deprived of your old licence because you fail to get your new licence, because it says that in the event of your being unsuccessful in getting the new one it will be deemed to have been an application for a renewal of your old licence; and you know that renewals can only be refused under certain conditions.

Section 10 is merely verbal and 11 is being inserted for this reason. At present, as the Ordinance reads, if the holder of a licence has been convicted of some offence and sent to prison that entitles the court to refuse to renew a licence to him. It has been pointed out that occasionally people do go to prison for offences which really involve no moral turpitude. For example, the most usual is that of a man driving a motor car. The holder of a licence goes for a drive and drives on the wrong side of the road and too fast and kills some unfortunate person and is convicted of manslaughter and sent to prison. Clearly, though it is very wrong to drive too fast and kill people, there is no moral turpitude attached to that and there is no reason why he should not be permitted to carry on his hotel or whatever it happened to be. We therefore have inserted the words “involving moral turpitude”. It will be a matter for the court to decide whether any particular offence of which a man is convicted involves moral turpitude.

Sub-section 3 is the usual sanitary provision. At present once a man gets his licence, the authorities have little control over the sanitary condition of his premises. We have therefore inserted this particular sub-section.

Sections 12 and 13 are merely verbal, 13 being a corollary to the last section I have referred to.

Section 15 contains a somewhat new principle in Kenya. The principle involved is this: A man, let us say, builds a very fine hotel for £25,000 and he sub-lets the bar of that hotel to some tenant. That person does not turn out to be as satisfactory as he hoped and is in fact convicted and his licence taken away. Through no fault of his own the man who has invested his £25,000 may find himself ruined—he cannot get a licence. We therefore make provision that where the tenant has the licence forfeited that immediately the owner of the premises may apply to have the licence transferred into his name. No doubt some exception will be taken to the fact that that simply means you can employ all the rogues as tenants you like and the moment they get convicted you take the licence back and carry on with the next. We foresaw that and make provision a few sections later whereby if an offence against these licensing laws is committed twice within two years by the holder of the licence of one particular premises the court will have the right to debar the premises for the space of one year from being licensed, so that, I think you will all agree, it will pay the landlord to be careful as to who he is putting in to run the liquor part of his establishment.

There is one section on which certain comment may be made and that is section 21, in which we make it quite clear that the principal is made liable for the act of his servant. In fact, in England at the moment the position is that both are always prosecuted, one, as holder of the licence—the other with aiding and abetting. This merely simplifies procedure and I do not think any serious objection can be taken to that.

Section 23 gives fourteen days grace to the holder of a licence who has elected to pay his licence half yearly. Under the Ordinance he is entitled to split the licence into two of six months. It also said that if he had not paid by the 30th of June his licence was null and void and he might not get a new licence. It was pointed out that hardship might easily arise. A man might be coming in to pay and find the river swollen and not able to get across and when he arrived next day, he would then be told that he is late and out of time and the licence is cancelled. That was never the intention,

and though it is the intention to insist that the licence is paid up as promptly as possible, we therefore give to the licensee fourteen days in which to pay, namely, till the 14th July. But in order to discourage him from any such unwillingness, the proviso says that he shall have to pay an extra 10 per cent if he is late; that is just a small penalty to keep him up to scratch.

The last section is merely redrafted for clarity and deals with the question of costs. Apparently when the case was before the courts in December last year they expressed criticism with regard to the exact meaning of the section as it stood and we have therefore clarified the position as to who shall pay the costs and under what circumstances.

I beg to move.

THE HON. T. D. H. BRUCE seconded.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I regret I shall have to commence again by entering into this backscratching contest with the mover, but I must say, again, that this time Mr. Harrison and myself saw him on numerous occasions and he met us practically entirely to the extent of all the suggestions we put up. There are, however, four or five points with which I think—we were not in disagreement, but not eye to eye, and I would like to elucidate those points in order that the Select Committee can consider them in due course.

The first point is in connection with the proposed amendment to sub-section 10 of section 10 of the original Ordinance. In that respect I would draw hon. members' attention not only to sub-section 10 but also to sub-section 16 of section 10 of the existing Ordinance, appearing on pages 6 and 8 of the Bill. In the existing Ordinance there is a very big difference between a temporary liquor licence and a temporary extension licence, and sub-clause 10 (a) says that a temporary liquor licence shall authorize the holder, being also a holder of a general retail liquor licence, to sell liquor by retail at any place of recreation or public amusement or other assembly for the period during which such recreation or amusement continues, subject to such restrictions and conditions as the district commissioner authorizing the issue of the licence may think fit. That means to say, for instance, that if the New Stanley Hotel got a contract for catering from the Royal Agricultural and Horticultural Society at the forthcoming Show, under that clause the district commissioner can grant them the right to retail liquor at the Showground subject to such conditions as he may see fit to impose to ensure that the service is properly and adequately conducted.

But a general extension licence merely means that the district commissioner can be applied to by any hotel to grant an extension up to 2 a.m. on such a night, and as a matter of fact it is well-known these hotels do get extensions—I think it is generally once a week they apply regularly, on Saturdays. In the original Ordinance there is no power given to the district commissioner to lay down conditions with regard to the extension and this Bill we are now discussing proposes to give the district commissioner such power and I suggest and I think that the most of us feel that there is no necessity whatever for granting that discretion. The hon. the mover did not refer to this particular amendment when he moved the second reading of the Bill—whether because he had so many other points that he overlooked it I do not know—but I suggest that there can be no grounds to say “Yes, we can give you an extension but special conditions must apply which do not apply on the rest of the week”. I understand that if a hotel has two bars, one in a place where people are amusing themselves by dancing and another elsewhere, the extension may only be granted on condition that the other bar in the hotel is shut, but the one in the place of amusement can be kept open. I do suggest to the hon. mover that he should consider this in Select Committee, seriously and not to make up his mind now, whether there is really any reason for this amendment and not to press it unless there is really good reason, which as I say, we have not heard.

The next point is in connection with private distilling. I very much regret to say and I apologise profusely that I did not quite hear, not because the hon. the mover dropped his voice, but because I was thinking of something else, why this amendment was put in. I am not clear whether it was due to some treaty, but it has been suggested that if you do not want to let people distil their own wines free of charge, one must introduce another winemakers licence. Whether that would get over it or not I do not know.

The next point is section 21 which the hon. mover said would not meet with any opposition, but as far as I am concerned it meets with considerable opposition. This is a Liquor Licensing Ordinance and the people who should be affected by it are holders of the licences and not other people. At home we are told that the non-holders may be prosecuted as accessories or aiders and abettors. If that is good enough at home, I suggest it is good enough for us, but it is entirely a wrong principle that simply because you are an employer you should be made responsible for the criminal acts of your employee. In that respect I would refer the hon. mover to the remarks of Mr. Justice Channell in the case of *Pearks v.*

Ward Hennen in 1902, 2 K.B. 1, which deals with the general ideas as to when a principal should be made criminally responsible for the act of his agent.

Two other points, Sir. The penultimate one is the question about when you should cease drinking. I am not suggesting that the hours should be altered in any way, but I am suggesting—as I suggested to the original committee of which I was a member—that the same privileges should be granted to people here as are granted at home: that they are allowed to consume drinks for one half hour after the time has passed when they can order them. That is, if you are not allowed to order drink after 12 midnight, you should be allowed until 12.30 to consume drink you have ordered prior to 12 midnight. That is, as everyone knows, the practice at home, and it seems a reasonable one to adopt here. You may come out of the theatre at 20 minutes past 11, and it may be 10 minutes to 12 when you wish to order further refreshment, that second bottle which some of us have heard of! and it would be ridiculous if you have at 5 minutes to 12 to swallow it down by 12 midnight or else have it whisked away. I would again ask the Select Committee to make recommendations for that extra half hour.

Finally, we come to the point of the divergence between the provisions of the Liquor Act and the Shop Hours Act. Under the Shop Hours Ordinance shops have to close at definite times. There is a provision in the Liquor Ordinance to the effect that notwithstanding anything in the Shop Hours Ordinance people can go in for the purpose of purchasing liquor from grocers and wine merchants who have liquor licences during such times as are provided in this Ordinance. There have been a great many complaints, and presumably they are not entirely unjustified, that people go into a grocer's shop which has a liquor licence ostensibly for the purpose of buying a bottle of whisky and at the same time they will say "Well, as I am here give me a couple of tins of peaches or a pound of sausages". As a result, those people who have grocer's licences under this Ordinance are in unfair competition with those who have not because the latter have to shut their shops. It is quite impossible, of course, to have a shop divided up by a sort of trellis work or iron grill so that one part can be shut and the other open, but it is at least worthy of consideration by the Select Committee as to whether the provisions of the Shop Hours Ordinance shall not be predominant instead of this Ordinance, and I ask for that to be taken into consideration.

I feel that that deals with the various points on which, as I say, I am not completely satisfied with the particular Bill as before the House.

THE HON. SHAMSUD-DEEN : Your Excellency, as regards the remarks of the last speaker, he drew the attention of the House to the fact that a great deal of dissatisfaction exists among licence holders who sell liquor by retail for the reason that they are debarred from selling after certain hours, because there does seem to be a great deal of laxity as far as persons are concerned who have wine merchants licences. In the town of Nairobi a bar has to close at certain hours, but a wine merchant can with impunity go on selling liquor all hours of the day and night. It is true they are liable to be prosecuted under the Shop Hours Ordinance, but that is a very small matter, for they are generally fined Sh. 10 or 15, and in the long run it pays them to pay the small fine for selling a bottle of liquor after hours than to worry themselves about strictly observing the Shop Hours Ordinance. I wonder if the hon. and learned Attorney General can include something in the Bill to deal with that matter?

LT.-COL. THE HON. J. G. KIRKWOOD : Sir, with reference to the Ordinance we are proposing to alter, there is one clause—10 (7) (a)—to which in its present form I am very much opposed. It is one of the principal sections in the Ordinance which we only passed some six months ago which brought the clubs under some police control. It is now proposed to delete that proviso, and to that I am opposed. In every law as well as this is the question of equity and justice, and if clubs are going to be allowed to revert to their *status quo* we have simply wasted a considerable amount of time last year in discussing this Ordinance. It also seems to me it will be in conflict with section 22 (4) (c) if it is deleted.

There is possibly a way out. I am not opposing clubs as clubs; neither am I here advocating privileges for hotels as hotels, but I suggest there is a way out which may be considered in Select Committee: that where a club is not in competition with a licensed hotel within a certain radius, then it may be given privileges of a limited number of days throughout the year when public meetings, etc., are held there. I have in mind such a place as Rumuruti. As far as I know there is no hotel there but there is a club. It would be very difficult for settlers and others in that area if practically the only place of assembly was not allowed reasonable amenities on certain occasions. I do not wish to handicap a club under those conditions. But where a club comes definitely in direct competition with a hotel which is properly constructed and is conducted in excellent manner and everything is in accordance with the law, that club should not have privileges out of all proportion, as it does have. Even to-day I could quote a case that happened about a week ago, when one of the member of the Judiciary who is not a member of any club in the Colony was given accommodation at a club.

The law is being broken every day of the week, and if it were possible, though I am quite sure as far as I am concerned that it is impossible, to get equity with clubs under the Liquor Ordinance, then we should do it, though I am afraid that I am only wasting my time advocating it. However, I do think these difficulties may be got over, that where it is necessary reasonable and just consideration should be given to clubs which are not in open competition with hotels and that the Ordinance may be altered to meet such cases.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE: Your Excellency, there is one point to which I should like to draw the attention of the Select Committee. I ask for an amendment to be made to section 5 of the amending Bill. It would appear that officers of the Navy, R.A.F., K.D.F., or any other force, if made honorary members of the K.A.R. or Police mess, cannot buy a drink in that mess. I ask that in section 5 (13), which amends section 10 of the principal Ordinance, after the words "Such licence shall authorize the sale of liquor to members only," there shall be inserted the words "and honorary members".

MAJOR THE HON. G. H. RIDDELL: Your Excellency, before I start with what I have to say I beg to call attention to the Rules of Debate at the top of page 10, No. 43 (xi), which reads: "No member may speak on any matter in which he has a direct pecuniary interest without disclosing the extent of that interest." I am pecuniarily interested in a hotel.

Your Excellency, members will remember that since the question of these liquor licences arose, I have consistently and regularly opposed this Bill. I have done so, even in the first year of my life as a member of this Council and among those so touchingly referred to by my friend the hon. Member for Nairobi North to-day, and I shall continue to do so for one reason, and one reason only. I put in a plea for some measure, or greater measure, of relief for what I have described as tourist hotels. When I first started my opposition, a good many of the elected members on this side of the House were not in agreement with me, and it was pointed out specifically by the hon. Member for Nyanza that the Bill as put in front of the House created a precedent for such relief of burden on these tourist hotels in the terms of another Bill which was before the House. That is true, but it is prejudiced by one fact, which is that the actual owner of a tourist hotel, unless he has accommodation for a certain number of people, is in fact mulcted by Government to a greater degree than he was before the Bill was introduced in the terms of the Licensing Bill. That fact members woke

up to, perhaps tardily, but they did, and their opinion was expressed in no unmeasured terms in the last debate by the hon. Member for Ukamba, who appealed to the House not to pass what he described as "bad legislation". The actual effect of these two measures taken in conjunction with each other is, that what the Government lose on the straight they win on the roundabouts, and if that is not bad legislation then I do not know any other term to express it.

I had hoped that when the hon. and learned Attorney General found it necessary to bring in no less than twenty-four amendments to a measure which was passed only six months ago, he would have added to that number one more in relief of tourist hotels, and I beg that when any further amendments to this measure are found necessary that that point will be kept in mind.

I have one other small point to make, and it is this; I have a specific case in mind. A show was got up in my own district to provide funds for a very deserving object, the East Africa Women's League. The bar, which was part of the entertainment, was provided, of course, free of charge by myself. But Government stepped in with a demand for a temporary transfer, and lost that charitable object Sh. 24. I do not know if that can be avoided, the making of money out of an entertainment of that sort. I suppose it can be argued that a charitable entertainment should be dry. But I assure you from my own knowledge of East Africa that a deserving charity benefits to a much greater degree if the entertainment is wet! (Laughter.)

VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, I think it is a very good thing that we cannot all get our way at times, because if I could get my own way there would be no such Bill as this in existence. But seeing that I cannot get my own way in this respect, there are two or three points that I want to lay emphasis on, with your permission. We have had brought before us this morning the distinction between a temporary liquor licence—that is, a licence granted to anyone who would supply the needs at a forthcoming show on a special occasion—and an extension of licence—which is a licence allowing a hotel or other place to continue open till 2 a.m. The suggestion has been made in the latter case that if there are two bars to that hotel only one should be kept open. I think that to observe the law as it stands at the present time would certainly be bad legislation as we have heard it described this morning. The reason why a bar is kept open on such occasions is for the accommodation of people who are enjoying themselves in the heated atmosphere by dancing and other ways. I think that if there is one bar

in the centre of the place where people are enjoying themselves, then the other on the outside of the hotel with a door leading into the street should unquestionably be kept closed during the extension.

The next point to which I wish to draw the attention of the House is with regard to private stills, there is, where a man is permitted on his own estate to distil drink for his own use. I have nothing to say against people distilling for their own use if that is the case without doubt, but I have it on fairly good authority that where such stills exist and where such permits are granted they are not used exclusively for the purpose of distilling for the people who actually have the licence, but that from that centre very often drink is sent forth to other places, not excluding natives, who can get all the drink they want. I do hope that the gentlemen who are to sit on the committee will look on that as something that should not continue in Kenya Colony.

The next point that I should like to make is with regard to the man who rushes into a hotel at 5 minutes to 12 and orders a bottle of drink, whatever it may be, and then has his cronies in with him, and they are allowed half an hour after midnight to demolish that bottle which was ordered just before midnight. I do sincerely hope that such an extension and such a privilege—if it can be called a privilege—will not be granted.

The next point, and the last, to which I should like to draw the attention of the House is the difficulty of controlling grocers and wine merchants licences, and I am in entire agreement with the principle that the Shop Hours Ordinance should predominate in each case. To allow in law one place to close at 6 o'clock and another where liquor is sold in bottles to keep open, is wrong in two instances. It is not right for the people who have not wine merchants licences and it is also wrong from the point of view of those who have to pay heavy licences in respect of hotels. I hope the Select Committee will consider making the Shop Hours Ordinance predominate and not allow grocers licences to stay open.

Those are the only remarks which I feel called on to make regarding this measure.

THE HON. F. A. BEMISTER: Your Excellency, it must be a source of very great congratulation to the members who sat in committee to investigate the Liquor Bill of 1934 that at the very first opportunity the Legislative Council meets, the whole thing is upset and twenty-five amendments are brought in. I would like you, if anyone has the time, to refer to *Hansard* when the committee reported to this House. As a matter of fact I think I am right in stating that the Select Committee did not sign their report.

When that debate was going on, Sir, His Excellency gave a ruling, which was supported afterwards by the hon. the Attorney General, which upset the whole of the ideas of the members, in that this was the first occasion in this House when they were not allowed to debate or speak on an amendment if they had already spoken on another amendment. In consequence, Sir, I am convinced that at that debate there was such utter confusion that several misunderstandings took place.

The misunderstanding I wish to express, Sir, was that I had it distinctly in my mind that where there was a case of real hardship in connection with a country or tourist hotel that His Excellency the Governor in Council would have the right to decide whether that was a country hotel or not. I quoted at the time of the original debate an example in Mombasa where a small hotel, very small indeed, which is at least five miles from the nearest public house and which is six and a half miles from the centre of the town, is through the recommendation of a gentleman who only came to the country one and decided the boundaries of every municipality—his name was Judge Feetham—the boundary was pushed from the original idea of high-water mark outside the Mombasa Island to two and a half miles into the inside of the country. This small hotel actually is three miles from the original boundary of Mombasa, it is five miles from the nearest public house and six and a half miles from the middle of the town. It is a hotel which has not any possible chance of popular trade; it is merely a hotel where tourists go for wonderful views of the Colony. Yet that small hotel has to pay £5 per month for the privilege of selling two, three or four glasses of this intoxicating liquor which people do sometimes indulge in. That is a very bad case and I do wish in this instance when the Select Committee sit, if they could possibly put in some clause that where a definite hardship like that is suffered by a licensee—if the committee wished it would not matter—they should be allowed to appeal to Your Excellency even in Council to get relief from that heavy tax, which in the ordinary way would be £25 to £30 and to-day is £60 a year for that very small privilege.

MAJOR THE HON. SIR ROBERT SHAW : Your Excellency, I only rise for one moment because I have been quoted here this morning and do not want to have any misunderstanding about the quotation that was made. I entirely agree with the hon. Member for Kiambu about the increased burdens on country hotels and on the occasion referred to what I meant was this : that a country hotel which is not a temperance hotel must take out at least a hotel liquor licence and I think I am right in saying it costs £20, but that if he has as much as

one bedroom in that hotel he now, under the Licensing Ordinance, has to take another licence for £20, so that in actual fact his charges have been doubled by those two Ordinances. I do not see myself how relief can be provided under this Bill. If relief was provided it would be in another Bill and it was only because I wish to make it quite clear that was what I said and that is the view I hold that I have risen to refer to the remarks of the hon. Member for Kiambu.

THE HON. THE ATTORNEY GENERAL: Sir, the first point which was made by the hon. Member for Nairobi South is with regard to the discretion which is given to the district commissioner to impose conditions when he is granting a temporary licence. If I am able to answer his argument shortly it is this, that the greater includes the lesser, and whereas you are willing that the D.C. should have the right to reject any application for temporary licence you say that if he is prepared to grant it he must not put down any conditions in that granting. As the hon. member quite rightly said when he answered the point himself, if you have a hotel which has two bars, one bar supplying, let us say, a dance inside the hotel where people have gone there particularly knowing they will be able to obtain refreshments, and also another bar which is on the street and which is inviting anybody and everybody passing to come in, I submit that it is quite reasonable for the D.C. to say: "Well, I do not think that you should have a licence for the bar in the street, but I will let you have a licence to 2 a.m. inside the hotel". If you cut out that provision it may easily mean that many a man who would get a licence in the ordinary way, if the D.C. were able to put some perfectly reasonable provision on that licence, the D.C. will say "No, I am sorry. I hear that everybody drops in to your outside bar and you cannot have a licence at all". So I think you will agree it cuts both ways—to facilitate the legitimate man and it will not permit a man to supply drinks to all and sundry.

The next point is really entirely academic because as the hon. member said himself in England both the holder of the licence and his servant were prosecuted. There you prosecute the holder of the licence for the act of his servant, calling him the principal, and then you prosecute the servant for aiding and abetting him by so doing, and this particular Bill sets out exactly the same thing. In fact, as I say, an aider and abetter can be fined and punished in exactly the same way as the principal. As the hon member knows, it says the principal shall be responsible as well as the servant, and when you think of it the only reason why a servant commits an offence is in order to gain money for his principal

in 99 cases out of 100, and it is not a great hardship to say that if a man is going to gain some pecuniary advantage he should be punished.

With regard to the extra half-hour which the hon. member is begging for, namely, that if you order your drinks at one minute to twelve you can sit down to be allowed to finish them, if you were to ask the police they would tell you that it is exactly the same as extending the time to 12.30, because it would be quite impossible to supervise in practice. It sounds very well in theory, but in practice how is anyone going to know when the drinks were ordered? It may have been done at home, but the hon. member forgets that if we were willing to exchange the laws here for the laws at home he might be inordinately sorry, if you think of the innumerable restrictions which exist there to-day! I do not think that any one in this Colony can complain of the recommendations of the committee with regard to extending the hours. Actually we gave the hon. member an extra hour with his meal when we extended the hours from 11 p.m. to 12 provided a meal was taken. I am sure the hon. member will appreciate that as much as anybody, but personally I am between Scylla and Charybdis as on the one hand I have the hon. members asking me to agree to what will amount to an extension of half an hour and on the other hand I can show you innumerable papers on my file denouncing the fact that we have gone as far as we can.

The question with regard to the Shop Hours Ordinance I certainly view very sympathetically indeed. I personally think there is a great deal in the point and I hope we will be able to meet the hon. Member for Nairobi South and the hon. and rev. Member and also the hon. Mr. Shamsud-Deen.

CAPT. THE HON. H. E. SCHWARTZE: On a point of explanation, Sir, may I say I put this forward as it had been put up to me and I promised those who put it up to ventilate the views in order that the Select Committee could have the benefit of hearing those views and also those of the opposite side. I particularly do not want it to be thought that I have made up my mind on it one way or the other until I have heard evidence in Select Committee.

THE HON. THE ATTORNEY GENERAL: That makes the position quite clear, and I do not think the Select Committee will have much difficulty in making up their minds. I think we all know the facts of the case and we will have to make up our minds whether the Shop Hours should prevail or the Liquor Ordinance hours. I personally feel at the moment, although I have an open mind, that a fairly strong case has been made out for the Shop Hours Ordinance.

not be in this case, and I had intended on another question altogether, nothing to do with the point raised, to suggest something of that description to the Select Committee in due course.

THE HON. F. A. BEMISTER: On a point of explanation, Sir, would that be retrospective?

THE HON. THE ATTORNEY GENERAL: That, of course, would depend on what happened to be the recommendation of the Select Committee. It could be made retrospective.

I think I have dealt with every point raised and as I say we will go into all these details again when the Bill comes before the Select Committee.

The question was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Bill which has just passed its second reading be referred to a Select Committee of this House consisting of:—

The hon. the Attorney General (Chairman).

The hon. the Commissioner for Local Government.

The hon. the Commissioner of Customs.

The hon. Member for Trans Nzoia.

The hon. Member for Nairobi South.

The hon. Member for Aberdare.

Dr. the hon. A. C. L. de Sousa.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

COMMUNICATION FROM THE CHAIR.

HIS EXCELLENCY: Before the adjournment, in view of disquieting rumours which I understand are prevalent as to conditions in the Masai Reserve, I have been asked to make a statement of the facts in so far as Government knows the position at present.

A full report has not yet been received, but the following are the main facts regarding the recent Masai incidents of which some notice has already appeared in the Press.

On Tuesday, the 25th inst., a body of young Masai warriors, believed to about forty in number, for some reason not at present clear, armed with swords made an attack in

three parties on the camp of the District Commissioner, Narok, about ten miles from Narok. Though called on to stop they continued to advance and orders were then given to three armed tribal police who were present to fire. As a result four Masai were wounded, one of whom has since died. The assailants then retired and made an attack on an Indian ganger of the Public Works Department as a result of which he received wounds but not of a dangerous character. The same party subsequently by force rescued a number of accused who were under the custody of a policeman and some tribal retainers. They had been arrested for some offence which is not known.

A strong force of police under the charge of the Commissioner of Police is now on the spot and the situation is well in hand.

*Council adjourned until Monday, the
1st July, 1935, at 10 a.m.*

MONDAY, 1st JULY, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, the 1st July, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, ESQ., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 28th June, 1935, were confirmed.

ORAL ANSWERS TO QUESTIONS.

QUESTIONS WITHDRAWN.

No. 6.—Has any decision been reached with regard to—

(a) The erection of buildings for the Girls' Secondary School, Nairobi, out of loan fund?

(b) The erection of a European block on the Grouped Hospital site?

No. 7.—Whether Government received a recommendation from the Postmaster General with regard to the reduction in the charge for Wireless Licences and, if so, what steps Government proposes to take in the matter?

CAPT. THE HON. H. E. SCHWARTZE: With regard to questions Nos. 6 and 7 standing in my name, in view of the announcement which appeared in the Press from Government with regard to both these matters, I do not require an answer.

CONVENTION OF SAINT GERMAIN-EN-LAYE.

No. 21.—MAJOR THE HON. F. W. CAVENDISH-BENTINCK asked:—

“(a) Can Government inform this House whether it is a fact that the question of revision of the terms of the Convention of Saint Germain-en-Laye which was due to be considered by a Conference of the Signatory Powers in 1930 was postponed until the year 1935? Or has the date for holding such a Conference been again postponed?

(b) In view of the fact that the majority of miscellaneous Treaties and Agreements usually contain a clause for a denunciation by either party subject to due notice, can Government inform the House whether any such provision was agreed at the Convention of Saint Germain-en-Laye when signed in 1919?

(c) In view of the question asked in the House of Lord in June of 1932 by Lord Cranworth and the unsatisfactory nature of the reply thereto by Lord Templemore, can Government inform this House whether any representations have been made to the Secretary of State for the Colonies regarding either the advisability of the revocation of the Convention at an early date or of the introduction of far reaching modifications therein in the interests of these territories?

(d) In the event of the reply to (c) above being in the negative, will Government make immediate representation to the Secretary of State for the Colonies on this subject?"

THE HON. THE ACTING COLONIAL SECRETARY: (a) The British Government proposed that the question of the revision should be postponed until 1935. This proposal was not formally accepted by all the Signatory Powers and no definite arrangements for the holding of a further Conference have yet been made.

(b) The reply is in the negative.

(c) and (d) The matter was discussed with Sir Philip Cunliffe-Lister during his visit to Kenya last year and, as has been several times stated by H.M. Minister in Parliament, has been engaging the continuous attention of H.M. Government. In the circumstances it would not appear that any useful purpose would be served by representations by the Kenya Government.

AGRICULTURAL OFFICERS, APPOINTMENT OF.

No. 30.—MAJOR THE HON. G. H. RIDDELL asked :

“Will Government state how many additional fully qualified agricultural officers have been appointed from overseas since the Report of the Economic Development Committee was received by them?”

THE HON. THE DIRECTOR OF AGRICULTURE: No fully qualified agricultural officers have been appointed from overseas since the Report of the Economic Development Committee was received by Government.

ECONOMIC DEVELOPMENT COMMITTEE REPORT.

No. 31.—MAJOR THE HON. G. H. RIDDELL asked :

“Is it the present and future intention of Government to implement such recommendations of the Economic Development Committee's Report as appealed to them without seeking the advice and sanction of Legislative Council in open debate?”

THE HON. THE COLONIAL SECRETARY: The views of Government on the Report of the Economic Development Committee will be found in Sessional Paper No. 1 of 1935 which was laid on the table on the 26th June, 1935. Should any hon. member disagree with the views expressed in that Paper, he will no doubt give notice of motion accordingly and the matter can then be debated. It is not the intention of Government itself to give any notice of motion on the Report as a whole, but it will be realized that many of the recommendations cannot be adopted by Government without the consent of this Council by reason of their financial implications.

POSTAL, ETC., SERVICES IN GOLD MINING AREAS.

No. 32.—THE HON. CONWAY HARVEY asked:

“What steps are being taken with the object of providing reasonable Postal, Telegraphic and Telephonic Services in the gold mining areas?”

THE HON. THE POSTMASTER GENERAL: Taking each class of services separately, the position is as follows:—

Posts.—Having regard to the existing conditions, a reasonable service is at present being provided. Advantage is being taken of all regular surface and air transport services available.

Telegraphs.—With the exception of Kisii, all the important points are connected with the main telegraph system. The question of making provision for the building of a telegraph line from Kisumu to Kisii is at the moment under consideration by Government.

Telephones.—A scheme for extending the Colony's main trunk telephone system to Kakamega, Kisumu and Kisii is at present under consideration by Government.

MOTION.

LICENSING ORDINANCE—EXEMPTION OF MEDICAL PRACTITIONERS AND DENTISTS.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, I beg to move the motion standing in my name, to the following effect:

“That the Bill to provide for the licencing of certain trades, professions and occupations within the Colony and to fix the licence fees payable, be so amended as to exempt from the provisions thereof medical practitioners and dentists or, alternatively, that these professions be exempted under section 17 (2) of the existing Ordinance.”

As you know, Sir, when the Licensing Bill was passed into law—I think it was two years ago—the medical practitioners were excluded and subsequently to that there was an objection raised on behalf of the dentists that they were somewhat unfairly treated, that while the medical practitioners were exempted, dentists were not, and I believe that in some cases medical practitioners practised dentistry without paying the licence, while dentists who practised dentistry had to do so. I think as a result of that when the new Ordinance was brought in last year that Government decided to include both medical practitioners and dentists. At the same time all members on this side of the House and I think all members opposite who are professional men opposed the inclusion of the medical profession. It may be argued, no doubt it will be argued, that as medical practitioners are carrying out their profession for profit that there is no reason why they should not be treated just the same as any other profession, but I do submit, Sir, that it is quite impossible to say that the practice of medicine is on the same footing as any other profession. I think we all agree that far the most important thing in life is health and that anything that contributes to good health is therefore of the very first importance.

Now, Sir, with regard to medical practitioners, there are many points which apply to them much more than to any other profession. As you know, medical men are called upon to attend sick persons at any hour of the day or night, at any distance and irrespective of the patient's ability to pay. There is a great tradition in the profession, a tradition which all medical practitioners take a pride in living up to, and they certainly would never refuse to give their medical aid to anybody in need of it quite irrespective of whether they are going to be paid or not and there is no question I am sure that the percentage of bad debts and reduced fees increase enormously. I believe I am correct in saying—my hon. friend the Director of Medical Services will correct me if it is not so—that Fellows of the Royal College of Surgeons and Members of the Royal College of Physicians never sue for fees which are unpaid. I believe that is so, Sir. Apart from that, medical practitioners are frequently called at any time, whatever they may be doing, to come and attend urgent cases, calls which are never refused. I do not think any other profession is handicapped in a similar way. Apart, again, from that, I think one must take in consideration the enormous amount of voluntary work that they do on behalf of various institutions and on behalf of Government. Just to mention a few there is the Indian Maternity Home, the Native Maternity Home, dispensary facilities, the Salvation Army and a great many cases in the European Hospital which they do entirely out of their own time and without any reward at all.

I do not say that other professions do not also do a great deal of free work for various institutions or charitable purposes, but not to the same extent or anything like the same extent as medical practitioners. I have been told that the amount of voluntary work they do without any payment would take the full time of two practitioners and therefore saves a very large sum in many ways and in fact of course Government gets more from those free services than anything they are likely to get out of these particular licence fees.

Now, Sir, whilst I have given some reasons why there is need for special treatment to the medical profession, I have not touched on the really most important reason, a reason which I believe does appeal to Government and which I hope will result in Government accepting this motion, as I have every reason to believe they will do, and that is, Sir, that by the imposition of this licence there has been a very serious loss to the Colony. We all know that there are three most distinguished specialists, men of world reputation, men of the very highest standing, who we are extremely lucky to have in a small Colony like this—those three gentlemen have all retired from practice in consequence of the imposition of this licence and that alone is a very, very great loss to the country. Apart from that Sir, you have got the principle that it has been Government's policy to encourage medical practitioners to take up farms and to help out with medical work all over the Colony where the population is scattered and there are not many of the usual medical facilities. Many of those gentlemen are not practising medicine seriously as a profession, but are giving their services to help anyone who may require it. The imposition of this licence fee has definitely driven them out of practice.

Now it may be said that there is provision in the Ordinance by which anyone can be exempted if they apply and it may be argued that therefore there is no real hardship because anybody could have applied for exemption. Now, Sir, I am not a medical man, but the medical profession have a very great pride both in their profession and in themselves and these medical officers claim that it is not the right thing either for them to apply for exemption, disclose all their private income and so on, to get exemption, and further that if they do so they admit the principle that the medical profession should pay a licence fee of this sort. You may argue that this is a wrong attitude but it is a real attitude and is taken up by them and as they take it up it does result in serious loss to the country in that a large number of medical practitioners have gone out of practice.

There is another point, Sir, with regard to these doctors in out-lying places. They say that if they get exemption

and then practice medicine they are taking away a certain amount of business from numbers of other practitioners who have had to take out a licence and therefore they do not consider that is fair attitude to take up.

I do submit, Sir, that the medical profession are in an entirely different position to any other profession and I do hope that Government, having realized the loss which is inflicted by the imposition of this licence fee, will accept my motion and will either amend the Bill which can be done later on on the agenda to-day or will exempt them under section 17 (2) of the Ordinance.

With regard to dentitsts, I admit the case is not so strong. The same arguments apply up to a point and in a lesser degree, but, as I said earlier in my speech, when the medical profession was exempted before, the dentists protested and their protests were put forward and I understand it was laid down that however the medical profession were treated the dentists should be treated the same, and on those grounds I have incorporated the dentists with the medical profession and I sincerely trust that Government will accept the motion and will exempt both these professions.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : Your Excellency, I beg to formally second the motion. I spoke at some length urging very much on the same lines as the mover of the motion when the original Bill came before the House last year and therefore it is not necessary for me to take up the time of the House by repeating those arguments.

THE HON. THE ACTING COLONIAL SECRETARY : Your Excellency, the Noble Lord based his arguments on two grounds, first, that the medical profession, as such, should not be subject to the payment of licences. Sir, Government is unable to accept that principle. May I remind hon. members of the circumstances in which these licences were imposed. It will be recalled that when the question of income tax was under consideration, at the request of the unofficial community proposals were accepted by Government for obtaining the revenue which was estimated would be obtained from income tax from other sources and one of those sources was an increase in the licence fees payable by various sections of the community. Now, the medical profession has never put forward the plea that they should be exempted from income tax and it does not seem logical to Government that they should put forward a plea for exemption from a tax which is in effect a substitute for income tax. But the circumstances in this Colony are to some extent unique and Government realizes that the second ground on which this motion is based is irresistible. It has been found

that a great number of physicians and surgeons who do not depend upon the practice of their profession for a livelihood are unwilling either to apply for exemption, which was the remedy that Government had provided to meet cases of this sort or to continue to practice, that is to say, they have said that they will neither take out a licence nor claim exemption. Government has fully realized that if that attitude were adopted the result would cause tremendous inconvenience and loss to the community, and so it is on the ground that Government does appreciate and does recognize the voluntary and very valuable services which that section of the medical profession is performing for the benefit of the community that I am authorized by you, Sir, to say that you will exempt the medical profession under section 17 (2) from the provisions of the Ordinance.

Now, Sir, if Government could have found ways and means of exempting those physicians and surgeons who are not dependent on the practice of their profession for a livelihood, Government would have exempted them and restricted the payment of licences to those who are definitely making it their profession and deriving their income therefrom. In the same way as it is not possible to draw a distinction between medical practitioners as such and those who are practising medicine purely to assist the community, Government finds equal difficulty in drawing a hard and fast line between the medical profession and the profession of dentistry, and therefore, Sir, you have authorized that dentists should also be included in the exemption.

LT.-COL. THE HON. J. G. KIRKWOOD : Sir, I rise just to make one point.

First of all, I should like to congratulate Government on its very wise decision, and secondly, to disagree with the Colonial Secretary when he stated a few moments ago that the graduated non-native poll tax was in substitution for income tax. It was agreed to by members on this side of the House as an emergency measure and as a financial measure to raise revenue, and in substitution for nothing whatsoever. It is therefore not correct to say that the non-native poll tax was in substitution for income tax.

THE HON. THE ACTING COLONIAL SECRETARY : On a point of explanation, I do not think I made that point. I said in substitution for income tax, but whether it was intended to be emergency or permanent taxation I did not say.

DR. THE HON. C. J. WILSON : Speaking on behalf of the medical profession, Sir, may I congratulate Government on its decision?

the Widows' and Orphans' Pension Ordinance. It is clearly inequitable that an officer's contribution should be reduced merely by reason of the fact that he has elected to receive a reduced pension and gratuity rather than the full pension.

It has been the invariable practice of the Board appointed to administer this fund to base contributions to pensions payable under the Ordinance on the full pension, even though a portion has been commuted. This, I think members will agree, is obviously the proper and equitable course to pursue. It has been ascertained, however, that this practice is not legally covered, and the object of the Bill is to provide the necessary legal provision. I may say that the Bill as drafted has the full approval of the Board which administers the fund.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

SECOND READING.

THE PROMISSORY OATHS (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Promissory Oaths (Amendment) Bill be read a second time.

This is an entirely formal Bill. As hon. members are probably aware, when the 1926 revision of the laws took place, in binding the laws together apparently there was some mistake and the second schedule to the Promissory Oaths Ordinance was omitted, with the result that the Ordinance as it stands at present is of practically no use whatever. The present schedule is almost the same as the schedule which should have appeared in 1926, except that we have permitted the Governor to delegate powers to administer oaths to certain more junior officials whenever necessary for him to do so in order to facilitate matters.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

SECOND READING.

THE EXPLOSIVES (AMENDMENT) BILL.

THE HON. THE DIRECTOR OF PUBLIC WORKS: Your Excellency, I beg to move the second reading of the Explosives (Amendment) Bill.

The purpose of the Bill is two-fold. Firstly, it seeks to provide for a permit to use blasting materials to be cancelled, for no such provision exists in the principal Ordinance. It may sometimes happen, and indeed it has happened, that an

accident occurs and at the inquiry it is established that the permittee has been grossly negligent or incompetent and is unfit to hold a blasting permit. No provision was made for the cancellation of the permit to use blasting materials in the principal Ordinance, because that Ordinance was based on the Explosives Act of the Union of South Africa, and in that country it is held that the power to grant a permit embodies within it the power to revoke. That is held not to apply to this Colony. Provision is made in the Bill for the right of appeal to the Governor if the permittee is dissatisfied with the decision of the Director of Public Works to revoke his permit.

The second amendment which this Bill seeks to make is to confine the power to issue permits to use blasting material to inspectors of explosives and district officers. What has been found in practice is that it is not necessary that magistrates other than justices of the peace and district officers should have that power. When the Ordinance was enacted eighty-four justices of the peace were circularized and not a single one replied, nor has there been any correspondence about the matter with them since that time. One magistrate, a district officer, wrote in stating that it was outside his province to grant such permits because he had not the technical knowledge requisite to judge whether the permittee should hold a permit or not. It is, in fact, necessary to put the applicant for a permit through a technical examination to ascertain his knowledge. Inspectors of explosives are in the best position to judge. It is, however, deemed desirable to retain power to issue permits by district officers, because it may happen that in an out of the way place there will be no inspector of explosives available. In practical use, however, very few permits are issued by district officers and hundreds are issued by inspectors of explosives.

THE HON. THE ATTORNEY GENERAL: seconded.

The question was put and carried.

SECOND READING.

THE JUVENILES (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Juveniles (Amendment) Bill be read a second time.

When the original Ordinance was passed it was recognized by everybody that the correct period that a young person or a child should be sent to an Approved School was any time between three and seven years. On the Ordinance coming into force, it was found that although we had made provision

for young persons of seventeen to be sent to Approved Schools until twenty-one no such similar provision had been made with regard to a boy of sixteen, with the result that a boy of sixteen can only be sent to an approved school until he is eighteen. This anomaly was pointed out by the new Manager, who says it will affect very seriously the working of the Ordinance, and it is at his request that the Ordinance is being amended in this respect, to permit young persons of sixteen to be sent, if necessary, to an Approved School, Class III, until they are twenty-one years old. All the old provisions remain, of course, with regard to permitting them to leave school earlier if the Manager thinks fit and so recommends.

The second provision which I have put in as the Ordinance was being amended in this first respect deals with whipping. As hon. members know and will agree, I think, it is the obvious punishment for every boy of fifteen when he runs away from an Approved School to be whipped. At present, all that a court can do is to extend the time that the boy may be detained, whereas as has been pointed out the court would rather have an opportunity of seeing that he got "twelve of the best" and not extend his time at all. This second amendment merely gives power to a court to direct the Manager of the School from which the boy escaped to give up to twelve strokes with an approved cane.

THE HON. T. D. H. BRUCE seconded.

VEN. ARCHDEACON THE HON. G. BURNS : Your Excellency, the Ordinance does not lay down the implement with which this whipping is to be given. Is it to be a cane, a *kiboko*, or what?

THE HON. N. S. MANGAT : Your Excellency, the whole of this Ordinance was revised in its entirety last year, and I should have thought that an amendment such as the one relating to whipping would have been brought before the Select Committee on the Bill to consider in all its aspects. As regards the first five sections of this Bill, I have no objection to any at all, but as regards the amendment to put in this whipping I have a very strong protest to make.

We are dealing with a people who are not intelligent enough to protect themselves and who cannot put forward arguments in their own defence because they are juveniles, and in nearly 99 per cent of the cases they are undefended. We are suggesting that as a detriment they should be punished with twelve strokes, in replacement of six months further detention. A sentence of whipping is the kind of sentence that is executed immediately after it is pronounced,

SECOND READING.

THE EXPULSION FROM PROCLAIMED AREAS BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Expulsion from Proclaimed Areas Bill be read a second time.

The original Ordinance, as hon. members are aware, was kept alive by motion in this House from year to year. The last resolution of this House was passed on the 17th May, 1934. In order to keep it alive I should have re-submitted it in November of last year, but it never occurred to me that the Council would not be sitting before the 17th of May this year with the result that it ceased to exist on the 17th May, 1935. It is therefore necessary for me to reintroduce the whole Ordinance again in the form of a Bill, with one small exception, that having been caught once I hope not to be caught again, so that I have deleted the section which says that this House shall approve of the Ordinance from time to time and have followed the procedure that the Ordinance shall continue until it is repealed.

So far as I am aware, I do not think the Ordinance has even been used at all, but those who know tell me that it is most valuable in that the mere knowledge that it might be used has the desired effect on persons who might offend against it. It would, therefore, appear to be a very necessary Ordinance to keep in the laws of the Colony, and I beg to move that it be re-enacted subject to the one amendment which I have mentioned with regard to the deletion of the section keeping it alive by motion of the House from year to year.

THE HON. T. D. H. BRUCE seconded.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, on behalf of the European Elected Members I have to say that we support this Bill. As the hon. and learned member has said, it has never been necessary to make use of this Ordinance, but we wish to say that we are just as anxious as Government are that the high standard should be maintained of people living in these areas. Therefore we support the reintroduction of this Bill, because we believe that actually it will be a dead letter. The standard of behaviour in these mining areas has been exceptionally good, perhaps unparalleled in the history of new mining development in any country in the world, but as we are quite confident that it will inflict no hardship on any deserving person we support the recommendation. Further, we agree with the hon. and learned member that it is unnecessary to have the clause that it should be approved every year.

THE HON. ISHER DASS : Your Excellency, I rise to oppose this Bill. (Laughter.) Before I give my reasons for opposing it I think I owe an explanation to this House, and that is that on Thursday, during the discussion on the Legislative Council Bill, I put forward as an honest suggestion that the time had arrived when natives should be represented by their own kith and kin, and I expected that the people who always claim to be trustees or to hold the destinies of the natives in their hands would have been absolutely pleased to hear such a suggestion from me, but, on the other hand, one hon. member went to the extent . . .

THE HON. THE ATTORNEY GENERAL : On a point of order, Your Excellency, is the hon. member in order in discussing a Bill dealt with on Thursday of last week?

HIS EXCELLENCY : I was waiting to hear how the hon. member develops his argument before intervening. I do not know what his argument is going to be in opposing this Bill, but he has not finished the first sentence yet so that I am loath to call him to order.

THE HON. ISHER DASS : My suggestion irritated the hon. Member for Nairobi South to this extent, that in spite of my giving sound and practical argument he indulged in personal attacks on my academic achievement . . .

HIS EXCELLENCY : I must call the hon. member to order now. That has nothing to do with the question before the House, and the hon. and learned Attorney General was probably right in thinking that I should have done it before.

THE HON. ISHER DASS : I am so anxious to raise this matter—I was trying to bring before the House the argument that if the natives were represented by their own kith and kin in this House we should at least have an authentic statement . . .

HIS EXCELLENCY : I must ask the hon. member to keep to the point, and the point is that this Bill be read a second time. I would ask the hon. member to confine his remarks to the desirability or not of reading this Bill a second time. (Hear, hear.)

THE HON. ISHER DASS : That is exactly my point—(laughter)—if we had natives here. To-day we have heard the European Elected Members wholeheartedly support this measure, and if we had natives here they would probably oppose it as strongly, because I believe this measure is going

to be used not so much in any case as in the case of politics. After all, the younger generation suffering from foreign domination are becoming conscious of their lost rights, and if they hold public meetings and raise public subscriptions to achieve their wishes . . .

HIS EXCELLENCY : Order, order! I must ask the hon. member to keep to the point. Native political meetings have nothing whatever to do with the provisions of this Bill. If you wish to oppose the passing of the Bill I must ask you to point out what particular sections you object to, or the principle.

LT.-COL. THE HON. LORD FRANCIS SCOTT : On a point of explanation, Sir, on behalf of the European Elected Members, we support the Bill in the interests of the natives.

HIS EXCELLENCY : That is perfectly germane to the discussion.

THE HON. ISHER DASS : The hon. and learned Attorney General has given us to understand that there was never any necessity to use this Ordinance. If that is so, where is the necessity of introducing it again? I want simply to refer to two or three clauses to which I strongly object. In principle I object to the whole of the Bill, but the inclusion of these clauses show exactly what is behind the minds of Government.

With regard to clause 5 (2) : "The Board shall have the powers of the Supreme Court to summon witnesses and to call for the production of books, plans and documents, and to examine witnesses and parties concerned on oath." That means that we shall have another Judicial Department with the powers of the Supreme Court.

In clause 5 (4) it says : "Any person against whom an expulsion order has been made by the Board may, within seven days of the making of such order, appeal against such order in writing to the Governor in Council, whose decision shall be final." We know perfectly well that if there is an aggrieved party who is served with a notice to leave a certain district or area by order of the Provincial Commissioner or the Board appointed by Your Excellency, and he appeals to the Governor in Council, what will happen? He will get a reply that the Governor in Council regrets that he cannot interfere with the decision.

The most interesting clause in this Bill of which no man of commonsense could fail to understand the object lying behind the mind of Government, is clause 12 : "No court of the Colony shall have any jurisdiction to review, quash, or otherwise interfere with any proceeding, act or

order had, done or made under this Ordinance." If we are going to have this kind of legislation, if we are going to ask people to leave districts who in the opinion of the Provincial Commissioner are not desirable people, and a man is expelled and leaves his home, we must give him a chance to defend himself in a court of law, and I suggest there should be a proviso to this effect. I particularly object to such legislation being passed against people who have no direct representation here. I therefore oppose this Bill wholeheartedly.

VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, in section 5 of the Bill I read these words: "If complaint is made to the district commissioner of a proclaimed area or if he has reason to believe that the presence within such proclaimed area of any person, other than a native of such proclaimed area, is undesirable, he may notify such person of the grounds on which it is considered that his presence is undesirable." I rise to support this Bill wholeheartedly and I support it for two reasons. First of all, taking rather a crude illustration, a man with a clean *kanzu* cannot carry a bag of coal without getting some of the dust of that coal on his clean *kanzu*. From the point of view of Europeans in Kakamega, this Bill does not refer only to Kakamega, their conduct has been so exemplary and their effort to do the right thing with the natives that if a man was found in that district who was dealing harshly with the natives or doing things that would be detrimental to the natives, the Europeans of that district would of necessity be in some way responsible for that man's conduct and for the sake of the Europeans that such a man be expelled from the district goes without saying if they want to maintain the high standing which I hold they have maintained for some time. But with regard to the natives surely it is to the interests of the natives whether he be European or whether a native. His conduct if it is undesirable reflects not only on the Europeans but on the natives themselves and that it is really for the benefit of the natives and for the good of the natives that such person be removed from a district whether he be European or native, so that his conduct may not bring disgrace among the people.

THE HON. N. S. MANGAT: Your Excellency, a very important point has been made by the hon. Isher Dass, where it refers to the restriction of jurisdiction of courts of law. Now I look upon the Bill from the point of view of a legislator. It may be said that I take the view of an accused person. Even if I do take the view of an accused person I know that every member of this House will take the same view because after all wherever we make laws we have to protect the accused person. We cannot pass legislation simply for the sake of experiments, and this law restricts the powers of

law. I would ask the hon. the Attorney General to explain if when a writ of habeas corpus has been issued and when a man affected by this Ordinance has been put in custody, could he possibly avoid an order of a court of law in spite of this legislation? I think we are passing measures where one of these days the legislature will come into conflict with the judiciary and we shall find, Sir, as it happened with the President of the United States, this legislation will be declared *ultra vires*. I seriously feel that the courts have jurisdiction unchallenged over every person and their property and this clause does not to my mind take us any further than showing our own ignorance. I would have very much liked to know the opinions of other hon. members to throw light on this law, but I trust that even if it is passed it has no meaning.

CAPT. THE HON. H. E. SCHWARTZE : Sir, I did not propose to speak but in view of what I take to be an indirect invitation from the hon. and learned Indian Member, my view is that—I do not know whether it is shared by the hon. Attorney General—from the nature of the question the Attorney General does not come into this at all—there is no question of imprisoning a man or forcing his attendance before the court. In effect what it is, is that the Board is appointed by the Governor composed of the Provincial Commissioner or district commissioner and other residents in the area. A fairer tribunal in a case like this would be difficult to find. If a recommendation is made which shows a *prima facie* case of a man being undesirable, he is notified and has the right to appear before the Board. If he does not, the Board deals with the case and takes the evidence of the witnesses in his absence and then make an order of expulsion or not. I do not think I should ever be accused of welcoming legislation which would deprive the Supreme Court of its legal powers. I am a very great believer in retaining the powers of the Supreme Court, but in the particular circumstances obtaining in this Colony it is very much fairer for everyone concerned and very much more in the interests of the natives in the area that we should have perfectly fair, but at the same time quick justice and that the people concerned should have the right to say whether their fellow's conduct can justify his expulsion. If you do not have a provision like this you would have an appeal to the Supreme Court and to the Court of Appeal and apart from the expense involved the delay would be considerable. We are however talking practically academically because as it has been stated on both sides of the House the provisions have not been invoked yet and we all have every reason to believe that the provisions of this Bill will not have to be invoked. I think the provisions are equitable and I think everybody will get perfect justice in these areas.

THE HON. SHAMSUD-DEEN : Your Excellency, the whole idea has been ridiculed as put forward by Mr. Isher Dass that this Bill should not be introduced in this House at all. I submit, Sir, that unless a case has been made out that it is absolutely necessary, there can be no justification for the introduction of the Bill. After all the time of every member of this House is of some value and I cannot understand why we are wasting this time, if the Bill is not absolutely necessary, and it simply amounts to this that we are trying to introduce a system by which we punish a certain individual without letting the accusation against him stand a test of justice in the judicial court and simply submit the accused person to a sort of mob feeling. I can imagine such a measure being abused in a mining area for example where a man like myself or Mr. Isher Dass might be and it may be said by a crowd hostile to us "he is an awful nuisance; let us get rid of him." I can see the possibility of the abuse of the Bill. It is an admission quite clearly that although we have elaborate judicial machinery in this Colony, we want to introduce something that will dispense with the scales of justice.

THE HON. THE ATTORNEY GENERAL : I feel, Sir, that the hon. and learned Member Mr. Mangat has answered the difficulties of Mr. Isher Dass, although I do not agree with his law. He has told us that section 12 is useless and should not therefore be put in if it is useless. We may therefore presume that Mr. Mangat will be able to get his client acquitted before the courts of law. It will be a matter of great interest to see if he manages to do that.

There are one or two misunderstandings in this Bill. Certain members have spoken as if the Bill applied to the whole Colony. It only applies to certain proclaimed areas. It is true that in those areas there is a body appointed known as a Board to administer this Bill, but that body only consists of one Government official and unofficial residents in the area so that in a sense you can say you have a judge and jury drawn from the particular district affected.

Another misunderstanding has been mentioned in regard to whom the Bill applies. Of course this does not apply to natives, only those other than natives.

An attempt was made to pass some resolution on the Governor in Council and it was suggested that the Governor and perhaps the Council were quite incapable of exercising an independent mind and that whatever was done by this Board in the area, which consisted of a P.C. and four or five unofficials, would be blindly followed, but if that has been the experience of the hon. member it is greatly to be regretted and I can say it is not true.

The other points were all raised when the Bill was first before the House and nothing has occurred to alter it. Because of this Bill when a man knew that if he had misbehaved himself he would be turned out, he went of his own accord. And that is why we want this hon. House to re-enact this Bill.

The question was put and carried.

Council adjourned for the usual interval.

On resuming.

SECOND READING.

THE EXCISE DUTIES BILL.

THE HON. THE COMMISSIONER OF CUSTOMS: Your Excellency, I beg to move the second reading of the Excise Duties Bill.

As stated in the objects and reasons, this Bill, which has been agreed to in principle by Uganda and Tanganyika, re-enacts all the main provisions of the existing Excise Duties Ordinance which instituted excise taxation in 1931. It does not, therefore, seek to establish a new system of revenue collection and supervision, but merely aims at strengthening the existing system which, considering its necessarily experimental character, has worked remarkably well.

The new provisions incorporated in the Bill are intended firstly, to improve procedure governing the assessment and collection of the revenue, and secondly, to impose a measure of control over the issue of excise licences.

The provisions falling under the former category do not introduce any new administrative principles nor do they impose any unusual or onerous obligations on licensees.

The first amendment of this type is contained in clause 4, where proviso (b) has been amplified so as to require the production of evidence of delivery from licensed premises in addition to evidence of exportation. This amendment is necessary in order to protect revenue from the payment of irregular claims for rebate.

I will revert later to clause 6 of the Bill, which contains the new provisions governing the control to be imposed over the issue of licences.

Clause 8 merely provides for the protection of the revenue in cases where the right to manufacture has lapsed.

Clause 9 re-enacts the provision included in the Excise Duties (Amendment) Ordinance passed during the present session, for the purpose of making altered rates of duty applicable to "in bond" stocks held on factory premises.

Clause 11 reproduces section 9 of the present Ordinance, but gives additional powers of inspection which experience has proved to be necessary.

Clauses 13 to 16, which are modelled on sections 174 to 177 of the Customs Management Ordinance, 1926, are new provisions which will enable licence holders, subject to proper safeguards, to comply with the requirements of the law through authorized agents.

Clauses 18 and 19 introduce new provisions which are modelled on sections 259 and 260 of the Customs Management Ordinance, and are required to assist systematic administration through the use of uniform documents.

Sir, I will now turn to clause 6, which provides for a measure of control over the issue of licences. The provisions of section 6 of the present Ordinance, which govern the issue of licences to manufacture excisable articles, do not admit of any exercise of discretion, whether to grant or refuse the issue of a licence, since they merely demand the payment of a prescribed fee and the completion of a form describing the situation of the premises intended to be used for manufacture and storage. The unregulated granting of excise licences has been found to be incompatible with the satisfactory collection of the revenue in so far as it has led, in certain cases, to the licensing of traders whose manufacturing premises and equipment are so primitive, and whose business methods are so lacking, that it has been impossible to impose an effective supervision over their operations. It is an essential feature of every economical system of excise taxation that the issue of licences is restricted to responsible traders who are in possession of premises suitably equipped for their purpose and designed to assist and facilitate revenue control, and most of the new provisions in clause 6 of the Bill are merely intended to bring the local system of licensing into line with the accepted practice elsewhere.

Fortunately in this Colony the disadvantages associated with the unrestricted issue of licenses have been limited because of the circumstance that the two main excised industries, the sugar industry and the tea industry, have been subject to organized control through other agencies. The fact, however, that an excised industry may, for one reason or another, have to be controlled for purposes other than revenue purposes, clearly points to the necessity for taking account of considerations other than revenue considerations in regulating the issue

of excise licences. It is therefore proposed that a power of discretion over the issue and transfer of licences shall be exercised by the Governor in Council, as the best method of securing co-ordinated regulation in the joint interests of the revenue administration and the healthy development of the industries concerned.

Clause 6 of the Bill, accordingly, in addition to laying down the grounds on which a licence may be issued, renewed, or suspended, provides that a licence shall only be issued by the Commissioner of Customs with the prior approval of the Governor in Council.

The Bill as printed requires to be amended in certain minor respects, and it is proposed to make them.

THE HON. THE TREASURER seconded.

THE HON. N. S. MANGAT : Your Excellency, I have two or three points which I feel, since the Bill is not going to Select Committee—(The Commissioner of Customs : Yes, it is.) Even so, I will touch shortly on them for the consideration of the House, so that when the Bill comes back the committee may have dealt with them.

The first is in section 3, in the last line of which it says "without the use of machinery, ready for smoking in tobacco pipes". Those words "ready for smoking in tobacco pipes" have been included in the interpretation clause as "manufactured tobacco other than cigarettes". If it is manufactured tobacco and it is to be manufactured with the use of machinery, I think that "machinery" should be defined. The word "machinery" would certainly be very controversial, especially in the courts, for it might be pleaded that tobacco has been manufactured by certain specific articles that cannot be called machinery.

The second point I have in mind is under section 12, where it says "shall be liable to a fine not exceeding one hundred pounds, or to imprisonment to a term not exceeding one year". The provision of such an arrangement in an Ordinance as this is perhaps not with the intention of inflicting the full punishment in every case, and except in murder cases there is probably not one per cent of cases where the full amount of punishment authorized is inflicted. I suggest that this clause should read "six months or a fifty pounds fine". My object in doing that is that all these offences punishable with fifty pounds and six months can be tried summarily, and are the least trouble to the court and the parties concerned. If the court says there should be a full trial it can make a full trial, and the court should not be deprived of treating an offence under this Ordinance summarily. It can only be done if the reductions are made which I have suggested.

The last point which I have in mind is with reference to sections 15, 16 and 17, which render the principal liable for the criminal acts of his agents. This point was raised by the hon. Member for Nairobi South when discussing the Liquor Bill, and the hon. and learned Attorney General replied by saying that when an agent was committing these criminal acts for the benefit of his principal why should not the principal be liable to be punished also? That view cannot be sustained, because after all a principal may not know about these criminal acts, and for all he may know his agent may be committing them for his own use and appropriating the benefits thereof to his own use. Besides, in section 13 you will observe that we have "Any holder of a licence to manufacture excisable articles may comply with the provisions of this Ordinance by an agent lawfully authorized". If he can comply with the provisions of the Ordinance through an agent, how can he possibly be liable for the criminal acts of his agent? This provision seems to be very dangerous, and since sections 15 to 17 make specific provision that principals must be liable I wish the committee to consider them.

Apart from the case quoted by the hon. and learned Member for Nairobi South the other day, we have a local decision that lays it down that a principal cannot be responsible for the criminal acts of his agents: Volume X of the Kenya Law Reports, page 42—Appellate Criminal. Before Sir J. W. Barth, C.J., and Stephens, J. Taj Din (appellant) *v.* Rex (respondent). Cr. App. 15/1926. Careless Use of Fire Prevention Ordinance, 1909, section 2—lighted or used—liability for acts of servants. They stated: "Apart from statute there is no rule of law which makes a person criminally liable for the acts of his servants".

It is exactly on the same lines that I am saying these sections should not be included in the Bill.

THE HON. THE COMMISSIONER OF CUSTOMS: Your Excellency, with regard to the proviso to clause 3, there is no difficulty in applying it. It seems to me there is little doubt as to the type of tobacco it is proposed to exempt. However, that point can be considered in Select Committee. Clause 12 re-enacts the corresponding provision that appears in the present Ordinance without variation. There again the suggestion will be given consideration in committee. Sections 15 to 17 have been taken word for word from the Customs Management Ordinance, and appear not only in the local customs legislation but in revenue legislation which is in force in a number of other colonies. I have no doubt the legal niceties of the provision will be considered in committee.

The question was put and carried.

SELECT COMMITTEE APPOINTED.

THE HON. THE ATTORNEY GENERAL moved that the Excise Duties Bill be referred to a Select Committee consisting of the following :—

The hon. the Commissioner of Customs (Chairman).

The hon. the Treasurer.

The hon. T. D. H. Bruce.

The hon. Member for Nairobi South.

The hon. Member for the Coast.

The hon. N. S. Mangat.

THE HON. THE COMMISSIONER OF CUSTOMS seconded.

The question was put and carried.

SECOND READING.

THE ASIAN CIVIL SERVANTS (PROPORTIONATE PENSIONS) BILL.

THE HON. THE TREASURER: Your Excellency, I move that the Asian Civil Servants (Proportionate Pensions) Bill be read a second time.

Section 7 of the Non-European Officers Pensions Ordinance, 1932, makes provision in regard to pensions to officers compulsorily retired, but it does not specifically refer to officers who retired voluntarily. As stated in the objects and reasons, the officers mentioned in the schedule were allowed to retire voluntarily in order to ease retrenchment, and their pensions have been approved from time to time in Executive Council. Payment of their pensions must, however, receive legal sanction, and this Bill is introduced for that purpose. I would remind the House that an Ordinance in similar terms was passed in 1932 in respect of certain European officers who were allowed to retire voluntarily. The concession of voluntary retirement was withdrawn in June, 1934, so that as matters stand at the moment no additions to the schedule need be anticipated.

THE HON. THE ATTORNEY GENERAL seconded.

THE HON. SHAMSUD-DEEN: Your Excellency, I must frankly admit that I have never been able to comprehend properly the principles that underly Government's action as regards pensions in this Colony, and I think the safer course for me would be to say nothing on the subject, because any amount of argument, according to the experience I have had, will not be successful in altering the decision of Government! It is just like an arrow or a bullet shot into the air—once gone nothing can alter the course of it.

However, I do wish to take the opportunity of bringing to the notice of this House that in deciding as to who is pensionable and who is not, evidently there is something wrong somewhere. I do not think I can be accused of exaggeration when I say that in matters of pension the Government does make fish and one and fowl of the other. Here we are discussing the legislation of pensions given to certain people working as clerks and compositors. On the other hand, I have made repeated representations to heads of departments of cases of people working for thirty and thirty-five years as compounders in various districts, who have been in charge of the whole district attending Europeans, Indians and natives. From those districts they have been removed, and now there are European medical officers, assistants and nurses working at a very much increased expenditure. But the names of those compounders do not appear in this Bill.

I do submit that the House should be given an opportunity of discussing or having its say as to what class of people or what services shall be included in the pension lists. This is the first time such a thing has come up to be legalized, though these pensions have been paid for years without the knowledge of the House. Now we are asked to give sanction to the legalization of these.

I would appeal to the Treasurer and ask if he would kindly consider certain cases of gross injustice? If he likes, I can give him the names of two or three cases of people who have worked for more than thirty years, and while their own office mates have had pensions they have not, and when any representation is made to the heads of departments they simply say "it is the decision of Government".

There is the case of a police sergeant named Abdulla Khan, who retired after serving thirty-five years. One of his mates, also a sergeant, did get a pension, but in his absolutely similar case he did not get the same consideration, although his head of department said he had served satisfactorily. Similarly, there are two cases of compounders, who acted as medical officers in charge of districts, though they were only designated as compounders. Their names are : Sultan Ali and Wadhawa Khan respectively. They also had a service of some thirty years, but you do not find their names here. Whereas clerks and compositors who are not required to take up the same responsible jobs as compounders who act as medical officers are given pensions.

I am only taking this opportunity of voicing my feelings on the subject : that there should be some principle before these things are brought before the House so that members can understand what is the rule for guidance in giving pensions.

THE HON. THE TREASURER: Your Excellency, I submit that the question as to what are and what are not pensionable offices does not arise in connection with this particular Bill. The officers mentioned in the schedule held pensionable offices and were allowed to retire voluntarily.

The question was put and carried.

SECOND READING.

THE NATIVE HUT AND POLL TAX (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Native Hut and Poll Tax (Amendment) Bill be read a second time.

There are two short amendments in this Bill. The first refers to minor offences. At present, under the Procedure Code, all minor offences, speaking broadly, have to be brought within one year of their being committed. The result is that if we were to allow that to apply to hut tax it would mean that by the 31st January we should have to have an entire list of defaulters and have to issue them with summonses. We have therefore sought to delete the provisions of section 203 of the Criminal Procedure Code in so far as the collection of hut taxes is concerned. This is a new point raised recently, and it is merely in accord with existing practice that we are amending the law.

The second amendment applies to the collection of hut taxes. At present, all hut taxes due before the 1st of January, 1935, have to be collected under the old Ordinance. As hon. members are aware, 90 per cent of the hut tax cases are brought now before Native Tribunals, among whom confusion has arisen—and I do not blame them for that—in that one man comes up for owing the 1934 tax and has to be dealt with under one Ordinance, and a man owing the 1935 tax is dealt with under another. We now make provision that the collection of the tax shall be in accordance with the law for the time being in force. This also has the added advantage of removing all questions with regard to the amount of detention that can be given in lieu of payment.

The Supreme Court some time ago raised the point that due to a misunderstanding the Detention Camps Ordinance as it then was, and is at the moment—although there is an amendment in the Penal Code which deals with the question—now only permits fourteen days detention being given for non-payment of the hut tax, even in spite of the fact that three months imprisonment could be given under the other law. This is obviously an anomaly, as it is clearly desirable a defaulter

should go to a detention camp and not to prison. The object of this amendment will be to say that in effect that can be done.

THE HON. THE TREASURER seconded.

VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, I am never very clear whether a man, having been committed for non-payment of his poll tax and he is sent to either prison or detention camp and there spends his three months as the case may be, is relieved of the responsibility of paying that same tax for which he has spent three months in prison?

Under the conditions of native life in the reserves at the present time, I am sure that Government officials and administrative officers who know those conditions as well, perhaps better, than some of us know them, would be the first to recognize that there is very real hardship falling on the natives in the collection of these taxes. I know that within the last three weeks in certain districts in Kikuyu country, where payment of the tax is being enforced, a sack of corn has been sold for Sh. 1 including the sack, which costs anything up to 50 cents—it depends on the sack—and a goat for Sh. 1, sometimes Sh. 1/35. The natives have had to dispose of them. The corn has to be sold, and after all it is the food of the people living in the district. The fault may be theirs, of course, that provision had not been made sooner, but after having been brought to book by Government for non-payment of the tax and spending three months either in prison or detention camp—where they are expected to do some, I hope, serviceable and useful work for the community—after that service is completed, will they be liable to have their property confiscated or taken up for payment of the same tax for which they spent three months in prison?

I know some of the difficulties that face those who have to collect the tax in native reserves, and I further know the disinclination on the part of some natives to pay the tax at all. That I can understand! But there is a vast majority—I say it without hesitation—of the natives who do want to do the right thing and pay their taxes, but sometimes when the tax is demanded of them they have not the wherewithal at that particular time. The greatest possible elasticity should be allowed the natives so that they could in some way, without there being any detriment to themselves and to their families, be permitted greater elasticity as to time when such payment of tax is asked. I simply submit to this House that it should not be forced on them to have to sell at the beginning of their harvest a sack of corn for 50 cents plus 50 cents for the sack, which amounts to a shilling. That should not be forced on

a native in any part of the reserve in this Colony, and I should plead very earnestly indeed that where a native shows himself of a disposition to meet Government's lawful demands and rightful demands on him every elasticity should be given, and consideration, until he can secure without tremendous loss to himself and his people money wherewith to meet the demands that are brought upon him for his tax.

I do hope this will be taken into consideration by the Government. I am convinced it will be, and that the officers who are collecting the tax—it is reported that the 1934 tax amounting to something like £32,000 has been collected. I know it should have been paid last year, but because of the difficulties and hardships the natives have had to endure in the last three or four years you cannot complain of the short-fall in taxation in 1934. When they have that tax added on to the 1935 tax, and they are then expected to pay it about the middle of the year, and so are forced to sell their produce and their animals for such absurd prices, I do earnestly beg Government to take these things into consideration and to be as lenient with them as they possibly can within the year in which the tax has to be paid.

THE HON. THE ACTING CHIEF NATIVE COMMISSIONER :
Your Excellency, I have heard with considerable sympathy the remarks of the hon. and ven. Archdeacon Burns and I must admit that the economic conditions in certain reserves have deteriorated to a considerable extent and the recent reduction in the price of maize has acted as a considerable hardship, but I would point out this fact, Sir, that during the present year the collection of this particular tax in the Kikuyu Reserve has been much more easily effected than it has been in the previous years. In fact, up to date, a considerable proportion of the tax in this reserve has come in and reports have been received that it has been easily paid. Another factor is that the crop of maize has been very considerable this year and that quite a lot of maize of the previous year's crop and even of the 1933 crop has been brought in for sale to the traders. Another factor also, at any rate in the Kikuyu Reserve and to some extent in the Nyanza Province, is that there are other products besides maize which have brought in a certain amount of cash—I refer to wattle bark in the Kikuyu Province and to cotton in Nyanza Province—and that these factors have helped the natives to pay their tax this year with greater ease than they were able to do last year.

But the additional argument which I might bring up in connection with the remarks of the hon. Archdeacon Burns is that the powers of exemption which are embodied in the present law give the collector of taxes very considerable powers

for remission of tax and that this itself is a very great safeguard to prevent hardship in the native reserves.

I think, Sir, those are the main points which I might bring in answer to the Archdeacon.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I am very grateful to the Chief Native Commissioner for having answered the hon. and rev. gentleman's question, because my answer was going to be that the question did not arise under the Ordinance which we are considering at the moment. However, as they have been answered there is no need for me to refer to them any further, except to answer one small legal point that I think was made, and that is whether if a man had three months detention it washed out the Sh. 12 tax or whatever it was he had to pay, and the answer to that question is in the negative, but he may not be convicted twice for the same offence.

The question was put and carried.

SECOND READING.

THE MINING (AMENDMENT) BILL.

CAPT. THE HON. F. G. ST. C. TISDALL (ACTING COMMISSIONER OF MINES): Your Excellency, I beg to move that the Bill to amend the Mining Ordinance, 1933, be read a second time.

Some doubt has been raised as to the ability of Mine Wardens and the Commissioner of Mines to order the payment of costs when they hear mining disputes. This Bill clarifies the position and gives them the necessary powers. Mining suits are apt to be rather expensive at times and therefore the matter is of considerable importance. I beg to move.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

SECOND READING.

THE CIVIL PROCEDURE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of a Bill to amend the Civil Procedure Ordinance, 1934.

The object of this amendment is to remove an anomaly which has been pointed out by one of the learned judges. Under the law as it stands at the present under the Courts Ordinance a native wishing to bring an action against a non-native for over Sh. 1,500 is bound to bring it in the Supreme Court, but under the Civil Procedure Code it says the costs shall be awarded on the lower scale. This was due, I actually found on looking it up, to a mistake made in the amendment

in 1931—I think it was—by putting the word plaintiff instead of defendant in the Ordinance. There is nothing else in the amendment than that and I have re-cast the whole section merely because it is more simple when one is looking it up.

THE HON. T. D. H. BRUCE seconded.

THE HON. N. S. MANGAT: Your Excellency, there is just one point which may be raised in the committee stage but since I have to give reasons for it, I raise it now. It is with reference to the proviso at the end of the section "Provided that in any suit a judge of the Supreme Court may, . . . make such order as to costs as to him may seem just". If the word "shall" could for the sake of convenience replace the first word "may" it would be a decided advantage to all concerned. The instances I have in mind are two. Firstly, natives cases where there is no point of law involved at all are generally brought before the first class magistrate, Nairobi. Under this section if the word is retained they will have to go to a third class magistrate. In Nairobi there is a third class magistrate sitting but he may not be able to take all the cases and the magistrate of the first class may have enough time but he is not allowed to take them. The second instance concerns those parties which come from Thika and Kiambu or outside districts since the jurisdiction of first class magistrates is very wide. On the date of the hearing if a point is raised that the court has no jurisdiction or that the amount involved is within the jurisdiction of a second or third class court, in that case although every person is available for the hearing of the case still the magistrate will have to send it back to Thika or Kiambu, which will result in great inconvenience and expense to the parties. I wish to give special discretion to the magistrate that if he has the inclination or time he may try the case in spite of the fact that it could have been brought in another court. There is nothing much in it but from the practical point of view it would be a great convenience to the parties if this discretion is given.

THE HON. THE ATTORNEY GENERAL: On this point that the hon. member has raised in regard to the word "may" or "shall" it was clearly the intention of this House when it passed the Ordinance, to force people to bring cases in the lowest court having jurisdiction and not to leave any discretion to anyone later on. It is a question for consideration but my own view at the present moment is that it is far more desirable to tell people exactly which court they have to go to than to let them go into some higher court with the hope that they will not be sent back to a lower court later. In other words to prevent the particular plaintiff in the case choosing the particular court that he likes.

CAPT. THE HON. H. E. SCHWARTZE : On a point of explanation or order, I do not know which, would Government agree to this going to the same Select Committee so that we should have time to think it over, or if not to report progress now?

THE HON. THE ATTORNEY GENERAL : With regard to the point raised by the hon. member, which Select Committee is he suggesting—the same one as for the Penal Code?

CAPT. THE HON. H. E. SCHWARTZE : I am suggesting the Select Committee dealing with the two legal Bills. I understand this Bill is not going to-day to a committee of the whole House and if Government makes no decision and allows Mr. Mangat, the Attorney General and myself to discuss the matter, we might reach a conclusion and the thing could then go to the committee of the whole House in the ordinary way.

THE HON. THE ATTORNEY GENERAL : The only reason that I would not prefer it to go to the Select Committee is, as the hon. member is aware, because we have actually finished sitting—the legal committee on the two Codes—and I think the suggestion of the hon. Member for Nairobi South is a sound one.

I think if Mr. Mangat and the hon. Member for Nairobi South met me some time during the next forty-eight hours, we might be able to fix the matter.

The question was put and carried.

SECOND READING.

THE LICENSING (AMENDMENT) BILL.

THE HON. THE TREASURER : Your Excellency, I beg to move the second reading of a Bill to amend the Licensing Ordinance, 1934.

This Bill, Sir, involves no new principle and it is introduced with the sole intention of clarifying the position as intended in the Principal Ordinance. As stated in the objects and reasons it was always the intention that the "omnibus" licence provided for in item 7 of Schedule C should not cover more than one place of business of a petty dealer, or of a trader, or of a manufacturer. As the Ordinance stands at present, however, this is not quite clear and this Bill is introduced with the object of removing any possibility of doubt in the matter.

THE HON. THE ATTORNEY GENERAL seconded.

THE HON. F. A. BEMISTER : Your Excellency, I have been asked to put one or two questions with regard to this Bill to make the position definitely and absolutely clear. I would like to mention first of all that I am only speaking for Mombasa. The position has been put to me there that a firm has its central office, but it is necessary for the carrying on of that business that it has a wharf office and a godown office and, further, if it is trading for the convenience of bazaar traders it has to have a bazaar office. Does this omnibus clause cover such circumstances as that, or would the firm have to pay a separate licence fee for each of those places of business?

Another position, Sir, is that because of the difficulty of getting suitable premises, I know of one firm which has a garage on one side of the road and a show room on the other side of the road. Both are within forty to fifty yards of each other. They belong to the same firm, and it is really part of the same business. If it were possible for the show room to be accommodated with the garage they would come under one licence, but because there are these two places of business forced on the firm by circumstances outside its control it now has to pay two licences? I would be glad if this position could be made perfectly clear.

MAJOR THE HON. G. H. RIDDELL : Your Excellency, I have only one small point to make as regards this Bill and that is the point that I endeavoured to make the other day when I was dealing with the Liquor Ordinance. I called the attention of this hon. Council to the fact that the overlapping of this Ordinance and the Liquor Ordinance does in fact defeat the object of reduction in the licence fees payable by people who own tourist hotels.

THE HON. THE TREASURER : So far as the point raised by the hon. Member for Mombasa is concerned, when separate functions of the same business are carried on in separate places, then those premises together are deemed to be one place of business. Each would be examined on its merits by the Licensing Commissioners and that would be the guiding principle.

So far as the point raised by the hon. Member for Kiambu is concerned, I suggest that that does not arise in connection with this particular Bill.

The question was put and carried.

SECOND READING.

THE DANGEROUS DRUGS (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I beg to move the second reading of a Bill to amend the Dangerous Drugs Ordinance, 1932.

There are only two short amendments in this Bill. The first refers to the definition of the words "prepared opium". In the courts there has been some difficulty in the Police proving their cases in that the analyst has found it difficult to swear in the witness box that opium had been prepared for smoking. As hon. members are well aware you can prepare opium in many ways and actually many of those ways are capable of being smoked, but the difficulty was the analyst could not definitely say the opium was prepared for smoking as there are three or four other ways, and therefore we have extended the definition to mean : opium, for whatever purpose prepared, which is capable of being smoked, as well as opium actually prepared for smoking, which was obviously the intention of the Ordinance.

The other small amendment is with regard to introducing the word "rule" in the penalty section. The reason for that is that for twenty years it has always been held by the Supreme Court that under the Interpretation Ordinance, the word "Ordinance" included "rule" and that therefore when you provided a penalty in the Ordinance, as the word "Ordinance" included "rule" it had been held that the penalty included offences against a rule. However, there has recently been a decision of the Supreme Court to the effect that if you wish to discover the penalty to apply under the rule you had to go to the certain section of the Ordinance which fixes it. The effect of that is naturally very serious in some Ordinances, as in Ordinances which provide very long rule making powers, the penalty being reduced might nullify the effect of the Ordinance altogether, and this happened to be one of those Ordinances.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

SECOND READING.

THE KING'S AFRICAN RIFLES (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of a Bill to amend the King's African Rifles Ordinance, 1932.

Again, there are two amendments in this Ordinance, but I do not think they need worry this House very much. They are merely a domestic arrangement of the King's African Rifles themselves. They have been pointed out by the officer commanding and I understand they are going to be introduced in Tanganyika and Uganda, if they have not already been passed.

The first is with regard to the re-engagement of soldiers. As the Ordinance reads at present a soldier is re-engaged after two years and nine months. A subsequent section says no

one shall go on leave until he has served three years, and the officer commanding points out that that means that six months useful work of that soldier may be held up owing to the fact that he has to be kept at headquarters for the three months immediately preceding the date he re-enlists and then for another three months because it is not worth while to send him up to the Northern Frontier and then bring him back in order to go on leave. This amendment permits him to go on leave immediately after he re-enlists, i.e. after two years and nine months.

The opportunity was taken to make a further amendment with regard to the granting of extra bonus and gratuity. At present after re-engagement after twelve years, if he serves eighteen years he is entitled to extra gratuity. If he only serves part of that time he only gets part of the gratuity. Incidentally even if he is discharged as inefficient he may be granted the extra fraction of the gratuity that he would have got if he had served for the full eighteen years, but there again the words "medically unfit" were left out of the Ordinance with the result that the officer commanding was precluded from giving him his little extra pension although if he were inefficient it might be granted.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that this House do now resolve itself into committee of the whole Council to consider the Bills which have passed their second reading with the exception of the Bill mentioned a moment ago—the Civil Procedure (Amendment) Bill—and also all those Bills which have been referred to a Select Committee, namely:—

The Tribal Police (Amendment) Bill.

The European Officers Pensions (Amendment) Bill.

The Non-European Officers Pensions (Amendment) Bill.

The Native Tribunals (Amendment) Bill.

The Employment of Women, Young Persons and Children (Amendment) Bill.

The Asiatic Widows' and Orphans' Pension (Amendment) Bill.

The Promissory Oaths (Amendment) Bill.

The Asian Civil Servants (Proportionate Pensions) Bill.

The Explosives (Amendment) Bill.
 The Juveniles (Amendment) Bill.
 The Expulsion from Proclaimed Areas Bill.
 The Native Hut and Poll Tax (Amendment) Bill.
 The Mining (Amendment) Bill.
 The Licensing (Amendment) Bill.
 The King's African Rifles (Amendment) Bill.
 The Dangerous Drugs (Amendment) Bill.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Council went into Committee.

In Committee.

THE TRIBAL POLICE (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 2.—Carrying of arms by tribal police.

THE HON. THE ATTORNEY GENERAL: There are two small amendments I would like to move. The first is to insert the word "fire" before the word "arms" which appears in the fifth line. It has been pointed out that arms might not include firearms. That is not the intention in the Firearms Ordinance, and there is no necessity to give the tribal police permission to carry his native weapon. Then I think, in the sixth line, where you see the word "issue", it would make better sense and better English if the words "laid down" were substituted therefor. It is difficult to think of circumstances which can be "issued", which would be the reading at the present moment.

The question was put and carried.

THE EUROPEAN OFFICERS' PENSIONS (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE NON-EUROPEAN OFFICERS' PENSIONS (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE NATIVE TRIBUNALS (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN
(AMENDMENT) BILL.

The Bill was considered clause by clause.

THE ASIATIC WIDOWS' AND ORPHANS' PENSION (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE PROMISSORY OATHS (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 2.—Addition of Second Schedule.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Second Schedule be altered to the extent of placing the

Commissioner for Local Government, Lands and Settlement in the correct order of precedence, namely, after the Chief Native Commissioner.

The question was put and carried.

THE ASIAN CIVIL SERVANTS (PROPORTIONATE PENSIONS) BILL.

The Bill was considered clause by clause.

THE EXPLOSIVES (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE JUVENILES (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE EXPULSION FROM PROCLAIMED AREAS BILL.

The Bill was considered clause by clause.

THE NATIVE HUT AND POLL TAX (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE MINING (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 2.—Power to award costs.

THE HON. N. S. MANGAT: I beg to move that in sub-section (2) of section 69A it should read "The Supreme Court shall, by 'rules,'" instead of "rule".

THE HON. THE ATTORNEY GENERAL: I have no objection to the letter "s" being added.

The question was put and lost.

THE LICENSING (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE KING'S AFRICAN RIFLES (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE DANGEROUS DRUGS (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the following Bills be reported to the House without amendment—

- The European Officers' Pensions (Amendment) Bill;
- The Non-European Officers' Pensions (Amendment) Bill;
- The Native Tribunals (Amendment) Bill;
- The Employment of Women, Young Persons and Children (Amendment) Bill;
- The Asiatic Widows' and Orphans' Pension (Amendment) Bill;
- The Asian Civil Servants (Proportionate Pensions) Bill;
- The Explosives (Amendment) Bill;
- The Juveniles (Amendment) Bill;
- The Expulsion from Proclaimed Areas Bill;
- The Native Hut and Poll Tax (Amendment) Bill;
- The Mining (Amendment) Bill;
- The Licensing (Amendment) Bill;
- The King's African Rifles (Amendment) Bill;

The Dangerous Drugs (Amendment) Bill;
and that the following two Bills be reported to Council with amendment—

The Tribal Police (Amendment) Bill;

The Promissory Oaths (Amendment) Bill.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY : I have to report that the following Bills have been considered clause by clause in committee of the whole Council and reported to Council without amendment :—

The European Officers Pensions (Amendment) Bill.

The Non-European Officers Pensions (Amendment) Bill.

The Native Tribunals (Amendment) Bill.

The Employment of Women, Young Persons and Children (Amendment) Bill.

The Asiatic Widows' and Orphans' Pension (Amendment) Bill.

The Asian Civil Servants (Proportionate Pensions) Bill.

The Explosives (Amendment) Bill.

The Juveniles (Amendment) Bill.

The Expulsion from Proclaimed Areas Bill.

The Native Hut and Poll Tax (Amendment) Bill.

The Mining (Amendment) Bill.

The Licensing (Amendment) Bill.

The King's African Rifles (Amendment) Bill.

The Dangerous Drugs (Amendment) Bill

and that the following two Bills have been considered clause by clause in committee of the whole Council and reported with amendment :—

The Tribal Police (Amendment) Bill.

The Promissory Oaths (Amendment) Bill.

THIRD READINGS.

THE HON. THE ATTORNEY GENERAL moved that each of the Bills mentioned by His Excellency be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bills were each read a third time and passed.

MOTION.

EAST AFRICAN GOVERNORS' CONFERENCE.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I beg to move the motion standing in my name:

"That, whilst realizing that much benefit can arise from meetings of the Governors of the East African Territories, when questions of mutual interest can advantageously be discussed, this Council views with apprehension the gradual enlargement of the status of the Governors Conference, and the atmosphere of secrecy behind which its deliberations are concealed."

I think we must go back, Sir, to the year 1924 when Major Ormsby-Gore was out here as the head of a Commission. This Commission made a very able Report, and in that Report they stressed the fact how much they had been struck by the complete watertight attitude of the various countries in East Africa and the lack of free and full discussion taking place between them. As a result of that, the Governors' Conference was instituted, and at the same time on the unofficial side conferences between representatives of the various territories were organized by the late Lord Delamere.

I think we all agree that one cannot have too close co-operation between these territories, and the more we meet together, whether official or unofficial, and discuss matters of mutual interest, the greater benefit it is to the whole future and interests of East Africa as a whole. So far as that goes, I think most people consider that the Governors' Conference serves a very useful purpose. At the same time, it is a somewhat anomalous institution, in that it has no statutory or constitutional position. And though in these territories our constitutions are not by any means ideal—in fact, one may describe them as pretty rotten ones—they are a form of constitution, and we are somewhat nervous that the Governors' Conference may be transformed from its original purpose into an extra-constitutional body which might assume to possess executive powers.

I say here, Sir, the gradual enlargement of status, and you may reply that there has not been any such enlargement. But, in fact, it was announced quite recently that the Governors had been formed into an Advisory Transport Board. I do not know quite what their duties are as a Transport Board, or how far they propose to go, or whom they are actually advisory to. We do feel, Sir, and there is an apprehension abroad, that we know very little of what goes on at these Conferences. The agenda beforehand is carefully concealed from anybody's

knowledge, and at the end of the Conference a somewhat poor and meagre account is published in the Press of what has taken place.

Personally, I believe that these Governors' Conferences could perform very much more useful functions if the Governor of whichever country he represents could go there in a position to say he represents the full views of the country which he governs. In other words, that if the people of the country had knowledge of what subjects were coming up for discussion and the Governor took them into his confidence and ascertained from the representatives of the community their attitude to those various problems, he would then be able to go there in a very much stronger position than he does to-day when, as far as I can make out, he merely goes in an individual capacity, not having discussed the agenda even with his Executive Council.

I do trust that Government in their reply will be able to give the assurance which may quieten those fears which are prevalent in the country to-day. You may say, Sir, that this motion is more or less an academic one. It is, in fact, but I think it is necessary that that warning should be given—that the people of this country are not happy about the situation and that they do want an assurance that there will be no encroachment on the present constitutional position. I beg to move, Sir.

THE HON. CONWAY HARVEY seconded.

THE HON. J. B. PANDYA : Your Excellency, I do not quite understand the first part of the motion in which the opposition to increasing the status and influence of the Governors' Conference is expressed. As far as I am concerned, I feel with the Noble Lord that the institution of the Governors' Conference is desirable, and it therefore automatically follows that if you do wish to have such an institution it is bound to acquire in course of time increased status and influence.

The only point which arises, and I am in full sympathy and support it, is the point that the Governors' Conference meets in secrecy and that the public have a right to know what important discussions are likely to take place in Conference and what decisions are made on those important issues which are being discussed. I think that Government should sympathetically consider that point of view, and while realizing the difficulties with which the Conference is faced in regard to the demand, it is necessary that this point of view should be taken into consideration in regard to future Conferences.

To that extent I support the motion of the Noble Lord.

THE HON. SHAMSUD-DEEN: Your Excellency, I also support this motion, but from an entirely different angle of vision.

While the Noble Lord apprehends that the Governors' Conference might gain influence and status which might not be quite in accordance with the public idea of democracy, I feel that these Conferences are really a sort of stepping stone towards the closer union of the three territories, to which the Indian communities of those countries have always been opposed.

I also agree with one fundamental principle that has been advocated by the Noble Lord this morning. That is, that the Governors of the various colonies do not necessarily represent the views of the population of those countries. They only represent the views of the Governments, which are not always in accordance with the views of the public. Therefore, I can quite see that the only objection which the hon. the mover has to this procedure is that he has not the fullest access to what is happening in the Governors' Conferences. That is really the sum total of the whole of this motion. I should very much have welcomed it if he had further elaborated it by asking that in all such future Conferences that with the Governors there should be one or two representatives from each colony, who should be authorized to be present and take part in the deliberations. That would be the proper thing to do.

I am sorry that the motion as it stands at present is rather vague and indefinite, but in spite of that I should like to support it from an entirely different point of view, because I think the more Conferences of Governors that we have the more they are likely one day to materialize in the consummation of the closer union which we apprehend is not in the best interest of the community at present.

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, the motion of the Noble Lord falls into three parts.

The first part refers to the advantages of such Conference. The Noble Lord has disposed of that part when he says that the function of the Governors' Conference as an advisory body has the approval of his side of the House. Government is in full agreement with that view, and, in fact, the Secretary of State has, in his published despatch of the 22nd December, 1931, in which he dealt with the recommendations of the Joint Select Committee on Closer Union, endorsed the view of that committee that in the absence of a Central Government the machinery of the Governors' Conference should be increasingly utilized. As a result of that dictum, more matters have been

referred to the Governors' Conference, but I can assure the Council that the status or the nature of the functions of the Conference have not been varied in any way. The Conference was and is purely advisory.

In regard to the second part of the motion, that "this Council views with apprehension the gradual enlargement of the status of the Governors' Conference", I assume that the Noble Lord was referring to a branch of the activities of the Conference in that the same personnel has been constituted a Transport Advisory Board. That Board is also purely advisory. It provides an opportunity for the Governors to discuss questions of common interest in regard to transport matters and to arrive at an agreed view on such matters. The Board is purely advisory to the Secretary of State and does indicate to him the policy which would, when practical matters are being dealt with, be acceptable to the three Governments concerned. The Board has no executive functions at all.

It is unnecessary for me to state that the fact that the Governments concerned, through their Governors, meet together once or twice a year to discuss matters of common interest, does relieve the Government machinery of an enormous amount of correspondence which would otherwise ensue. It is easy to imagine the volume of correspondence that would be otherwise necessary if agreement were to be reached on questions. One of the very valuable functions of the Conference is that it does eliminate the necessity for a tremendous volume of correspondence.

There would appear to be some misunderstanding regarding the preparation of the agenda for the Conference. A question is raised by one Government for discussion. That Government's views are embodied in a memorandum which is circulated to the other Governments concerned, or a precis is made by the Secretary collating the views of the Governments. When the question is then before the Conference, the Governors are then in a position to decide on a common line of action, but any resolution taken is not necessarily binding on the individual Governments. Cases have, in fact, occurred where resolutions have been passed by Governors as expressions of opinion which have not been implemented by Governments concerned, and executive action on other lines has been taken. Those instances support what I contend, that the Conference is purely advisory and provides merely a meeting ground for the reconciling differences of opinion and arriving at a general line of common policy.

I think the most serious part of the motion of the Noble Lord reads as follows: "and the atmosphere of complete secrecy behind which its deliberations are concealed".

Government cannot accept that as being a true statement of the actual position. Hon. members will realize that there are very often matters of a highly confidential nature or secret nature which are of common interest to all three territories. It would be obviously improper for any communique to be issued to the Press beforehand that such matters were to be discussed. Again, there are also matters possibly affecting tariffs on which a common line of action between the various territories is required, and again it would be improper to include references to such matters in a public announcement before the meeting. When any matters affecting trade or commerce are to be discussed, the secretary of the Governors' Conference does in practice inform the Associated Chambers of Commerce, and those bodies are thereby given an opportunity to submit whatever representations they may wish to make from the commercial aspect. In point of fact, when there are important matters of general public interest to be discussed, it is quite usual for the Secretary of the Conference to publish a notice in the Press that the Governors' Conference would be held on such and such a date and that the following matters of general interest would appear on the agenda.

I may give two concrete instances.

Before the 1934 Conference the Secretary wrote the Associated Chambers of Commerce and told them that the only item of general commercial interest likely to be on the agenda was trade licences and consumption tax. That afforded the commercial community the opportunity of expressing their views had they so desired. Again in December, 1934, for the Conference held in January of this year, the Secretary published a communique saying that the main items for discussion would be the new Empire air services and despatches from the Secretary of State on the Gibb and Bushe Reports. Hon. members are also aware that immediately after Conferences are held, the Secretary always issues a full communique to the Press setting out what matters other than those of a highly secret or confidential nature have been discussed.

Government is unable to accept the view that the Governors' Conference is held in a complete cloak of secrecy. Some secrecy is obviously necessary on certain subjects.

The Noble Lord raised the point that matters affecting the Colony should at least be discussed by the Governor in Council prior to the Conference. As I have already pointed out, the Conference is purely advisory and consultative, and that any matters which do require executive action are dealt with subsequently by the Governments concerned. Before any important decision is taken therefore, the matter would of course be considered by the Governor in Council.

In conclusion, while this Government welcomes the opportunity of hearing the views of hon. members opposite on this question and of stating what this Government believes to be the true position, it would be obviously improper for this Government to accept the motion of the Noble Lord as it stands, since it is in a way a vote of censure not only on this Government but the other Governments forming part of the Governors' Conference and, in a way, on the Secretary of State. I trust that in view of the statement I have made, in which I have endeavoured to show that the criticisms contained in the motion are not really substantiated by facts, that the Noble Lord will withdraw his motion.

The debate was adjourned.

*Council adjourned till 10 a.m. on Tuesday,
July 2nd, 1935.*

TUESDAY, 2nd JULY, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, the 2nd July, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, ESQ., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 1st July, 1935, were confirmed.

PAPERS LAID ON THE TABLE.

The following paper was laid on the table :—

By THE HON. THE ACTING COLONIAL SECRETARY :

Copy of certain correspondence with the Indian Association, Nairobi.

ORAL ANSWERS TO QUESTIONS.

INSURANCE OF GOVERNMENT BUILDINGS.

No. 8.—CAPT. THE HON. H. E. SCHWARTZE asked :—

“ Whether Government will consider effecting insurance on main Government buildings, such as Government House, the new Law Courts, etc., and, if not, whether any provision has been made or is being made to guard against the cost of rebuilding in the event of any such building being destroyed by fire? ”

THE HON. THE DIRECTOR OF PUBLIC WORKS : The answer is in the negative. Government sees no reason to depart from the procedure which prevails in other dependencies, which is that Government buildings are not insured, but that in the event of their destruction by fire provision for repair or replacement is made from surplus balances.

CAPT. THE HON. H. E. SCHWARTZE : Arising out of that answer, Sir, in the event of their being no surplus balances?

THE HON. THE DIRECTOR OF PUBLIC WORKS : I think that is a financial matter, but I suggest that if there are none the only thing to do is to build up surplus balances and adopt the procedure as in other dependencies. (Laughter.)

CAPT. THE HON. H. E. SCHWARTZE : Arising out of that further answer, I would ask the Director how he proposes to build up surplus balances? (Laughter.)

ARREST FOR INTERFERENCE WITH CROWN WITNESSES.

No. 11.—THE HON. N. S. MANGAT asked :

“ Will the hon. the Attorney General state whether he is aware that—

(i) Four Indians were arrested without warrants by the police on or about 23rd October, 1934, and that five more were arrested later, and all charged under section 108, Penal Code, that is, for interfering with Crown witnesses; and that in eight cases the applications for bail were opposed by the Crown, and they were kept in custody for various terms?

(ii) That after several adjournments cases against all of them were withdrawn in January, 1935?

(iii) All the above nine persons were again charged with conspiring to defeat justice, an offence similar to the one on which they had been discharged?

(iv) After several adjournments, these cases were again withdrawn?

If the answer to any of the above is in the affirmative, whether such steps were taken with the concurrence of the Attorney General or any Crown Counsel?

THE HON. THE ATTORNEY GENERAL : (i) The answer to this question is in the affirmative.

(ii) The answer to this question is in the affirmative.

(iii) The Attorney General is aware that a new charge of a similar nature was substituted for the original charges.

(iv) The answer to this question is in the affirmative.

(v) The steps in question were taken with the concurrence of the Attorney General and of Crown Counsel.

ALLEGED PERJURY BY CROWN WITNESSES.

No. 27.—THE HON. ISHER DASS asked :

“ Will the hon. the Attorney General state—

(i) If he was requested to institute criminal proceedings for perjury against certain Crown witnesses who, it was alleged, had given false evidence before the Supreme Court in Criminal Case No. 159 of 1934, commonly known as the Arson Trial? If so, what action did he take?

(ii) Whether he is aware that, on private prosecutions instituted in the Magistrate's Court, five of such witnesses were convicted of having committed perjury in the said case?

(iii) Whether he was served by the Supreme Court with notice of appeals and the records of the perjury cases in Criminal Appeals Nos. 11, 12 and 16 of 1935; and if the answer is in the affirmative will he state whether he made appearance and assisted the Court in each appeal?

(iv) Whether a request was made by Mr. Mangat that he should be allowed to represent the Crown in the above appeal? If so, what action was taken?

THE HON. THE ATTORNEY GENERAL : (i) The answer to the first part of the question is in the affirmative. No action was taken, beyond forwarding the letter of request to the police.

(ii) The answer to this question is in the affirmative. Several of the convicted persons have appealed, and so far one appeal has been successful.

(iii) The answer to the first part of the question is in the affirmative. The answer to the second part of the question is in the negative.

(iv) The answer to the first part of the question is in the affirmative. The answer to the second part of the question is that no action was taken.

CORRESPONDENCE WITH INDIAN ASSOCIATION, NAIROBI.

No. 28.—**THE HON. ISHER DASS** asked :

“ Will the Government place on the table the letter dated 6th May, 1935, and received from the Honorary Secretary, Indian Association, Nairobi, along with the copy of the resolution enclosed therein?

Will Government state whether the request contained in the said resolution was acceded to?

If the answer to the above is in the negative, will the Government state the reasons?

THE HON. THE ATTORNEY GENERAL : (i) The answer to this question is in the affirmative.

(ii) The answer to this question is in the negative.

(iii) The reasons are set out in the reply sent to the Association, a copy of which has already been laid on the table.

ADMINISTRATIVE STATION, LEROKI PLATEAU.

No. 34.—**MAJOR THE HON. G. H. RIDDELL** asked :

“ 1. Is it a fact that a Government Administrative Station has been established for some considerable time on the Leroki Plateau within the area claimed by the Unofficial Elected (European) Members for the White Highlands last October?

2. If the answer to No. 1 is in the affirmative, will Government state the approximate cost of the station buildings and whether same are to be regarded as temporary or permanent structures?

3. When was this station established, and what is the present staff, both administrative and technical? "

THE HON. H. E. WELBY : 1. The reply is in the affirmative. The hon. member is referred to paragraph 18, on page 10, of the papers regarding the death of Mr. T. L. Powys, laid on the table of this House on Wednesday, 26th June.

2. The approximate cost of the buildings, including the layout of the station, is estimated at £530. The buildings are of a temporary nature.

3. The station was established in June, 1934. The present European staff consists of a District Commissioner, with headquarters at Rumuruti, and one District Officer, with headquarters at Maralal for the combined Samburu-Laikipia areas ; one Stock Inspector, and one Assistant Stock Inspector at Maralal. The duties of the Veterinary Officer attached to the Rift Valley Province extend to this area.

MOTIONS.

Re THE GOVERNORS' CONFERENCE : WITHDRAWN.

LT.-COL. THE HON. LORD FRANCIS SCOTT had moved :

"That, whilst realizing that much benefit can arise from meetings of the Governors of the East African Territories, when questions of mutual interest can advantageously be discussed, this Council views with apprehension the gradual enlargement of the status of the Governors Conference, and the atmosphere of secrecy behind which its deliberations are concealed."

THE HON. CONWAY HARVEY had seconded.

The debate was continued.

CAPT. THE HON. H. E. SCHWARTZE : Sir, I merely wish to rise with reference to certain remarks made by the Acting Colonial Secretary in his speech yesterday. He gave this House to understand by implication that really the only matters which were not made public, either before a meeting of the Governors' Conference or afterwards, were those of a highly confidential or secret nature. Naturally, no one in this House—at any rate, on this side of the House—would expect any such matters would be made public. But I am not quite certain that the implication which he asked this House to accept was quite the correct one, and I would wish to refer

to one matter which was discussed by the Governors' Conference in which a despatch was sent home, I understand from the Governors' Conference to the Colonial Office, which could not be called secret or highly confidential. My submission is that that should have been made public immediately, because it was a matter of very considerable importance and one on which various bodies interested in this Colony should have had the opportunity of expressing their views to the Colonial Office.

That was in connection with the proposal that in future all resident magistrates, and, I believe, even Crown counsel, should as a general rule be recruited from the Administrative Service of the colonies, and that their appointment should not be confined to qualified men with five years' practice, which was the general rule laid down by the Colonial Office. I say nothing as to that suggestion except, with the greatest possible respect to the Governors' Conference, they clearly could not have known anything about the matter, because to anyone with experience of law in this Colony the suggestion is fantastic. I understand that that proposal did not, at all events, meet with the approval of the legal people concerned, whether in this Colony or in England. That is just one example, Sir, of a recommendation of the Governors' Conference which, if it had been accepted, might have had the most far-reaching consequences on the administration of justice in the East African territories.

Under the procedure adopted, that despatch goes home, nobody knows or would have known anything about it, and it might have been carried into force without those persons chiefly concerned—such as, for example, the Law Societies in these territories—having the opportunity of protesting against it.

It is matters like that which I have given as one example, which we do consider should be given greater publicity.

THE HON. A. C. HOEY : Sir, I support the motion. There is one point I wish to make, and a very important point, and that is if these conferences are necessary between the Governors of Tanganyika, Uganda and Kenya—which I am perfectly certain they are, because it is essential to co-ordinate as far as possible the policy of the three territories—I do consider that it establishes at once the necessity of going into the closer union of these three territories. (Hear, hear.) Almost every question that is discussed at these conferences must, I am quite sure, envisage the whole financial policy, and I believe that if we are ever going to get the services of these territories on similar lines and to effect savings which would accrue by a proper co-ordination, then I believe the only answer is closer union. That, I believe is one of the strongest points for the future of Kenya, Tanganyika and Uganda.

MAJOR THE HON. G. H. RIDDELL: Your Excellency, it was not my intention to speak on this motion, although I am in full agreement with it, for the very reason that the Leader of the European Elected Members has stated the case to our entire satisfaction. But I got on my feet because of a certain statement made by the Acting Colonial Secretary during the course of debate.

First of all, he explained to us at some length that it was necessary that the Governors' Conference should keep certain things secret, and he instanced questions of defence. It seems to me, speaking for the Elected Members, that it is not necessary to stress such a simple point as that. Surely we, all of us, know that in questions of defence and such-like matters secrecy is obviously a necessity.

But the gravamen of the complaint we have, and it was voiced by our Leader, is the complete secrecy in which these deliberations take place. I only want to make one point strongly, that both before and after these Conferences there is no effort of any sort or any kind made, in my knowledge at any rate, to consult the Elected Members over questions which must be of tremendous importance to ourselves. The fact that that is not done means that the Governor goes to the Conference with the official view, and the official view alone.

THE HON. THE ATTORNEY GENERAL: Your Excellency, there is only one small point with which I should like to deal—the point raised by the hon. Member for Nairobi South, in which he gave a practical example of what is meant by the secrecy of the Governors' Conference and the failure to consult with members of the public in general and the Elected Members in particular.

I think the example given is a rather unhappy one, because if there was any subject which appears to have been given the light of day it has been the Bushe Commission Report, and the innumerable despatches which followed after it. As you remember, the whole thing was laid on the table of the House about six months ago, so Members of this House were well aware of what the Government's views were even before the last Governors' Conference sat and decided what steps should be taken to implement the Bushe Commission Report.

I only mention that to show the House there has been no hole and corner business with regard to that Report, for the whole thing was laid on the table, so that members and the public should know what were the views of Government.

CAPT. THE HON. H. E. SCHWARTZE: On a point of explanation, the despatch in question and the recommendations

not only did not appear in the Bushe Report, but have been strongly opposed by every member of the Bushe Commission.

THE HON. THE ATTORNEY GENERAL: I am not dealing with the views of individual members of the Commission. The point I was making was that the views of Government were made perfectly clear in their despatch, which was tabled with the Bushe Commission Report, on whatever date it was—at the last sitting of the House, I think. That is all I have to say with regard to that particular point.

The only other point which I feel hon. members must realize is that this is entirely an advisory board, if I may call it such, and hon. members know perfectly well that nothing can be implemented—the things that really matter—until they come before this House. I have always found that practically every point brought up has some financial bearing in some way or other, so that in practically 99 per cent of the cases we know that all matters discussed at the Conference have to come before this House some time or another, in order that members can express their opinions.

It does seem to me a little hard on an advisory board that, when making up their minds as to what advice they should give the public, they should have to ask the public first what advice they should give, which is really what this motion comes down to.

LT.-COL. THE HON. J. G. KIRKWOOD: Sir, I rise to support the motion before the House. I am quite confident that there is considerable apprehension throughout the Colony on the lines indicated in the motion.

I agree as to the desirability of the Governors' Conference, because it leads to co-operation between the three territories, co-ordination of Ordinances, etc., and as we all know it is a valuable means to that end. But it must be obvious also that the Secretary of State, the powers that be who have sanctioned the appointment of this Conference, and its functions, have done so in the interests of closer union. It is a step towards closer union, co-ordination and co-operation between the territories.

But there is one very serious apprehension, that the Governors of the respective territories do not reach public opinion in their territories, and consequently do not speak as they claim to on behalf of the countries they represent, inasmuch as they have very rarely, if at any time, asked for co-operation; for instance, in Kenya Colony of the Elected Members, the only body of men in this Colony representing public opinion. They are the elected representatives of the

country. In this Council we have often been appealed to for co-operation, but I claim that as regards the Governors' Conference no co-operation whatsoever has been shown by the Government of this Colony; we are not consulted. If we were, I am quite certain that it would lead to a greater advantage to our representative, His Excellency the Governor, when sitting in at the Governors' Conference, wherever it is held.

I hope that in future that will be borne in mind. While we are willing to co-operate, our co-operation is not asked for, and I do not admit that there is any matter of secrecy or confidence that can be discussed at the Governors' Conference that could not be discussed, if necessary in confidence, with the Elected Members of this Colony, and thereby strengthen His Excellency as the representative at that Conference when speaking on behalf of Kenya.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, there are very few points which I wish to comment on.

The first point occurs in the statement of the Acting Colonial Secretary. He quoted from a despatch, I think of the Secretary of State, showing that our fears of increased powers of this Conference were quite unnecessary. Actually, he quoted a sentence which rather confirms our fears, in that he said he trusted that the machinery of the Governors' Conference would be used more and more for dealing with many matters.

With regard to this Transport Advisory Board, if its duties are to be so very exiguous as stated, I cannot understand why the Board was ever formed at all, because it is quite obvious that the Governors' Conference in its ordinary procedure must be in a position to deal with any transport matters which affect the three territories. I do not really know what is the object of turning the personnel of the Conference into a Transport Advisory Board, or what further good is going to be achieved by that.

With regard to the question which has been most generally referred to as one of secrecy. Naturally, Sir, everybody agrees there are certain matters which cannot be made public, but I do submit that even matters of the greatest secrecy with regard to questions of defence of this territory are not so desperately secret that the Governor could not benefit by taking into his confidence and seeking the views of people in this Colony who have studied such questions, and whose good faith in regard to keeping matters secret confided to them could be trusted. With reference to the more general complaint about secrecy, on more than one occasion Elected Members have asked that we should be given notice of what is going to appear on the agenda of the Governors' Conference, and what questions were coming up, but the answer has always been a

refusal. The few instances quoted of matters that had appeared in the communiques I consider do not in any way refute our accusation of secrecy.

I was glad, however, to gather from the speech of the Acting Colonial Secretary that Government's attitude is that there is no undue secrecy, and therefore presumably the corollary is that they do not wish to pursue a line which will give justification to our accusations that there is undue secrecy, so that I trust that in future the various public bodies may be taken into confidence more than they have been in the past.

The Acting Colonial Secretary said this was in the nature of a vote of censure. I should like to explain that it is not so at all. I brought up this matter because it is a very serious matter which exercises the minds of people, and I moved this resolution more with the object of bringing to the notice of Government that those fears did exist and thus elicit as much information as possible on the subject. Having done that, I do not wish to put the motion to a vote, and with the consent of my seconder I beg leave to withdraw it.

With the leave of the House, the motion was withdrawn.

DR. K. T. K. WALLINGTON : PENSION.

THE HON. THE TREASURER : Your Excellency, I beg to move the first motion standing in name on the Order Paper of to-day :—

“ This Council approves the payment of an unreduced pension of £318-13-5 a year to Dr. K. T. K. Wallington, who retired from the service of the Uganda Protectorate with effect from the 26th of November, 1934, inclusive, in lieu of a reduced pension of £239-0-1 a year and a gratuity of £796-13-4.”

This motion is in precisely similar terms to many other motions which have received the assent of this House. As I have previously explained on other occasions, it is considered to be in the interests of Government to authorize an officer who has opted to obtain a reduced pension and gratuity to revoke that option in favour of a full pension. This relieves Government of the necessity of paying out comparatively large capital sums to meet payments against pensions. This concession was first allowed in March, 1933, for a period of 18 months, but that period was subsequently extended, and now expires in March, 1936. I may say that, in spite of this concession, Government did expend in 1934 a sum of £34,500 on commuted pensions.

As regards the particular officer in question, Dr. Wallington joined the Medical Service of Kenya in February, 1921,

transferred to Uganda on promotion in 1932, and retired on the grounds of ill-health in November last year.

I beg to move.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

MR. H. J. SNELGAR : PENSION.

THE HON. THE TREASURER : Your Excellency, I beg to move the second motion standing in my name :—

“ This Council approves the payment of an unreduced pension of £571-1-10 a year to Mr. H. J. Snelgar, who retired from the service of this Colony with effect from the 31st of March, 1935, inclusive, in lieu of a reduced pension of £428-6-4 a year and a gratuity of £1,427-15-0.”

This refers, Sir, to Mr. Snelgar, who was in the Home Service from 1910, appointed as a clerk in the Land Office in 1912, and finally retired with the rank of Principal Registrar of Titles in March of the present year.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

MR. A. A. SELDON : PENSION.

THE HON. THE TREASURER : Your Excellency, I beg to move the third motion standing in my name :—

“ This Council approves the payment of an unreduced pension of £562-4-6 a year to Mr. A. A. Seldon, who is retiring from the service of this Colony with effect from the 14th of July, 1935, inclusive, in lieu of a reduced pension of £421-13-5 a year and a gratuity of £1,405-10-10.”

This refers to Mr. Seldon, who was appointed an Assistant District Commissioner in December, 1913, and who will retire as a District Commissioner in July of the present year.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

LOAN FUNDS : REALLOCATION.

PUBLIC BUILDINGS.

THE HON. THE TREASURER : Your Excellency, I beg to move the fourth motion standing in my name :—

“ Be it resolved that this Council hereby approves the expenditure of a sum of £102,400 upon the purposes specified in the Schedule hereto as a charge against Loan

Account and further approves provision being made therefor by reallocation of the following amounts from the sums already approved for—

Public Buildings.

Other Buildings.

Nairobi K.A.R. Lines	...	...	£57,518
Nairobi Central Offices	...	...	£44,882

Schedule.

Public Buildings.

Medical Buildings.

Group Hospital, Nairobi	...	...	£78,500
Mathari Mental Hospital	...	...	£2,400

Educational Buildings.

Boarding Accommodation, Girls' Secondary School, Nairobi	£18,000
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Other Buildings.

Reconstruction of Kisumu Market	£3,500
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£102,400."

This motion, Sir, is in respect of the reallocation of the sum of £102,400 chargeable against Loan Account in order to allow of the construction of a Group Hospital for European, Asian and African patients in Nairobi; an addition to the Mathari Mental Hospital; the provision of boarding accommodation at the Girls' Secondary School, Nairobi; and the reconstruction of the Kisumu Market. These proposals have been exhaustively examined and have been approved by the Loan Works Committee and the Standing Finance Committee, and, as Your Excellency has already explained in your address at the opening of this session, it is considered that these buildings are more urgently necessary than, and should take priority over, the proposed Central Offices.

My hon. friends the Director of Education, the Director of Medical Services, and the Director of Public Works will, if necessary, give more detailed information in regard to the buildings themselves, and I will therefore at this stage deal only with the financial aspect of the question.

If the amount of £61,680 short borrowed on the 1930 Loan is left out of account, because it is not immediately available, the adoption of this motion will have the practical effect of reducing the amount provisionally allocated for the reconstruction of the K.A.R. Lines to the minimum required.

regard to the erection of this group hospital, and I feel very strongly, and I think I can say every hon. member of this side of the House feels strongly that there should be opened a competition amongst the architects of this Colony to send in plans for the proposed buildings. It is going to be a magnificent building; it is going to be a building which will improve the health of the Colony from every aspect, as I am quite certain the hon. the Director of Medical Services will explain, to the great advantage of central research, and so on, and I do feel very strongly that these designs should be open to competition, and even if not necessarily accepted, there can be no reason why the architects of this Colony should not be given an opportunity of competing for the design of this central building, and I do urgently and earnestly ask the Loan Works Committee and the Standing Finance Committee and Government to accept that suggestion and give the local people a chance of competing for the design.

THE HON. SHAMSUD-DEEN : Your Excellency, when the European community expresses gratitude to the Government for the proposed hospital, it may be well imagined as to what the feeling of a community should be who possess really no hospital worthy of the name. The European community really have a hospital. If it was given to the Indian community we should be glad and proud of it. Yet they feel the necessity for an improved hospital. I think it is common knowledge that the so-called hospital for Indians and natives attached to the K.A.R. in the shape of a wing is really no better place than would be used for the treatment of animals, I think, in any civilized country. I have always described it as no better than a stable. I only hope that this time we are taking a practical step in the right direction, although, as the hon. Member for Nairobi South stated, we were promised a hospital to the best of my knowledge for the last twelve years, and I do hope the motion will pass to-day and that it will take the form of practical action, and not remain on the papers, as it has remained, or be sent to cold storage again.

DR. THE HON. A. C. L. DE SOUSA : Your Excellency, I join with the previous speakers in their expression of gratitude to the Government in this matter. But there is one thing I am not quite sure of and that is what a group hospital means. Does it mean that Government proposes to carry on this scheme as originally intended, that is, separate hospitals for Europeans, Asians, and Africans, grouped together in one locality, or is it the intention of Government to carry out only part of that scheme? Changes may be found to be necessary in these days, but for a hospital which is to be a central hospital where special cases from all over the Colony are likely to be treated, it seems to me to be a very small

amount, even considering the bad times. I should like Government to make it clear what they mean by a group hospital.

The second observation I have to make is in connection with the item for boarding accommodation at the Girls Secondary School. I very much regret that equal facilities could not be provided for the very urgent needs of the Indian community, at the Elementary School for boys. That is a standing grievance of the Indian community in Nairobi at any rate. Hundreds of children to-day are accommodated in very inadequate buildings, and hundreds more are provided for by private enterprise because Government does not allow them room in their own schools. The accommodation at the European Secondary School for Girls has been a very long-standing grievance, but I regret Government has not given equal consideration to a very urgent need of the Indian community.

THE HON. THE DIRECTOR OF MEDICAL SERVICES: Your Excellency, firstly, I should like to express also my very sincere gratitude to Government in deciding to build group hospitals. That there is great need for them goes without saying.

In answer to the hon. Indian members, I would say that group hospitals really mean precisely what the words say. There will be grouped round the Laboratory three institutions—a European hospital, an Asian hospital, and an African hospital. So far as is possible, economies will be effected by not providing three administrative blocks and details. How far one can group service matters of that sort one cannot say until one has got down to getting out detailed plans. There will be a very large amount of work to be done before finally accepting these principles, and in certain administrative things we will only have one instead of three.

THE HON. THE DIRECTOR OF EDUCATION: Sir, I should like to express my gratitude also that this very long-standing difficulty over the girls boarding accommodation has at last been removed.

With regard to the hon. Dr. de Sousa's remarks about the elementary school, I must admit that I endorse everything that he says. The accommodation for the children in the elementary school is very, very bad indeed, but Government has the matter in mind, and I hope that within a short while that matter also will be regulated.

THE HON. SHIA SUD-DEEN: May I inform the hon. the Director of Education that the Indian boys at the present are actually attending classes in what used to be kitchens and bathrooms, and the old secondary school has about 150 more boys than the Medical Officer of Health has sanctioned.

THE HON. THE DIRECTOR OF EDUCATION : I am aware of that, and it was to that I was referring when I said that the accommodation was lacking and was very bad indeed.

With regard to the secondary school, that matter is also under consideration, and owing to the building of the Rahimtulla Hostel recently it is hoped that there may be accommodation in the Government hospital which can next year be utilized for extra classrooms.

THE HON. THE DIRECTOR OF PUBLIC WORKS : Your Excellency, I do not think there is any question for me to deal with, but the hon. Member for Nairobi South referred to the question of a competition for architects. That is a matter which will be thoroughly explored by the Loan Works Building Committee, and it would be premature for me to make any statement on it here. I think the hon. Director of Medical Services has dealt with the question concerning the arrangement of the hospitals round the Laboratory, and there seems to be no question with which I can deal in that connection.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Sir, I am in support of the motion, and I think that all these buildings which are going to be undertaken are fully justified. The fact that I personally have never been in favour of the principle of the grouped hospital does not altogether arise, as that question has been decided, and now that it has been decided I trust that these hospitals when they are built will be built in the most convenient and economic way, from the point of view of running the hospital, which has been the serious defect in the present European hospital.

I should like to emphasize what my hon. friend on my left (the hon. Member for Nairobi South) said, that before these buildings should be put out to contract a tender should be called for from the architects, so that we should get the best competitive tenders put in; and I would, however, like to suggest that if possible as much African labour should be employed in the construction of these buildings as possible.

VEN. ARCHDEACON THE HON. G. BURNS : Your Excellency, I have only just one word to say, and that is to congratulate the Government on at last having taken in hand the necessity of providing accommodation for insane people at Mathari Mental Hospital. The position with regard to those poor people is a very sad one indeed, which I do not intend to go into this morning, but it is to be hoped when this branch is built at Mathari that the position as it is now in the Prisons with regard to those poor people will be alleviated and they will have a place where they will be properly looked after and housed during their time of mental illness.

With regard to the group hospitals at Nairobi, I also am glad that the natives are going to have an addition, or at least better accommodation than has been given to them heretofore. Those of us who have lived in Nairobi for some considerable number of years and remember the old hospital that used to be down here where the dispensary is now, and then go on to the present hospital, inadequate as it is, were filled with wonder at the change that has taken place with regard to the accommodation for Africans, but, on the other hand, Sir, the accommodation up at the K.A.R. Lines for the natives is very poor, and if the accommodation which my hon. friend (Mr. Shamsud-Deen) mentioned with regard to the Indian accommodation is poor, so poor that you would not give it to animals, yet, if that is so, which I do not agree with, then the accommodation is required as quickly as it can be erected, because many of the applicants cannot be taken in, and the authorities there do not know really how to deal with the situation.

I congratulate the Government and I congratulate the medical authorities on having decided to go ahead with these schemes.

DR. THE HON. C. J. WILSON : Your Excellency, I had not intended to take any part in the discussion, but I feel that I must associate myself with the hon. member who has just spoken in congratulating Government on its decision. I have a long experience of this question of grouped hospitals in Nairobi. I was always strongly in favour of it, and later, for five years served in a country where group hospitals were the rule and completely successful; but there is only one point on which I wish to protest, and that is the expression used by the hon. Shamsud-Deen, when he said that the accommodation for Indians was no better than a stable. I have worked in that ward, and I know the conditions. It is not a stable, nor anything like a stable, and if that ward is a stable, then, as my hon. and venerable friend has suggested, the accommodation for Africans is a stable, and I submit that Africans, who have self-respect, would refuse to be treated in a stable.

THE HON. THE TREASURER : This motion, Sir, has been so favourably received that there seems to be nothing for me to say except to express gratification for the manner of its reception.

There is only a very small point, and that is with regard to Dr. de Sousa. I can assure him that the question of the accommodation for Indian scholars will receive the sympathetic consideration of Government in due course, but there is only a small amount of money available, and he will realize it is difficult to improve in many directions at one time.

The question was put and carried.

PUBLIC WORKS EXTRAORDINARY : ROADS AND BRIDGES.

THE HON. THE TREASURER : Your Excellency, I beg to move the next motion standing in my name :—

“ Be it resolved that this Council approves the expenditure of a sum of £4,178 upon the purposes specified in the Schedule hereto as a charge against the revenue and other funds of the Colony.

Schedule.

Public Works Extraordinary.

Roads and Bridges.

Roads, etc., for Law Courts Site,					
Nairobi	...	...	...	...	£4,178.”

This refers to roads in the vicinity of the Law Courts. The total figure of £4,178 in this motion is made up as follows : Layout of the ground, £3,000 ; net cost to Government of construction and conditioning, £711 ; and net cost to Government of new roads, £467. The layout of the Law Courts ground is entirely for Government, and the cost is not to be met out of loan funds. So far as road construction is concerned the total cost is estimated at £2,356, which the Municipal Council has agreed to bear one-half. It is hoped in due course that the sale of plots in this area will fully reimburse Government for any expenditure incurred, as the land in the immediate vicinity of this ground will become a very valuable asset.

THE HON. THE ATTORNEY GENERAL seconded.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Your Excellency, there are one or two points with regard to this motion—I think I am correct in saying that this was brought up before the Standing Finance Committee—everyone approved it, and we understood that a larger sum than this would accrue to the Government finances for the sale of plots, but I understand the plots have been put up for sale since then, and we have had no offer for them. Perhaps we could have some statement from Government on the situation arising from this matter. Beyond that, I was at the Law Courts yesterday, and I would like to know what those enormous tombstones are for which I see there, and I should like to know whether Government can inform this House of the total amount of expenditure which has now been spent on the erection of the Law Courts, including the furnishing of the multitude of rooms, and everything else.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT : Your Excellency, when putting before the Standing Finance Committee the proposed expenditure

on the layout of the Law Courts enclave, I certainly did say that I was putting up for auction in the near future two plots in the neighbourhood of the Law Courts, and that I hope, if they sold successfully, there would accrue to Government revenue a sum which would very nearly equal, if not quite equal, the expenditure on this layout. I also made it clear at that time that I naturally could not speak with any certainty; whether those properties sold or not, only the future could decide. The plots were put up on the request of certain interested parties, but when auctioned no bids were received.

The reason for that may possibly arise in the course of this session on the debate on another motion, and I think perhaps at the moment on this motion it is not necessary for me to go into that aspect of the question, except to say that, whatever the particular reason may be in the case of these two plots, there is no general reason to suppose that in the future the land in the City Square will not be sold as a whole at such an advantageous price as to recompense Government for all the expenditure incurred, both in making the sites available for sale and in the development of the City Square.

CAPT. THE HON. H. E. SCHWARTZE: Your Excellency, I agree with the last speaker, that probably the question of the sale of these plots had better be discussed on the motion standing in my name with regard to the appointment of a Valuation Board. But I should like to say a few things in connection with it.

One is that I rather have it at the back of my mind that in this particular case the reason for fixing the upset price was based on the fallacious optimism that the money could be got to pay for the roads and layout of the enclave, and, secondly, I cannot let it go unchallenged, if the hon. member means the advantageous price that will be got in the future at the price that he put it at. Although it may reach that price in the future, it will only be long after we cease to exist, unless, of course, he is going to base his price in shillings, and the suggestions of certain parties are going to devalue the shilling!

I should like to ask two things—perhaps the Director of Public Works will be able to answer both of them. The first is: Could you kindly tell me what roads are definitely being constructed now? I am asking this quite genuinely for information. There is a road from the McMillan Library up to what is called the tombstones and the judicial entrance, and there is another road going at right angles, that which goes straight to the Bank of India. That will be on the west side of the Law Courts. Is the road on the other side towards the Railway Offices, running parallel with the Railway Offices and

Whitehouse Road, also going to be completed, so that you will have the road to the Law Courts from the McMillan Library off to the Bank of India, off that way to the Municipal Offices, and similar roads going north and south of the Law Courts? I shall be very grateful if I can be informed of this.

I should also like to ask, although it may not strictly be in connection with the roads, a question with regard to the lift in the Law Courts. I understand that the lift, when installed is going to have very severe restrictions put on it, in that nobody at all can come down in it, and only those can go up who are earning salaries of £600 a year or more! (Laughter.) According to what I read in the newspapers to-day, this would mean that 70 per cent of the officials can go up, but no unofficials! (Laughter.)

THE HON. THE DIRECTOR OF PUBLIC WORKS: Your Excellency, replying first of all to Lord Francis Scott, I am not in a position at present to quote the exact cost of the Law Courts, because the final figures cannot be made up until the maintenance period is over. The contractors have to maintain the work for six months after the works are finished, and expenditure may be incurred during that period. But the approximate cost will be the amount provided for the purpose, £135,000, including administration charges.

The pillars which the hon. member referred to as tombstones are what are known as pylons, used for fixing the chains; eventually, when the City Square develops more, they will be used for supporting lamps.

With regard to the question of the hon. Member for Nairobi South, the funds provided for the layout of the City Square and the roads will be used for those roads in the vicinity of the City Square, not for extensions up to the National Bank of India, and so on. Elliot Street, on the other hand, is being constructed.

I am afraid that I cannot answer the question about the cost of individuals using the lift. That is a matter for the administration, and will no doubt be considered after the lift has been installed.

CAPT. THE HON. H. E. SCHWARTZE: On a point of explanation, Sir, they are actually making a road from the Law Courts to the Bank of India, whether tar or murrum, I do not know, but the rollers and things are there, and it is practically built. Does it come out of this money or is it being done by the Municipality?

THE HON. THE DIRECTOR OF PUBLIC WORKS: As far as my information goes at present, it is only the portion of the road adjacent to the Law Courts which is being done out of the

sum of £4,178 which we are now considering. The remainder being done up to the Bank will be done, I think, out of municipal funds.

THE HON. THE TREASURER : Your Excellency, I think that all the points raised in this debate have been answered. There is only one point, and that is to confirm the statement of the hon. Member for the Rift Valley that this matter was considered by the Standing Finance Committee in December last, and the expenditure was recommended.

The question was put and carried.

MOTION TO ADJOURN.

SUBSTITUTE NOMINATED OFFICIAL MEMBER.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Your Excellency, I rise under No. 33 of the Standing Rules and Orders to move the adjournment of Council in order to bring a definite matter of public importance before this House.

CAPT. THE HON. H. E. SCHWARTZE : I beg to support.

THE HON. CONWAY HARVEY : I am the second supporter.

THE HON. SHAMSUD-DEEN : On a point of order, Your Excellency, has notice of motion ever been given as to the nature of the subject to be discussed?

LT.-COL. THE HON. LORD FRANCIS SCOTT : No. May I explain, Sir, the subject with regard to which I make this motion? As I see it, Government have transgressed section 15 of the Royal Instructions as to the composition of this House. That section states—

“ The Legislative Council of the Colony shall consist of the Governor as President, eleven *ex officio* members, nominated official members not exceeding nine in number”

and during this session of Council, ten nominated official members have been nominated.

CAPT. THE HON. H. E. SCHWARTZE : Your Excellency, as the seconder of the motion, I take it the position is—and the hon. and learned Attorney General will agree—that if the motion for the adjournment of the House is made to call attention to a “matter of public importance” that, of course, with the permission of the President—that is yourself, Sir—the matter can be debated.

I should like, if I may, to second the motion for the adjournment.

The position appears to be that when this Council met the same hon. members were present, that is nominated members, as are present now. Owing to a certain disturbance in other parts of the Colony, it was necessary for some members on that side of the House to absent themselves, and in order to protect the Government majority Government swore in the Surveyor General. We contend, Sir, that that was wrong, unless a certain other member was no longer a member of this Council during that period, in which case when that member returned he would have to be sworn in again, as he could not have been a member when the Surveyor General was a member.

If that is correct, I respectfully suggest the proceedings taken, either when the Surveyor General was present or after he retired and the Provincial Commissioner had come in without being sworn in, were out of order, and require the Government to pass an enabling Bill to put right the proceedings taken when the House was not correct.

The Noble Lord has not raised this motion as a matter of jocularity, but, I submit, rightly, calling attention to what he rightly or wrongly considered was, again rightly or wrongly, an unintentional slip up—if I may use an unparliamentary expression—on the part of Government.

I suggest for the consideration of Your Excellency not to accept the motion naturally as it stands now, but to have the usual adjournment in order that the matter can be discussed in the delightful way in which matters are discussed during the interval, and we come back happy afterwards and agree. (Laughter.)

Council adjourned for the usual interval.

On resuming.

HIS EXCELLENCY: The debate on the motion for adjournment moved by the Noble Lord will be resumed.

THE HON. THE ATTORNEY GENERAL: Your Excellency, it is with some relief that I rise on this motion, as I imagined from the seriousness of the Noble Lord that at least a European War had been declared. Fortunately, this point had been considered by Your Excellency and myself before taking any action in the matter, and it was considered with some care.

The position, as hon. Members are well aware, is that after this Council had had a meeting and after the hon. Member, Mr. Fazan, had been sworn in, there was some trouble in Narok, and he was ordered by the Governor to go to that part of his province. It then became a question for

the Governor to decide whether, under the Royal Instructions, he could act. These Instructions read as follows (I am shortening them): that whenever any nominated member of the Council shall be incapable of exercising his functions as a member of the Council—and “incapable” is an important word—the Governor may then appoint someone in his place. The question His Excellency had to decide was whether, having ordered Mr. Fazan to go and do his duties in Narok, he was incapable of exercising his functions here. On my advice, His Excellency came to the conclusion that Mr. Fazan was quite incapable of doing both things, and therefore swore in the Surveyor General to take his place.

The two necessary documents were duly signed and sealed, and although I have not got them here, His Excellency will tell you himself that they are at the Secretariat at the moment, and anyone can see them who wishes to.

The Royal Instructions go on quite clearly to say that whenever the person who has been incapable of exercising his functions as a member of the Council is capable of exercising them, he shall be declared so capable by the Governor by an instrument under his hand. That instrument was duly signed, and the Surveyor General went off the Council.

The question with regard to the oath is not as serious as it might be thought, because both Mr. Fazan and Mr. Gilbert did take the oath, and all that the Royal Instructions provide for is that no one shall take part in the Council, vote or speak, unless he has in fact taken the oath which is duly prescribed.

Under those circumstances, my submission is that everything has been correctly complied with. But His Excellency has authorized me to say that, in view of the fact that he did exercise his discretion with regard to the word “incapable”, he is quite willing to refer it for a ruling to the Colonial Office.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, in view of the statement of the hon. and learned Attorney General, I beg leave to withdraw the motion. But I do think it is a little bit hard on the hon. Member, Mr. Fazan, that he should be designated as incapable! (Laughter.)

The motion was by leave withdrawn.

AGRICULTURAL ADVANCES WRITE-OFF.

THE HON. THE TREASURER: Your Excellency, I beg to move:—

“That this Council approves the write-off as final expenditure of a sum of £4,892-9-39, advanced under the provisions of the Agricultural Advances Ordinance, 1930,

this write-off operating in further reduction of the authorized appropriation of £113,201 approved by this Council as follows :—

£100,000 by motion dated 30th May, 1930.

£7,000 by motion dated 8th May, 1933.

£6,000 by motion dated 20th December, 1933.

£201 by motion dated 26th November, 1934."

This refers to a write-off under the agricultural advances scheme. It has always been recognized that in operating the agricultural advances scheme certain losses are inevitable, that the full recovery of the total amount cannot be reasonably expected in the circumstances attending the inception of the scheme. It is kept under constant review by the Land Bank Board, acting as agents to Government in this matter, and as I foreshadowed in my remarks in May of last year, further motions would be moved as it becomes clear to the Board, Government and the Secretary of State that sanction to write off irrecoverable advances is necessary.

In making recommendations to Government, the Board have acted on the principle that no step should be taken which would have the effect of dispossessing a working farmer or which might of itself place him in a position of bankruptcy or destitution. When circumstances arise, either from death or bankruptcy of the farmer or foreclosure of the whole of the mortgage, the Board is compelled to realize such assets as it might have, and apply for sanction to write off as irrecoverable the balance of the advance outstanding after such realization.

On the 8th of May, 1933, a motion was passed in this Council authorizing the write-off of a sum of £2,956-18-12; on the 10th of May, 1934, authority was sought and obtained to write off an additional sum of £4,294-7-26; the motion now before the House seeks authority to write off a further sum of £4,892-9-39, bringing the total write-off to date to £12,143-14-77.

The sum of £4,892 odd in the present motion refers to two advances which are deemed by the Board to be irrecoverable, and sanction to write off has been received from the Secretary of State. Against these ascertained losses, I think it should be noted that under the agricultural advances scheme a contribution has been made from interest on advances, after meeting the costs of administration, of a total sum of £13,082. This is a substantial reimbursement to revenue, which should not be lost sight of when the general purposes of this scheme are being considered.

THE HON. THE ATTORNEY GENERAL seconded.

THE HON. ISHER DASS : Your Excellency, I wish to ask the hon. the Treasurer certain information in connection with these advances. The information I should like to have is, the name or names of the person or persons to whom these advances were made, and the amount in each case, the nature of the security on which the amount of the advance was made, and if there is any possibility or chance of realizing any part of such advance?

THE HON. THE TREASURER : In reply to the hon. member, it is not the custom of Government to give names in circumstances such as this. (Hear, hear.) As I stated in my opening remarks, every attempt has been made to secure such return on the advances, and further receipts are improbable.

The question was put and carried.

NATIVE STORES, MEDICAL DEPARTMENT.

THE HON. THE DIRECTOR OF MEDICAL SERVICES : Your Excellency, I beg to move :—

“ Be it resolved that this Council approves the expenditure of £2,700 upon the purposes specified in the Schedule hereto as a charge against the revenue and other funds of the Colony.

Schedule.

Medical Department.

Native Services : Medical and Surgical
Stores, Equipment, etc. £2,700.”

This motion is a request that this House will approve of the further provision of £2,700 for the purpose of native services : medical and surgical stores, equipment, etc.

In so far as £1,000 is concerned, that is required for the purpose of additional quinine, and will in great part ultimately be returned to general revenue through re-sales at post offices to members of the public. This, I may say, is the second purchase of that amount which we have had to make this year, and the first £1,000 has already in great part returned to general revenue. It may interest hon. members to know that in 1929, when we started selling quinine to the public, in the course of four months we sold £50 worth. Last year we sold £1,600 worth at the post offices to the public, and this year we are selling now at the rate of over £200 a month, and have already sold very nearly £1,000 worth.

With regard to the rest of the provision, it has become necessary as the result of certain unforeseen contingencies. As hon. members are aware, there has this year been a very

large amount of malaria in Nairobi, and it was necessary in April to build two temporary wards at the native hospital, accommodating altogether 50 cases, because there was no room in the hospital itself. Since the 19th April, 760 Africans have been treated at the hospital, and allowing seven days each, that means about 5,000 patient-days. Those wards had to be equipped from store, and about £350 worth of equipment was issued. That equipment still exists, but I cannot say when it will be available for re-issue; much of it will not be so fit, and that will have to be replaced.

In addition, extra drugs have had to be purchased for the treatment of this sort of patient, and it might interest the House to know that at the earliest opportunity the drug was on the market we purchased a small quantity of a drug which has received a good deal of attention in the Press in Ceylon, and we are at present investigating its possibilities. In due course a report on it will be available.

We also had to make additional issues with regard to the concentration of troops at Wajir, and about £400 more than usual is required for the purchase of sera. One of the purposes for which sera are required is in connection with the treatment of cerebro-spinal meningitis. This disease is not epidemic at present, but the numbers of sporadic cases are unusually high, and we have had sporadic cases in a good many parts of the country. Certain extra purchases of emeting also had to be made, as there has been an unusually high incidence of the condition for which this drug is usually required.

Altogether, we have had to issue from store about £400 worth of equipment, which will require to be replaced, and instead of purchasing certain supplies of the ordinary drugs we have had to devote about £500 to special drugs; and there will be more required. We also require extra money for local purchases and to meet any emergencies that may occur.

I regret very greatly to have to trouble Government to provide extra money in the middle of the year for unforeseen emergencies of a not very unusual character, and the reason why I cannot meet them, apart possibly from the need for sera and quinine, is that for the past five years with a diminishing income I have had to meet increasing demands. My provision in 1931 for medical stores was £26,000; it went down the next year to £20,000, and has remained at about that figure ever since. On the other hand, the number of patients treated has gone up from 800,000 in 1931 to over 1,200,000 last year. The reason why we have been able to carry on at all has been partly due to a fall in prices, partly to very good buying, and also due to using up any reserves which we had. If at the present time I had to deal with another emergency such as

that which has occurred in Nairobi, I should not be able to do it except by purchasing locally many things at retail prices.

THE HON. THE ATTORNEY GENERAL seconded.

THE HON. CONWAY HARVEY : Your Excellency, I intend to support this motion, as any reasonable person who has listened with care to the very convincing case put up by the hon. the Director of Medical Services would do. I should like to congratulate him on the enormous volume of work that his Department succeeds in accomplishing. I believe it works out at something like Sh. 1/4 per head of the population of Kenya, so that it cannot be claimed by critical people that the welfare of the inhabitants of the country is very seriously neglected. Although that sounds a trifling sum, in actual fact it is large compared with the total sum spent on medical services in other countries largely made up of native states.

There is one point which I should like to make. I should like to ask whether this proposal for the expenditure of funds has been referred to the Standing Finance Committee, which I have always understood was appointed for the purpose of examining in detail any financial proposals of Government which involve the expenditure of public funds. With very great respect, I suggest, if it has not been so referred, that it should have been, as should all proposals emanating from Government involving taxpayers' money.

THE HON. THE DIRECTOR OF MEDICAL SERVICES : I regret that I am unable to answer the specific question of the hon. member. I do not know that any other point arises, Sir.

HIS EXCELLENCY : It is out of order, but perhaps the hon. the Treasurer will make a point of explanation.

THE HON. THE TREASURER : No opportunity of putting this before the Standing Finance Committee has occurred up to the present, but it does appear in the Schedule of Additional Provision, and I think the next Order of the Day refers to Schedules of Additional Provision to be referred to the Committee.

THE HON. CONWAY HARVEY : So we have the cart before the horse, then.

The question was put and carried.

SCHEDULES OF ADDITIONAL PROVISION.

THE HON. THE ACTING COLONIAL SECRETARY : Your Excellency, I beg to move :—

“ That the Schedules of Additional Provision Nos. 4 and 5 of 1934 and No. 1 of 1935 be referred to the Standing Finance Committee.”

As, in accordance with the usual custom which is reflected in Standing Rules and Orders, these Schedules will be examined item by item by the Standing Finance Committee, I will not burden the House with many details at this stage.

Schedule of Additional Provision No. 4 of 1934 includes all supplementary expenditure authorized by special warrant between the 1st of October and the 31st of December. The total sum is £20,885, which is covered by specific savings to the extent of £16,418, leaving a net additional expenditure of £4,467. Of this £4,467, £3,670 is on account of unavoidable expenditure on the Prisons Department, which is entirely due to the rise in the prison population during last year. The balance consists of a number of small items of which full explanations will be found in the memorandum enclosed in the Schedule.

Regarding the Schedule of Additional Provision No. 5, as hon. members are aware, at the end of each year authority is sought for small excesses which are invariably revealed when the Treasurer's books are closed. This year, however, the total is more substantial, namely, £25,911, due largely to two items. The first of these is a payment to the Railway of £10,614, on account of appreciation of securities in the Stamp Duty Reserve Fund. As explained in the memorandum, under Colonial Regulations it is necessary to charge off to expenditure any depreciation of the Colony's investments at the end of the year, and similarly, to credit to revenue any appreciation. The appreciation of securities in the Stamp Duty Reserve Fund amounts to £15,058, which has been credited to the Colony, and of this sum the Railway's share amounts to £10,614. The second large item is one of £10,694 for pensions and gratuities. This expenditure was approved by motion of this Council on the 14th of December, 1934.

Schedule of Additional Provision No. 1 of 1935 envisages supplementary expenditure of £51,148, which is covered by savings on the sanctioned estimates to the extent of £2,282. Of the balance of £48,866, £40,534 represents loans or grants from the Colonial Development Fund, which are credited to revenue and voted as expenditure, and therefore do not affect the balance of the budget.

In regard to that item, I would refer hon. members to page 4 of the Schedule, in which it is shown that of that sum £29,000 is in respect of the Kakamega and Lolgorien roads and £10,000 in respect of the Kericho-Lumbwa road. I might explain that a special warrant in anticipation of the expenditure being proceeded with was signed, and before the matter came up for consideration by the Central Roads and Traffic Board. When the matter was discussed by that Board, it was decided that it was advisable to carry out further investigations

into the actual needs of the mining areas, and a sub-committee was appointed for the purpose. That committee, I understand, has carried out its investigations, but its report has not yet been considered by the Board. Quite possibly, when these two items are considered by the Standing Finance Committee, the recommendation will be made that this special warrant should be cancelled and substituted by one for, possibly, £7,000, which is the most that can be expended this year; that is, expenditure on the preliminary surveys which are being carried out now. The grand total may be misleading at the present time.

In addition to that, there is £1,000 for the purchase of additional raw materials for prison industries, which will, it is confidently anticipated, be more than covered by revenue; £840 for a headquarters for the Kenya Royal Naval Volunteer Reserve, being part of a donation made by the hon. member representing the interests of the Arab community, whose great generosity I wish to take this opportunity of publicly acknowledging (hear, hear); £4,178 is in respect of the cost of roads, etc., in the vicinity of the City Square building, which has been discussed this morning. There are no other items which call for mention.

THE HON. THE TREASURER seconded.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I only rise to ask a question. I do not quite understand the Colonial Secretary. I gathered that he said that £40,000 was credited to revenue and then debited to expenditure, so that it was really a cross-entry, but that the special warrant in respect of £40,000 might be cancelled and substituted by one for £7,000 in respect of the survey, which was all that could be expended this year. If that is so, does that mean that the remaining £33,000 will be credited to revenue, and that only £7,000 will be debited?

THE HON. THE ACTING COLONIAL SECRETARY: The special warrant for £40,000 will be cancelled in the Treasury books, otherwise they will have a wholly wrong impression of the transaction. In any case, if a special warrant for £7,000 is substituted for one of £40,000, £33,000 would be shown as excess revenue over the expenditure at the end of the year—a quite fictitious figure—so that we had better cancel it straight out, as if it were never signed, and substitute one more approximating the amount spent this year.

THE HON. CONWAY HARVEY: Your Excellency, I want to refer to the somewhat loose terminology at the top of page 4, in which it mentions £29,000 as available for expenditure on of the sub-committee which has made a most intensive survey and examination of the roads of all mining areas, and I hope to

get an assurance from the hon. the Acting Colonial Secretary that although the Kakamega and Lolgorien roads are specifically mentioned in this loan that it does not necessarily preclude the expenditure of the money on all mining areas for which a case may be made out.

It would be very improper for me at this stage to anticipate the report of an *ad hoc* committee going into the matter, but I should be very much surprised, in the light of what I have heard from my constituents, if some sort of case is not made out for those who are so successfully working in No. 2 Area, and also in mining properties in the region of Kisii, and properties quite near Muhoru Bay. It would require a rather elastic interpretation of the terms used were they included in this item, but I shall be satisfied with an assurance from the hon. the Colonial Secretary that it is intended to refer to roads in mining areas generally.

THE HON. SHAMSUD-DEEN : Your Excellency, may I apologize for my ignorance, but I wish to inquire, as a matter of common interest, what is the status of this Central Roads and Traffic Board. It seems to be the authority on various roads constructed in the Colony. Is it a statutory body appointed by this Council, or is it one of those famous advisory bodies, such as the Governors' Conference and the Railway Advisory Board and many others? This is a matter of great importance, because, as a member of Nairobi Municipal Council, I should like to know what is the best way to bring this august body to listen to any reason as far as the construction of roads is concerned.

THE HON. F. A. BEMISTER : Your Excellency, I have not the slightest idea of cribbing any roads in any area, but I would beg leave to bring before this House the peculiar situation that has arisen in granting a very large sum of money to help an industry, the only industry in the Colony, whose product has risen 100 per cent in value. I happened to listen to the wireless last night when Mr. Mervyn Hill (Secretary, Royal Agricultural Society) instanced, and very finely instanced, the necessity of assisting farmers in this Colony, people who under every condition and difficulty hang on to the ground and work to produce a revenue for the railway and money for taxes after paying wages. It is doubtful if gold went back to its proper price, whether there would not be a hurried closing down, and the roads that you propose having made now would be redundant. I only raise this question. I do not want to stop anybody getting money for roads.

I would only refer you to the days gone by, when the Magadi Soda Company discovered the great deposits at Magadi. What did you make them do? They built their own railroad,

their own dock. Was there any assistance given to them—any large grants? No, Sir; it has been confined in this instance to an industry which has the most powerful people behind it. We know how these things are worked. I happen to have been in the trade for nearly 15 years. I know how the things are worked. I do think that if some means were made or could be discovered whereby those depressed industries, such as at the coast, could be assisted, then some of these rich people or corporations should be made to stand up to their liabilities, and make their roads and help their own industry, as many others have done in this Colony.

THE HON. J. B. PANDYA : Your Excellency, I should like to support the views of the hon. Member for Mombasa in regard to the necessity for such roads at the coast. Whilst seeing nothing against the present proposal which has been accepted by the Secretary of State, the plea we are making is that, particularly at the coast, we are suffering from want of roads, and the agricultural produce cannot be properly dealt with on account of that handicap from which we are suffering, and I only bring this point to the notice of this House, so that when we are making up a case for a similar grant for a road scheme at the coast this might be borne in mind.

THE HON. THE ACTING COLONIAL SECRETARY : Your Excellency, I think it may assist if I just go back over the history of this much discussed loan by the Colonial Development Fund. The application for the loan arose from a most definite and well supported recommendation by the Central Roads and Traffic Board, and Government after consultation with the Mines Department considered that there was a case for assistance. An application was accordingly made to the Colonial Development Fund in respect of this particular money, and the grant by the Colonial Development Fund was for the specific purpose for which the application was made. The wording of the section follows exactly the terms on which the grant was made. When this matter came again before the Central Roads and Traffic Board, in view of representations then made, it appeared to Government or to the Board obviously inadvisable to expend money when circumstances had changed since the original recommendation was made. The Board or Government do not deliberately desire to waste money and, as the hon. Member for Nyanza has stated, a very representative sub-committee was appointed to investigate the whole question, and this House can rest assured that if that committee recommends that the money be not expended in the way in which it is now proposed, that Government will be the first to say that the proposal shall not be proceeded with. But I would like to remind this House that there was a specific

grant by the Colonial Development Fund for a specific purpose, and if it is decided not to use that money for that specific purpose, we shall have to make out a case for expending it on some other purpose, and it is quite possible that, after the amount of time we have looked into the horse's mouth, the body which made the gift may, in view of the representations that have been made that we should not spend the money on the mining roads, quite possibly withdraw the grant, and that any work on the mining roads will have to be done out of revenue or from whatever balance is available. I am not saying we cannot make out a good case for spending some portion of this grant, but it will be remembered that the Fund will have to be advised and a strong case made out for diverting the money to other purposes.

The hon. Mr. Shamsud-Deen asked what was the position of the Central Roads and Traffic Board. That, Sir, is a statutory body appointed under the Central Roads and Traffic Ordinance. I think the statement which I have already made in regard to the loan to some extent meets the representations made by the hon. Member for Mombasa, and that is that some portion of the money should be used for Mombasa on the coast roads. That actually does not arise out of this motion before the House, because, as I say, the money has been made available for a specific purpose.

THE HON. F. A. BEMISTER : On a point of explanation, Sir, I did not want any of this money. I wanted some more.

THE HON. THE ACTING COLONIAL SECRETARY : I think that is a separate issue which does not arise.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE : May we be told, Sir, if this is a free gift from the Colonial Development Fund?

THE HON. THE ACTING COLONIAL SECRETARY : To this extent, that it is free of interest for five years, and then it bears interest at $3\frac{1}{2}$ per cent and is repayable over a period of twenty years from the date of the advance.

The question was put and carried.

BILL.

SECOND READING.

MARKETING OF NATIVE PRODUCE BILL.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I beg to move the second reading of a Bill to Control and Regulate the Marketing of Native Produce.

As the name indicates, the object of this Bill is to organize and stimulate the marketing of native produce and to facilitate as far as possible supervision. I suppose few Bills in recent times which on the face of it appear so innocuous have been treated with more suspicion than the Bill which is now before the House, by certain sections of the public, but at least we do know that the Bill which is now before you has been examined by almost every possible body of persons and individuals it could possibly interest, and though representations have been made by them the Bill has not been altered in any material respect whatsoever. In order to remove any misgivings as to the intention of the Bill, you have the amendments of which I gave notice, and which I will ask you to read into the Bill for the purpose of this debate. I gave notice on the 4th June this year.

In dealing with this Bill, Sir, I think, before I deal with it section by section, I might point out what are the real objects behind the Bill. First, the object is to move with the times, in that practically every country either has already or is introducing Bills of a similar nature. The second object is to stimulate and encourage native produce in order that we will be able to improve our exports. If we wish to improve exports, as hon. members are all aware, the thing that you have got to do is to see that your exports are of the best quality possible. Not only must they be of the best quality, but you must see that they are properly packed, that they are pure and free from all forms of adulteration which would completely damn them on the world's market, and free from such things as short weight and bad packing. In order to do that, the first thing you have got to do is to see that the producer, in this case the native, has a fair deal, and in this respect the first movement that is made in that direction is to see that he is paid in cash and not given, by way of barter, a few beads or some Japanese silk. We have also got to impress on the native that the better his produce, the more money he will get for it, and so long as petty traders give him money for any rubbish he chooses to produce, so long will it take us to improve generally the quality of the native produce.

While dealing with that we have also got to deal with the people who buy this native produce, and this Bill is to a great extent going to be used to control those buyers, and when I say control them, I mean to control them in such a way that they do not enter into cut-throat competition with each other, and thereby nullify the prospects of making the produce a paying concern, which is the only way that you build up an export market. It has got to be handled therefore by persons who have had experience and who know something of the world's markets and who have financial backing. Those who

are in such a position as to be able to reduce the cost of transport, and generally to be in the hands of those who know the business. It is quite useless, it has been found all the world over, not only in Kenya, to let everybody and anybody try and do a special job, and if you will turn to the Bill you will see the manner in which the Government is going to endeavour to do this.

The first point that I will refer you to is section 3, where the Governor has the right to declare any area to be what is known in the Bill as a "declared area" for some particular native produce; any native produce you like, say cotton in Kiambu, as being the most ridiculous I can think of at the moment; and having declared that area, certain rules and regulations set out in the Ordinance (in the Bill before you) come into operation at once. The first detail that has to be observed is that no one in a declared area is permitted to buy that particular produce mentioned in the Governor's order unless he is in possession of a licence under this Ordinance so to do. This is not an effort of Government to raise more money, because if you will look at it the cost is only going to be Sh. 2 for each licence and for each product. For instance, I have only mentioned Kiambu cotton, but if there were two or three other declared products, there would have to be three or four licences, totalling at the most Sh. 8. They will only be issued to a person who already holds a licence under the ordinary Licensing Ordinance. Now the object of that is clearly so that Government can see that only the right people will be in possession of licences to buy from the native.

In addition to that licence, if you turn to the next section, which is section 5—or I might say, instead of those licences, to be more correct—the Governor may in a declared area issue what is known as an exclusive licence, which will permit only one person to buy, in the particular area that is declared, the particular produce mentioned in the exclusive licence; and I would like to refer hon. members to the proviso to clause 5 (1), which makes it quite clear: "Provided that no such licence shall be granted in respect of the products of husbandry, except for the purchase of one or more kinds of native produce the cultivation or production of which is new to the said area or for which new or improved technical methods of preparation or packing are essential." In addition to that safeguard, you have the further safeguard that before an exclusive licence can be issued by the Governor in Council in any area, it shall be debated by motion in the House, and notice of that motion shall be fourteen days, instead of the usual notice under the Standing Rules and Orders. There was some suggestion at one time that each exclusive licence should have a particular

Ordinance to itself. Well, the only object of that clearly would be that it was debated in this House before it was given, and I think every hon. member will agree that, provided it is a motion of which fourteen days' notice is given, which is exactly the same as would be necessary for a Bill, in substance we are doing exactly what we are asked to do, without making it necessary for the printer to reprint this large part of this Bill over and over again as each exclusive licence happened to be granted.

The next thing that happens after this House has debated and approved of the principle which I have just indicated to you, is that it is advertised for a period of three months, and at the end of that time the Governor in Council makes the necessary grant of an exclusive licence to the person that they consider most suitable. The licence, as you see in section 6, shall be for a period of seven years, with a possible extension of five years after that. Then follow the normal clauses with regard to suspending or revoking any licence by the Governor in Council after it has been granted where there has been a breach of the Ordinance or of the conditions under which the licence was issued.

The next four sections merely protect the various licensees under the Ordinance from those who attempt to buy without the necessary licence. There are the usual provisions in the Ordinance with regard to insisting on cash being paid for any products received.

Section 13 deals with the power of the licensing authority to revoke what I will call the ordinary licence, not the exclusive licence, and provision is made for an appeal to the Governor in the usual way, actually through the Provincial Commissioner.

You then come to the section (section 16) which deals with rules. This is a more important section than usual because I think that it is under the rules that possibly the most important details with regard to the administering of this Ordinance will come. I refer to such rules as number one, and, I think, number two, whereby the Governor in Council may establish markets; where the markets will be, and details of that description will be dealt with by my hon. friend the Chief Native Commissioner in due course. But the important part is this: that the idea is of course that the Ordinance, as I see it, has to concentrate the buying centre in certain places in order that Government will be able to supervise it. It is quite hopeless if you are going to have shops dotted all over the place for the most exceptional agricultural officer in the world to be able to supervise, and the idea is that they will be collected in certain central spots where complete supervision will be capable and the shops themselves and the buyers regulated.

These, very shortly, are the main provisions of the Ordinance, which, as I said earlier, I think have been greatly misunderstood. There is no hidden significance in any particular clause. There is no intention of introducing racial legislation of any description, but it is a genuine effort to control the marketing of native produce by whoever happens to buy it. Experience elsewhere has not shown that any particular race has been driven out of competition in any way, but I am of opinion—I think I am correct—that what has happened elsewhere is that it has been concentrated in the hands of bigger people. Instead of having half a dozen shops belonging to one race, you may have two shops belonging to people of the same race who employ assistants.

I was extremely surprised at the suggestion that there was any idea in this country of introducing the racial question over marketing when I look round and see what has happened, let us say, with regard to cotton. I know I will be told that there is no exclusive licence in regard to cotton. In fact, there is. As you know, the Governor has the power to grant licences to gin and buy cotton, and in practice it has been found inadvisable to grant more than one ginning licence in the same place, and in fact only one is granted within 20 miles of another, so that for 20 miles at least the effect is the same as an exclusive licence. What has happened there? Has not every race had an equal opportunity? Can there be any possible complaint that any one person or class of people has been picked out in order to give exclusive licences; and I think that that having been the policy of Government in the past that it is pretty ungenerous to suggest that Government has some hidden idea behind the Bill which is now before you.

THE HON. SHAMSUD-DEEN : On a point of order, Your Excellency, may I ask who suggested that it is a racial measure?

HIS EXCELLENCY : There is no point of order in that.

THE HON. THE ATTORNEY GENERAL : If hon. members will only look round and see what is happening in other countries, you will see that every country to-day is making the strongest effort to control its marketing. Even as long ago as 1917, the export market in South Africa in fruit became completely controlled by Government, who have the right through inspectors, no matter what class of contract had been entered into by the exporter, to examine the fruit leaving the country, and if not up to the standard required by Government to throw it out ruthlessly, and no one inquires what happens to the unfortunate man, as to whether he fulfills his contract, or what happens at the other end. It is necessary, though perhaps regrettable to some people, that the world has realized in

general that the time has come when it has got to control its marketing, and this is the first effort of a general nature that has been made in this Colony.

I would like to make one point clear, and it is this : that, assuming there is some product in this Colony which is produced not only by natives, this Bill does not cover that product and if any desire or demand or necessity exists for controlling that industry generally in the Colony, it will have to be done by means of a special Bill, as has been done in the past with regard to other products.

THE HON. THE ACTING CHIEF NATIVE COMMISSIONER :
Your Excellency, I beg to second the motion.

My hon. friend the mover of the Bill has dealt with its legal aspects, and I therefore propose to confine my remarks to the economical, political and social circumstances which have rendered it necessary.

We live, Sir, in a time when organization is a vital need for every trading and producing interest. It is a need which has been fully recognized and met in the case of non-native industries, and few of them, without such organization, can have a reasonable chance of success in a world of intensive competition.

Nearly every non-native industry is grouped in some form of combination, some kind of organized defence against competing interests, both inside and outside the Colony. Nearly every non-native community has had the advantage of up-to-date education, time-honoured commercial traditions, and a fund of business experience to help it in the marketing of its produce. The African producer and trader have had few such advantages ; they have had little or no education, and little or no business experience, and practically no organization. Assistance therefore to them in the marketing of their produce is a duty which the Government can no longer neglect.

What, Sir, are the principal objects of marketing organization? They are to improve quality, to ensure a fair price to the producer, and, by centralizing transport and collection facilities, to reduce the costs of handling. Native products are no exception to this rule. The marketing of these has hitherto been, to say the least of it, haphazard. Though quality has been improved, in the case of wattle bark in the Central Province, and cotton, maize, simsim and ground-nuts in Nyanza, by rules under the Crop Protection and Live Stock Ordinance, there is still a long way to go before native marketing generally is put on a sound basis.

How is the marketing of native produce now effected? Firstly, we have the native markets proper, situated in the heart of the reserves, and established in many cases before the arrival of Government. At those markets, barter was practised and is practised to-day to some extent, and to take the case of the Kikuyu products such as root crops, red earth for putting paint on the faces and bodies, and fuel from the forest areas were and are exchanged for bananas and maize grown at the lower altitudes. In these native markets, native traders have erected their shops and sell retail goods to the general public, such as blankets, cloth, tea, sugar, salt, beads, paraffin, and other articles, the range of which increases almost daily. Many of these traders are also dealers in native produce such as maize and wattle bark, and have erected butchers' shops, and *bandas* for the shade-drying of hides.

These native markets play a very important part in the marketing of native produce, and, together with the trade centres, will be the foundation on which the structure of native marketing will be built. A point which will come up for consideration in the future is whether the number of existing markets is sufficient for the requirements of native trade. If in practice it is found they are not, the creation of additional markets to ensure that the native has not got to go a long way to sell his produce will be effected without great difficulty.

We now come, Sir, to the Indian trade centres, which play an even more important part in the marketing of native produce. At these, the bulk of the trade in native produce is now transacted, the Indian shopkeepers performing a dual function, firstly that of retail shopkeepers, and secondly that of produce merchants, either for themselves or as agents for the big firms in Nairobi and elsewhere. This has been the practice from time immemorial, and the result is an important and valuable trade, the Indian shopkeeper purchasing the native produce and in return selling retail goods to the native producer.

Next we have a number of native shops dotted about the reserve, away from the native markets or trade centres, the owners of which eke out a precarious living by the sale of retail goods to the native and by purchasing native produce. By the rules foreshadowed under the Bill, trade in specified produce will be denied these shopkeepers; and it is anticipated that many of them will transfer to the native markets proper.

Lastly, we have a number of unlicensed and itinerant traders, often callow youths fresh from school, who throng the roadside outside the markets during the height of the produce buying season and intercept the native women producers on their way to the market, buy the produce at a cheap

rate, and then dispose of it in the adjacent market at a considerable profit. These unlicensed traders have been, Sir, the source of much complaint in one at least of the Kikuyu districts, and, under the rules of the Bill, it is proposed that they should not be allowed to continue trading except in licensed markets and with a licence, because they compete unfairly with the licensed traders. Moreover, their activities definitely prevent the natives from getting a fair price for their produce.

In order to put native marketing on a sound basis, the first essential is some form of control. This, as has been already pointed out by the hon. mover, has been effected, firstly, by the provision in the Bill which lays down that no person shall trade in a declared area unless he is in possession of a valid licence. This will automatically exclude these traders to whom I have referred just now who are unlicensed.

The second provision is under the rule making power by which the Governor will be empowered to make rules to prohibit the sale of any produce except in an established market in a declared area, and no person will be able to trade in produce except in that market.

Thirdly—I apologize for reiterating what has already been said by the hon. mover, but I think it is necessary to emphasize these important provisions—thirdly, under clauses 4 and 8 of the Bill, the licensing authority is empowered to attach conditions to the issue of licences. The sort of conditions which I have in mind are the observance of any rules for inspection under the Crop Production and Live Stock Ordinance, and the purchase of produce for cash. At this point, I will assure the hon. Indian members that there will be no differential treatment in the matter of the conditions attached to these licences. They will all be the same in a declared area in respect of ordinary licences, other than exclusive licences.

Breach of these conditions will render the licensee liable to the cancellation or non-renewal of his licence, at the discretion of the licensing authority under clause 13 (1) of the Bill. The rights of the licensee, however, are safeguarded by the provision which allows him to appeal to the Provincial Commissioner and to the Governor, and also by the requirement that the licensing authority shall state his reasons in writing for refusal to grant or renew a licence.

Fourthly, there is the institution of exclusive licences. The hon. the Attorney General has already detailed the main provisions regarding these, and I do not need to add very much to them. The words “exclusive licences” have invoked all sorts of spooks and bogies, and called forth the strongest opposition. The attention they excited was complimentary, but completely undeserved. The object of exclusive licences,

as pointed out by the hon. the Attorney General, is to establish in a declared area a crop which is new to that area. Unless the trader who is to finance the production and marketing of the crop in question is protected against unrestricted competition in the early stages, the industry has little chance of survival. Later, when the industry is so established, it will be necessary for the whole question of that exclusive licence to be reconsidered.

It remains, Sir, for me to inform the House how it is proposed to apply these provisions in any declared area, and I am authorized to state, in regard to the ordinary licence contemplated in clause 4 of the Bill, for purchase of produce, that in the early stages it is proposed to issue licences to all bona fide traders, both non-native and native, who comply with the terms and conditions of their licences and with the provisions of the law. It is, however, probable that at the present time there is a larger number of traders in native produce than is justified by the economic circumstances of the reserves and by the amount of available trade; powers are embodied in the Bill to restrict the number of such licences to an economic level. That number cannot, of course, be fixed until some time has elapsed and without the test of considerable experience. It is for this reason therefore that it is the intention of Government in the early stages to issue licences to all bona fide traders who apply for them.

In regard to the cost of the licence, I have recently toured many of the Kikuyu markets of the Central Province, and discussed the matter with the Administrative Officers concerned and with a number of Indian and native traders, and the general opinion was that a comprehensive licence for at least these areas to cover the purchase of all forms of specified produce in a declared area is preferable to a separate licence for each specified form of produce. This proposal will be considered by the Select Committee on the Bill, and I need not enlarge upon it here. The alternative of a separate licence for each specified product will, however, be desirable, because in many of the poorer areas the traders will prefer this form of licence to the comprehensive one.

A further object aimed at is the ultimate separation, in native markets and in trade centres, of the trade in retail goods from the trade in produce. Under this proposal special produce markets will be established within the confines of native markets and trade centres in which it will be compulsory for produce traders to erect their stalls. The effect of this would be that the purchase of produce would then be confined to these produce markets, but these being, as I said, adjacent to the shops, it is considered that very little or no hardship to the shopkeeper will result. The object of this separation is to

centralize the buying of produce, to facilitate inspection, and thus maintain quality.

I now come to the important clause 16 (a) of the Bill, which empowers the Governor in Council to make rules for the establishment of markets. It has aroused the fears and anxieties of the Indian community, because it was thought that, if markets were established away from the trade centres these centres would suffer a serious loss of trade.

In order to allay these fears, it is the intention of Government that trade centres which conduct a trade in native produce will normally be declared to be native markets under the Ordinance, and that the purchase of produce within these will continue as heretofore, subject, however, to the possibility of the ultimate separation within those markets of produce buying from retail selling.

Government, however, cannot bind itself to declare all trade centres to be native markets, as there are a number of outlying or redundant trade centres, in respect of which such a course would be undesirable, and not in the best economic interests of the community.

In conclusion, I must briefly refer to the report of Mr. Menon, the Indian Government representative, who visited this country and reported upon this legislation. Some of the amendments to the clauses of the original Bill are, in fact, concessions to the fears expressed to him by the Indian community during the course of his inquiry. Reference to these amendments has already been made, and I do not propose to enlarge upon them, but I will comment on two matters only.

Mr. Menon stated in his report that barter is no longer practised in the native reserves. During his short stay in the country Mr. Menon had not time to visit all the reserves, and the pastoral reserves in particular. In these pastoral reserves, and in particular the Suk, Kamasia and Masai Reserves, I am informed by those who know that barter is most prevalent. It is not only restrictive of true economic progress, but it is also in some measure responsible for the limited cash resources of those tribes. My hon. friend the Provincial Commissioner for the Rift Valley Province and my hon. friend the Officer in Charge of the Masai Reserve will have an opportunity at a later stage of the debate of giving the House the benefit of their experience in regard to this matter.

The second point is the statement that the "Bill is part of a policy to eliminate the Indian from East Africa". This is so obviously remote from the truth that it is hardly necessary to assure the Indian community that Government has no such intention. I think Government can claim with confidence

that not only has the fullest and most sympathetic consideration been given to the fears of the Indian community, which were aroused by certain clauses of the Bill, but that these clauses have been substantially modified with a view to removing such fears. This is surely a sign of Government goodwill and itself refutes the statement which I have just quoted:

I am, however, authorized to give a formal assurance, even though such an assurance is unnecessary, that the provisions of the Bill, and especially those relating to exclusive licences, will be applied in no racial spirit, and that, subject to the main object of the Bill—which is to improve the marketing of native produce—the most careful consideration will be given to the interests of other communities.

Finally, it is perhaps unnecessary to emphasize that the main argument for this Bill is that, by improved methods of marketing, the prosperity of the native will increase. It is an obvious fact that the increased prosperity of the Kenya natives will not only react with equal benefit to the Indian trading community with whom their trading is so largely conducted, but will also help to promote the general welfare of Kenya. (Applause.)

Council adjourned till 10 a.m. on Wednesday.

3rd July, 1935.

WEDNESDAY, 3rd JULY, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, the 3rd July, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 2nd July, 1935, were confirmed.

PAPERS LAID ON THE TABLE.

The following paper was laid on the table:—

BY THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS :

Supplementary Estimates, 1934, Kenya and Uganda Railways and Harbours.

ORAL ANSWERS TO QUESTIONS.

CROWN LANDS ORDINANCE AND REGISTRATION OF TITLES ORDINANCE.—REGISTRATION AND SEARCH FEES.

No. 17.—MAJOR THE HON. F. W. CAVENDISH-BENTINCK asked :

“(a) Can Government see its way to amend the Crown Lands Ordinance and/or the Registration of Titles Ordinance so as to allow of a Power of Attorney to be registered under both Ordinances for an inclusive fee not exceeding Sh. 6?

(b) Can Government see its way to alter the existing rules and regulations so as to allow a search fee not exceeding Sh. 2 to cover a search in both Crown Lands Registry and the Registration of Titles Registry and to permit of the searcher taking such copies and extracts as he desires?”

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT : (a) The fee for registering a Power of Attorney under the Crown Lands Ordinance is Sh. 6 and for a Power of Attorney requiring registration under the Registration of Titles Ordinance is Sh. 10. Powers of Attorney which have been previously registered in accordance with the Registration of Titles Ordinance are recognized for the purpose of registering a document under the Crown Lands Ordinance without the necessity for re-registration under the latter Ordinance. Cases of double registration are, therefore, extremely rare.

(b) Search fees chargeable are Sh. 2 for a Crown Lands Ordinance title, and Sh. 6 for the Registration of Titles Ordinance. In practice the Crown Lands Ordinance Register is inspected to a much greater extent than the Registration of Titles Ordinance Register, because in the case of land registered subject to the Registration of Titles Ordinance the original Crown Grant contains endorsements of every transaction or dealing, and information as to ownership is available to the public without having to inspect the Register. In accordance with the usual procedure a searcher is not allowed to take copies and lengthy extracts, but no objection is made to short particulars being taken of any registered document; where complete copies are required these are supplied by the Registry on payment of the prescribed copy fees. The fees chargeable for registration of Powers of Attorney and for searches under the Registration of Titles Ordinance are no higher than those chargeable for similar services in neighbouring territories, and Government does not consider that any amendment to the law on the lines suggested is justified in the present circumstances.

NATIVE BETTERMENT FUND.

No. 37.—VEN. ARCHDEACON THE HON. G. BURNS asked :

“Will Government please state what its intentions are as to establishing the Native Betterment Fund recommended by Lord Moyne three years ago and reported on by a committee appointed by this honourable House?”

THE HON. THE ACTING COLONIAL SECRETARY : I would refer the hon. and venerable member to paragraph 16 of the Memorandum on the Draft Estimates for 1935.

The question of the inauguration of the fund will receive consideration in connection with the 1936 Draft Estimates.

BILL.

SECOND READING.

MARKETING OF NATIVE PRODUCE BILL.

HIS EXCELLENCY : The question is that a Bill to Control and Regulate the Marketing of Native Produce be read a second time.

THE HON. THE ACTING COLONIAL SECRETARY : Your Excellency I do not propose to enter into the debate on the Bill, but, Sir, with a view to allaying the fears of the Indian community, which it is unnecessary for me to say are wholly unfounded, I desire to draw the attention of the House to the amendment proposed to clause 1 of the Bill, namely, that the Ordinance shall come into force on a date to be proclaimed

by the Governor. This procedure will enable Government to give full and careful consideration to any fresh recommendation which may be raised during the course of the debate and which may in the opinion of Government call for a further amendment of the Ordinance.

I am also authorized by Your Excellency to state that although it is not proposed to include in the Bill a provision similar to that which is contained in the Uganda Bill, viz., that the approval of the Secretary of State must first be obtained before an exclusive licence is issued, the approval of the Secretary of State will in practice be sought before the principle of the issue of exclusive licences is applied to any particular class of produce.

I feel, Sir, that the giving of these assurances must remove any grounds for the belief which the Indian community appears unfortunately to hold that the Bill is directed against their interests, and I desire to take this opportunity of acknowledging the very valuable part which the Indian community has played in the past in the development of native trade. (European Elected Members: Oh!)

Government is fully confident that the Bill now before the House will result in the improved economic position of the native producers and that the Indian trading community will benefit equally with other sections of the community from that improvement.

THE HON. SHAMSUD-DEEN: Your Excellency, I am very glad to hear from the complimentary remarks made by the hon. the Acting Colonial Secretary just now as regards the part taken by the Indian community in the development of native trade in this country, but I wish to submit, Your Excellency, that the whole position has arisen due to the fact that to-day there is not one single officer in this Colony who knows the circumstances under which this class of business man, who are afraid of their being eliminated from this Colony, established themselves or introduced this trade in the remotest corners of the Colony in the early days.

The desire of the Indian community and the Indian members of this House is not to obstruct any arrangement which might be necessary for trade and for promoting the marketing in export markets of native produce, but, Sir, the fear of the Indian community concerned is that this is not a measure to regulate the marketing of produce, but is going to revolutionize the whole system existing in the Colony for forty years. I am not going to deal with the merits or demerits of the case because our attitude on this Bill is well known to everybody. I am only going to deal with that aspect of the case which necessitates our asserting ourselves entirely with

this trade. I know that really it is not going to make any difference to the plans and intentions of the Government who have made up their mind to see this Bill through in this House, but being in a sort of microscopic minority as we are, we think that we will be giving vent to the intensity of our feelings on the subject if we simply say that we are not going to have anything to do with the deliberations on this Bill. I know very well that any arguments of mine or any amount of reasoning by the members in this corner of the House will not have the slightest effect. Past experience of this Council for twelve years has convinced us that if at any time the Indian members were to bring a motion in this House, on something in the following terms, to say that two and two were four, I am quite certain it would meet with as much opposition as the Indian members will meet on this measure. There is not the slightest hope of our carrying our arguments on this. And I do not think that any man by speaking at length on this Bill is going to alter the essence or spirit of this Bill. He is nothing short of an optimist and nothing short of a miracle will persuade Government to alter it.

I do not wish to try to explain to this House the feeling of the Indian community on this subject. I know that European settlers take a great pride in calling themselves settlers in this Colony, but to the Indian community who are denied the opportunity of holding agricultural lands of any value at all, the only avenue of activity left to them is that of the middle man and petty trader, and those are the traders who in the early days, the conditions of which are very little known to any member in the House, went to the remotest corners of the Colony and established themselves, as, it has I think been stated by eminent politicians in England, as the "missionaries of civilization" in all corners of the Colony where nobody could have possibly gone in the circumstances in those days, Sir.

Now, Your Excellency, it has been stated by the hon. the mover and the seconder of this motion that the Indians are going to oppose this measure because they consider it to be racial. I tried to explain that yesterday. No such statement was ever made anywhere. We are afraid that that class of trader who is really the bulk of the Indian population of this Colony, and that is the middle class, is going to be eliminated if this measure is passed. Anybody who heard the hon. mover yesterday could not possibly have any doubt in his own mind that he was trying to hand over this trade to people who were better class, people who were specialists who knew something about the markets of the world and who were a sort of monopolist and specialist. It is obvious, Sir, that all these small traders, who, I think according to the special

views of the hon. seconder are merely ekeing out a living in the reserves, will be completely eliminated in this Colony. I have said, Sir, that the opportunities of agriculture are denied to us; from the Services we are being eliminated by a gradual process from day to day. The only thing left to us is that of middle man and petty trader and if this Bill is passed there is no doubt about it that it will strike at the very root of the existence of those people. We have never said that this is a racial Bill with the only exception of one clause which gives an opportunity to settlers in the Highlands to have markets on their private farms. That is only just one racial aspect of the case, otherwise it simply means that the small man is sacrificed for the wealthy man. It is said that most of these monopolies will be given to well-being Indians who have the means, who know and who are entitled to the markets. I am here, Sir, to look after the interests of not only the wealthy class but also especially to that class of people who will be thrown on the streets by this Bill. Unemployment will be increased and it will create a problem in this country. That is why the Government of India took the trouble to send a representative to this Colony because they know very well that any measure which is likely to eliminate the bulk of the Indian population in this Colony will only aggravate and increase the difficulties and miseries which prevail in India. I have not the slightest doubt, Your Excellency, that unemployment which is on the increase will be very much aggravated by this Bill.

Now, Your Excellency, what I wish to ask those gentlemen who ask us not to adopt this—some people call it rather dramatic gesture of peevish demonstration of temperament—what other course is left to us to show the Government. It is not merely for the sake of obstructionist tactics, but we really feel that it is going to affect a very large settlement of the community and result in their total elimination. If the Government could only be persuaded to at least postpone it. It has been alleged that a similar measure has been passed in adjacent territories and is working satisfactorily. I suggest that there is not such a desperate hurry about the Bill. Kindly give us an opportunity of going to the adjoining territories and seeing how in practice this Bill is working and whether our fears are exaggerated or unfounded and in this case if we find it all right and we think that our fears are unfounded, we shall come back and simply say—all right go ahead—but the Government seems to be in such a desperate and indecent hurry to want to rush the Bill through this session. We have not had the opportunity of seeing Mr. Menon's Report or the various despatches of the Government of India and other authorities—nothing has been published. We are therefore in the dark.

Seeing the assurances that are given, what is the difference in the Bill since it was first published? It only says that before a person is given an exclusive licence, fourteen days notice will be given and that it will be discussed in this House. We know too well our impotence of representation in this House and I think we are very poor and will be in need of every penny before we are able to oppose any Bill or any suggestion brought to this House.

I think it should be somewhat of a matter of interest to this House to know that I and certain colleagues of mine who feel the same as I do are not taking any further part in the deliberations on this Bill because we are going to disassociate ourselves to save the time of the Council, but I do wish to allude to one or two matters. One of the reasons given I think by the hon. mover yesterday was that they have the system of bartering between the natives and Indians. If I have not read it wrongly, Sir, I think of recent days not only the Indians and natives engage in barter but even in Brazil a shipload of coffee was sent away and they got back motor cars. Is not that bartering? I cannot see where the objection should come. If you want the native to get cash so that the collection of taxes will be facilitated—but what difference does it make whether the native gets a *panga* or a shilling. Past experience has shown us, Sir, that although the regular monopolies in this Colony have every assistance it has to be proved whether these monopolies are for the best interests of the Colony. In connection with the produce grown the only thing left to the Indian is to deal with the natives. There is no possibility of dealing with anything grown by Europeans because they have a pool amongst themselves in which the Indian has very little opportunity at all. Our only possibility of existence in this Colony lay in trading with the natives and that also is being arranged in such a manner that all the Indians who have fully made up their minds to settle in this country will have lost the last opportunity.

I was going to say as far as the reference to exclusive licences is concerned, what is this Council? Even supposing for a moment that all the unofficial members were to sympathize in that, it is only an advisory Council. We were told the Governors' Conference and the Railway Board were advisory councils. Well really this Council is merely advisory. If the Government make up their minds to give exclusive licences they will do so, even if the whole House unites and opposes it which is very seldom, Sir.

Perhaps it may seem to hon. members that I am wandering away from the subject, but it seems to us that the only job left to us is to do this trading. Only the other day it

has been shown what a keen struggle the Indians have had to get a piece of land and they have been described by the hon. mover as using cut-throat competition. In Kibos a farm was sold the other day at the upset price of £5,000 or £8,000. That was cut-throat competition but for the benefit of the Government. In the reserves if the Indians resort to cut-throat competition the native benefits by it. As a matter of fact I have been in some of these trading centres and I quite agree that the Indians go to such an extent in competition that sometimes they actually add something from their own pockets in order to buy the products. That would certainly never be the case if a monopoly was given to a party. In the present case owing to this very cut-throat competition, the native benefits and naturally the prices are kept low.

Your Excellency, I do not think I can be accused of exaggerating the fears of the Indian community as regards this measure. I think the hon. Colonial Secretary will tell you that there were scores of telegrams received from every centre in Kenya, and copies sent to the Indian Association, saying that this measure is going to sound the death knell of the traders in these centres.

As regards the quality of native produce, and I heard something about packing, etc., take the case of maize, which is one of the chief native products. It does not matter in what sort of bags it is packed, they have to be unpacked at the coast where it is graded and there is elaborate machinery for grading and whether by a cut-throat competitor or a monopolist, there are safeguards for the quality of the produce. For all practical purposes we have got almost an Ordinance for every produce, for butter, wheat, pyrethrum, almost everything. Well instead of giving the Government such wide powers that they can apply to any commodity or produce or not as the opportunity arises, pass through these various Ordinances as we have been doing and the same as we passed two or three days ago with regard to pyrethrum and coir fibre. Can the Indian trader be blamed for his fears when he sees that Government by a stroke of the pen can restrict free trading? It is a very controversial matter whether free trade in the spirit in which it has been going on up to now is the proper thing or whether the interference of Government is desirable.

Your Excellency, I think I could dwell on this for quite a long time, but I do not know that any useful purpose would be served by prolonging the discussion of this subject and we say that in order to show in the extreme how strongly we feel on the subject, and having expressed our reasons for not taking part in this measure, I think, with your permission, we will retire from the further discussion on this measure.

(The hon. Indian Elected Members, Messrs. Shamsud-Deen, Isher Dass, N. S. Mangat and Dr. A. C. L. de Sousa withdrew from the Council.)

THE HON. J. B. PANDYA: Your Excellency, before I speak on the main issues of the Bill, I should like to say a word or two or explain the views I hold in regard to the statement just made by the hon. Member Mr. Shamsud-Deen and his attitude towards the Native Marketing Bill. I would certainly associate myself with him on the principle that this Bill is of such a grave nature, and is likely to prove so harmful and detrimental to the interests of the Indian community, that it should be strenuously opposed and that a walk out would be justified in order to show a feeling of deep resentment which the Indian community entertains and also to demonstrate the seriousness with which they view the enactment of this measure.

However, I regret that I have to differ from him in regard to the stage at which the Indian members should walk out. The Federation of Indian Chambers of Commerce, a representative institution of the Indian commercial community, and the one very much concerned with the legislation now before us, after a very careful and anxious consideration of the Bill and the situation created thereby, have requested the Indian members not to walk out at this stage but to take part in the debate, oppose the Bill strenuously, and vote against it at every stage. They have asked the members to go on the Select Committee and move amendments suggested by the Federation, and were the amendments not accepted to register their emphatic protest against the Bill by walking out of the House on the adoption of the Report of the Select Committee at the third reading stage, and thus demonstrate their feeling of resentment at the passing of a measure which is calculated to do an immense amount of harm to Indian interests.

I am in complete agreement with the views of the Federation of Indian Chambers and I am going to follow that course.

I do not believe in the policy of negation and cowardice. I am not one of those who run away from the field during an engagement; and while the fighting is thick and critical I want to do my duty and remain rooted to my post till the last minute. Even if I were not successful in persuading the Government and others to my point of view I would lose nothing thereby, and I will have the satisfaction of doing my duty in the best interests of those who have sent me to this House to represent them and fight for them with the best that is in myself.

It is my considered view, and also of a large number of people outside, that the hon. members who have decided to run away and take no further part in this House in regard to this Bill, are doing the greatest possible harm to the Indian interests, which they have been sent not only to protect and safeguard, but also to advance.

It is indeed unfortunate that they have yet learnt nothing from the past experience of the nature of the step they have decided to take at this stage.

Now, Sir, coming to the main issue in regard to this Bill, at the very outset I should like to say that the Indian community have very good ground for getting alarmed at the introduction of this Bill into the Legislative Council. It is a question of very vital importance to the interests of the Indian community, and therefore I should like to crave your indulgence, Sir, and the patience of this House if I take a little longer time than usual, which I am likely to take on an occasion like this, and I hope you will give me that indulgence. As the other hon. Indian members have retired, I am sure that members of the House would not grudge me this extra time.

This measure has been aptly described as a question of life and death for the economic interests of the Indian community. Before going into details, I should like to describe if I may the general attitude of the Indian community towards the principles of this Bill, and I shall try to clear away certain misunderstandings that persist, in spite of our explanations, in regard to the Bill.

The hon. and learned Attorney General said yesterday that one of the objects of the Bill was to move with the times. I should like to assure the House that the opposition of the Indian community to the Bill is not based on any intention to delay the wheels of progress in this country. Most of us remember that in this very town of Nairobi not many years ago there were small shops run by Indians. To-day, I can say this: that the Indians have progressed in regard to the wholesale and retail trade establishments to such an extent that in their standard of service and efficiency I can claim that no other race can surpass them. That in itself should prove that there is no intention whatever on the part of the Indian community in opposing this Bill to stop the wheels of progress. There has not been the same measure of advancement in the native areas because of the poor conditions of trade in the reserves due to want of encouragement for production by Government. This, however, should be quite sufficient to prove that the Indians do not favour stagnancy and are not lagging behind.

The hon. and learned mover also said that one of the objects of the Bill was to stimulate and encourage native production for export. As far as the views of the Indian community are concerned on that issue, I might say that we have been from the very beginning pressing Government for increased native production. It was, until the country found itself in the grips of the world depression, the policy of this Government to encourage—and I must say exclusively, or to a very great extent—production by Europeans in this country, and it was also held in those days that the encouragement of increased native production would create to a certain extent some sort of shortage of labour. Now Government have realized that the size of the Government machine could hardly be maintained nor the country be expected to progress without increased native production. But before that view was taken by Government the Indians had been pressing from the very beginning for increased production by the natives.

In this connection, sometimes our attitude is misunderstood. This reminds me of a story in which a prince was sitting at the bay window of his palace overlooking the road taking his tea, when on the road he saw two emaciated men fighting for a piece of bread. He asked his minister what was the reason for this fighting, and latter explained that they had no bread to eat. Then, said the prince, if they have no bread to eat why don't they eat cake? This, Sir, is the type of mentality which represents those who are in favour of this Bill. They do not understand the difficulties through which the traders who are handling the native produce will have to pass as a result of this Bill. That is the position in which we find ourselves to-day.

Apart from that, we are in regard to this Bill faced with a peculiar and a difficult position, because we find that the principle of this Bill has been accepted by the Secretary of State for the Colonies. There was no secret made of this when the former Secretary of State, Sir Philip Cunliffe-Lister, visited this country. He unequivocally announced it many times in his speeches, and therefore we feel that in principle the case has already been prejudged. I do not want to enlarge on that issue, but I should like to say this—that the Indian commercial community were not given an opportunity of presenting their case to the former Secretary of State during his visit to this country, and therefore he had that view without hearing the other side of the question.

As a result of a change in the ministry at home, and with the appointment of a new Secretary of State for the Colonies in Mr. Malcolm MacDonald, we hope and feel that he will give the fullest consideration as has been promised by Government in the statement made this morning by the

hon. the Colonial Secretary, and that he will consider the opposition and the points of view which we put forward in this debate. Apart from that, even now it is not too late for the Government to take into consideration the various small points which I am going to raise and accept amendments which I am going to suggest, amendments which will go towards improving the Bill and reducing the hardships of which we are afraid.

There is another reason why in our opinion we are faced with this Bill. We consider that the Bill is not necessarily essential in the interests of this country, but that it is introduced to implement the wider Imperial policy of uniform legislation in East African territories; that is the reason why to-day we have this legislation presented to the House. We have heard that similar legislation has already been introduced into the neighbouring territories of Uganda and Tanganyika, and very recently in Zanzibar, and therefore to keep to this uniform policy this country must also have the same sort of legislation pushed on to it, whether it needs it or not. I should have considered it to be a good fortune for this country to be the last of the lot in the matter of the application of this marketing legislation, because of the opportunity it presented to digest and profit by the experiments of the neighbouring territories, and, before we accept it, to examine thoroughly the good and bad involved in it. Hence the Indian commercial community suggested to Government that there was a case for inquiry into the question. I should have considered it the duty of Government to have held such an inquiry in consultation with those who were mostly affected by this legislation.

As I said, the Federation of Indian Chambers of Commerce in 1933 passed the following resolution in regard to this inquiry :—

“In view of the definite and reliable information available to the Federation that the marketing legislation in Tanganyika and Uganda has failed in its objects of conferring any special benefits on natives, and that it has created definite hardships and has proved harmful to Indian interests, the Federation urges upon the Government of Kenya to appoint a representative committee to inquire into the advantage, if any, of this legislation alleged to have been secured to natives in Tanganyika and Uganda before taking any steps for its introduction in Kenya.”

This was a very reasonable and fair request to be made by a representative commercial institution who were affected by this measure, but the Government turned a deaf ear to the

request; they did not hold the inquiry which would have brought out certain facts before this House of which, officially we do not know anything.

Even if we accept what the governments of the neighbouring territories claim, that this legislation has been a complete success in those territories, even if we accept that—and in my opinion Governments are not infallible, as for them to sit in judgment on their own actions is hardly fair and hardly convincing—I think that my submission that an inquiry should have been held is all the stronger, because if it really has been a success as has been claimed what harm could there have been in allowing an inquiry to be held into this question? Such an inquiry would have stopped all sorts of fears which we had in our minds; it would have cleared the ground; and in the end perhaps it would have been better for us to know what has happened in those other countries.

But this statement of the neighbouring territories has been challenged by the people not only in this country but in those very territories, and by the people who are affected by that legislation. Therefore it appears that the suspicion we have that everything is not gold that glitters is strengthened. This suspicion has been strengthened by the memorandum of the Eastern Province Chamber of Commerce in Uganda, in which they claimed that the system had failed in regard to one commodity, that is groundnuts. Having had experience of that legislation, they actually put these facts on record, that it had resulted in difficulties and brought about exactly the conditions which had been prophesied by the Federation of Indian Chambers of Commerce.

Handicapped by the Government's refusal to hold an inquiry in regard to this Bill, my task in opposing the Bill is more difficult. Some of us consider such opposition futile—we have seen my colleagues leave the House, believing it is of no use to prosecute their point of view any further in this House. But I consider that great injustice is being inflicted by the Government on the Indian community, and my duty as a member of this House is to oppose this Bill. When we find that the principle has already been accepted by the Secretary of State the odds are even more against us and the fight becomes more unequal, but those who are unable to approve the proposals of Government in regard to this measure feel they have an obvious duty to perform and that they must proceed to the performance of that duty, however heavy may be the odds against them.

In order that all the issues and many others which have been raised in the course of debate may be properly and adequately dealt with, I should like to divide my speech into three parts. In the first part I will review the historical

claim of the Indian community for unhampered trading rights in this country; in the second part I shall deal with the question as to whether this legislation is necessary at the present stage of native development and native interests and whether the situation could not be met by the existing legal powers in the hands of Government; in the third part I shall deal with the particular effects such legislation has had in Tanganyika and Uganda and the way in which it is likely to be harmful to long established Indian interests in Kenya and the way in which amendments are desirable.

Coming to the first part of my speech—that is, the historical claim of the Indian community to privileged rights—I do claim privileged rights in this House in regard to trading interests and shall show that we have special privileges guaranteed to us by the Imperial Government, which privileges are being infringed to-day. They will bear repetition on an occasion like this as a background.

Clause 4 of the Bill limits the number of licences to be issued. I was amused yesterday with the hon. and learned Attorney General stating that this restriction of licences is going to be in the interests of the traders themselves—it was going to save them from the cut-throat competition in which they are indulging to-day—and that the business was going to be handled by those who knew the world markets and had a financial backing. I regret to say that no bigger exhibition of ignorance of the conditions of trade in native produce has been given than those views of the hon. member.

THE HON. THE ATTORNEY GENERAL: On a point of explanation I did not say what I am alleged to have said. I said that competition would be eliminated and those who remained would be in a far better position than they are to-day; I said they would be better off.

THE HON. J. B. PANDYA: That is exactly what I am saying, that it meant the reduction of traders, and a reduction to that extent in the competition. I do not blame the hon. member for that point of view; I think the profession to which he belongs does not entitle him to know all the details in regard to this Bill, which is a commercial measure.

I should like, however, to clear away the misunderstanding that the result of that restriction is not likely to be what has been declared by the hon. member. We know to-day from experience that there are certain trading centres where there are not more than two shops, and still the competition in that centre is as furious as it would be in any other centre where there was a large number of shops. And in regard to knowledge of world markets and the financial backing, I

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I should like, however, to clear away the misunderstanding that the result of that restriction is not likely to be what has been declared by the hon. member. We know to-day from experience that there are certain trading centres where there are not more than two shops, and still the competition in that centre is as furious as it would be in any other centre where there was a large number of shops. And in regard to knowledge of world markets and the financial backing, I

think that if anyone made inquiry they would find in a very large number of cases that those who are engaged in doing this business to-day have that knowledge and have the financial backing.

I was saying that our historical claim for the privilege of special rights in this country was much more stronger than is the claim which other races have made in this country for a privileged position. I shall go back a little bit, to the historical period as far back as A.D. 60 when a Greek merchant who visited the East Coast of Africa wrote in his log book: "There are imported in these places Indian iron and steel, cloth, wheat, rice, ghee and sacchari." This is the first mention in the history of sugar as an article of food. It was known to Pliny as a medicine. The Sanskrit name for sugar is *sharkara*.

Thus we find that Indians were established in business on the East Coast of Africa before any other race who claim special privileges to-day and enjoy such privileges knew anything about the whereabouts or existence of this country. In addition to this import trade, they had also at the same time a large and flourishing trade in exports from this country.

Coming to the nearer period of British connection with this territory, it is a historical fact that when the Royal Charter was conferred on the Imperial British East Africa Company by Queen Victoria, it was laid down in the preamble of that document that:

"One of the chief grounds for Government for the possession of a British Company of the Coast Line which includes the Port of Mombasa was that it would be advantageous to the commercial and other interests of our subjects in the Indian Ocean."

If the Royal Instructions are binding, as they should naturally be, this makes it quite clear, apart from any other thing, that the Charter was conferred on the British Company—which was the beginning of British influence in these territories—because it would be advantageous to the commercial and other interests of the Indians. I should like the House to note the word "commercial", because that is what I claim to-day: that it was primarily and particularly for the commercial interests of the Indians that the territory was acquired.

Is it therefore unfair if I claim here in this House that special privileges were guaranteed to us long before and at the time the British Company acquired it? Can restrictions be imposed on trade by the Indians on any moral grounds?

Coming to the nearer period of historical connection and the taking over of this country by the British Government,

the name of Sir John Kirk, as the first consul to the Court of Zanzibar, is an honoured name in this country.

This reminds me of the wonderful influence which Sir John Kirk had at the Court of Zanzibar in those days. In 1873, the Imperial Government sent to Zanzibar a mission under the leadership of Sir Bartle Frere to negotiate a treaty in regard to the slave trade. The Imperial Government thought that a mission of that nature would carry greater weight than the Consul General in Zanzibar. What actually happened was that when the mission came to Zanzibar Sir John Kirk, feeling a little sore, took a back seat and did not interfere with the negotiations, with the result that the mission departed a failure. The Sultan refused to sign the treaty. On the way back, Sir Bartle Frere visited a mission on the mainland of Mombasa, and to-day that place is called Freretown. Soon after the mission had left, Sir John went to the Sultan, and he signed that very treaty without demur, and that treaty was despatched by a fast cruiser to Aden to Sir Bartle Frere.

I mention this as background, that Sir John in those days was an authority, and he was the man who first established the British influence in this part of the world. Giving evidence before the Sanderson Committee in 1910, Sir John Kirk said this in regard to the Indians :

“But for the Indians we should not be there now. It was entirely through gaining possession of these Indian merchants that we were enabled to build up the influence that eventually resulted in our possession.”

May I ask if the services which brought to the British Government the possession of these territories, could now be so easily forgotten and set aside? Sir John has specially mentioned that the Government gained possession through those Indian merchants. They were valuable services rendered to the British Government in the form of merchants trading, and to-day those very people through whose influence the British Government acquired territory which has become a colony are faced with this Bill which denies them and restricts them in that freedom in regard to trade.

Coming further to the nearer period, I should like to quote from Sir Harry Johnston, the great explorer and administrator, who as far back as 1922 wrote these significant words :

“The participation of Indians of all classes with us in the conquest from the slave traders, the survey, the opening up, the discoveries of botany and zoology of East Africa from Abyssinia and Zanzibar to Natal, has been too noteworthy to be overlooked.”

I am quite sure in regard to this legislation that these services have been entirely overlooked, and I therefore submit we deserve more sympathetic consideration than is being accorded us.

Mr. Winston Churchill, who is not very sympathetic to India at the present moment and who is one of the foremost diehards in regard to constitutional advance in India, considered that Indians in East Africa had special privileges. Writing in his book he observed :

“It was the Sikh soldier who bore an honourable part in the conquest and pacification of these East African territories. It is the Indian trader who, penetrating and maintaining himself in all sorts of places in which no white man could earn a living, has more than anyone else developed the early beginning of trade and opened up the first slender means of communication.”

Apart from the fact that the Indians in the early days contributed materially to the acquisition and advancement of this country, the Government of India has not played an insignificant part in regard to the maintenance of peace and the protection of native interests. It is a historical fact that in 1856 there was a dispute between two brothers for the throne of Zanzibar and Oman, and in 1861 the Governor General of India, Lord Canning, who was appointed arbitrator, gave an award by which the Arabian and African dominions were to be separated and that Seyed Majid was to be given the throne of Zanzibar. When that settlement was made, it was in the award that the Sultan of Zanzibar had to pay an annual subsidy of 40,000 crowns, or about £80,000, to the state of Oman. What happened when this subsidy was not paid? The Sultan of Zanzibar could not be persuaded to pay it, and ultimately the Government of India, because Lord Canning had given the award, paid the subsidy to the state of Oman in the interests of peace in this territory.

That, Sir, from my point of view to a very great extent also supports the claim which I have made for the Indians who are in this country, that India actually paid for the pacification of this territory.

Coming to the period of British occupation, and after the country beyond the ten mile strip on the coast, which is the Protectorate now, was opened up, the Indians were the first to penetrate the land and to go along with the British administration to civilize the country. Here is an extract from a book recently written by Sir Frederick Jackson called “Early Days in East Africa”.

LT.-COL. THE HON. J. G. KIRKWOOD: On a point of order, may I ask if a book written by Sir Frederick Jackson or anybody else has anything to do with this Bill?

HIS EXCELLENCY: The hon. member is in a difficult position and I am inclined to allow him a little more latitude than ordinarily. He has explained that he is painting his background, and I am prepared to allow him to go on.

THE HON. J. B. PANDYA: I am not going outside my point, which is that when the first British administration came into this country beyond the ten mile strip, Sir Frederick wrote that:

“Adamji Alibhai was the first Indian trader to venture up country in 1892 when he established himself at Machakos.”

I am developing this argument that in this very centre Machakos, which is in a native area, to which an Indian came in 1892, as a result of this Bill the Indians there to-day are faced with destruction so far as their trade is concerned. Can anyone say, therefore, that this sort of restriction is justified?

I should like to quote in this connection the Rt. Hon. Sastri, who is considered one of the most moderate and one of the most influential statesmen in the Empire. He is not making an exaggerated claim, but what he said in a speech in England at a meeting in 1923 was this:

“We have been in Kenya for about 300 or 400 years. Long before the British ever came there we have established our connections, and built up our business. In fact, the Britishers came there in order to protect our interests and it was because of our influence with secular powers already established in these parts that the British established a Protectorate, and then converted it into a Crown Colony. It was all for our benefit in the first instance, and now, having come here for our benefit, the representatives of the British powers say to us ‘You clear out.’”

That is what Mr. Sastri, one of the greatest moderate and influential Empire statesmen, has said in regard to the position in this country.

It should be clear to everyone that the adverse effects of this Bill on Indians would be very great. At one stroke it would snatch from them the unfettered right of buying native produce, and it is an irony of fate that the British Government who came here to protect our interests should now turn into an instrument for our destruction. It will be an historical landmark for future guidance.

HIS EXCELLENCY : If the hon. member intends to speak for any length of time, I think it will be convenient to take the usual interval now.

Council adjourned for the usual interval.

On resuming.

THE HON. J. B. PANDYA : Now, Sir, in regard to these trading activities I should like to say that they were not confined to only imports, but at the same time the Indians were engaged in shipping large quantities of grain, ivory, mangrove poles, etc., by dhows. A very great service has been rendered by the Indian community in regard to the development of marketing facilities for native produce. This service has been recognized by the Hilton-Young Commission, who in their report observe that :—

“The Indian trader had been a potent factor in the process of civilizing the African. The Indian dealer has performed another useful function in marketing the produce of native agriculture, for instance, the greater part of the valuable cotton crop in Uganda is handled by the Indians and their activities have undoubtedly stimulated the spread of cotton cultivation.”

Thus the valuable services rendered in regard to marketing of native produce have been recognized.

The first part of my speech, the historical part, with which I have dealt, claims the unhampered rights on the ground of special privileges historically acquired, and the quotations of various authorities of historical importance establishes the old and undisputed trading rights since pre-British days. These rights are threatened by this Bill and on historical grounds alone we deserve sympathetic consideration, but in addition to this it should be remembered that because of our existence in this country, the British Government have been able to acquire these territories. Leaving aside our other claims, I do not think it could be reasonably disputed that our sphere of influence in trading should not be interfered with. This is a very moderate demand on our part.

Having established this, in view of the fact that this Bill, in our opinion, would squeeze us out of the country economically, I should like to ask, in the words of Mr. Winston Churchill, who said in regard to this question in his book :

“Is it possible for any Government with a scrap of respect for honest dealing between man and man to embark on a policy of deliberately squeezing out that native of India from regions in which he established himself under every security of public faith?”

These are very strong words, but I should like to see any British statesman differing from the spirit of these sentiments and principles of justice which they breathe. I think, Sir, that they are applicable to the present occasion.

I therefore venture to submit at this juncture that a great injustice is being inflicted by Government on a community which rendered such signal service to it, to the people generally and to the country as a whole, a country which they have adopted as their home.

The hon. the Attorney General and the hon. the Chief Native Commissioner have both emphasized that this is not a racial Bill, that there is no hidden meaning and that there will be no differentiation in regard to its administration. They have even gone to the extent of saying that such a meaning or interpretation would be ungenerous and even surprising because no such thing is intended. I thank the hon. members for their assurance, given on behalf of Government, and I quite realize that the Bill, as it is, is equally applicable to all races, be they Europeans, Indians or Africans. However, Sir, with due respect to them, I should like to submit that the hon. members have not meant it personally, but that it is in fact no more than mere bluff when it is said that this is not a racial Bill. It is not mentioned in the Bill that the Indians will not be granted leases or that restriction will apply to them, but the only thing the Bill says is that people who follow certain trades or who are engaged in buying native produce (and only Indians are engaged in buying native produce) will be restricted in these activities by the provisions of this Bill. It is therefore reasonable to assume that it is intended to be and is going to operate as a racial Bill. If this is not a racial Bill then I should like to know the difference and what a racial Bill is likely to be. The licences will be restricted, exclusive licences may be issued, and when this is done it would mean the extinction from that particular trade of the class of people who are engaged in this trade, and it will, therefore, apply only to the people who are to-day engaged in that particular trade, and we know that these people are not Europeans or natives. To-day at least the large majority are Indians.

Coming to the main principles in regard to this Bill, we consider this Bill to be wholly unnecessary and that in our opinion it is putting the cart before the horse. If the Government wishes to encourage native production then for that particular thing we do not consider this Bill is necessary. What is required to-day is the improvement of road systems in the native areas and the encouragement of intensive native agriculture. The Mombasa Chamber of Commerce, an institution which is composed of a very large majority of wholesale

and export houses and traders says in their memorandum which was submitted to the Government on this issue, that :

“The Committee are of the opinion that the question of efficient marketing of native produce solves itself the moment a sufficiently large volume of produce can be economically assembled in marketing centres. Until the volume is increased they see no more satisfactory alternative which would be economically possible.”

The first thing which is necessary is to increase the volume of produce. There is not the volume to-day to justify any special measures in regard to marketing. This expression of opinion comes from a representative body of commercial men and I claim that these commercial men in Mombasa—the export houses—know much more about the native produce and export trade than anyone can claim here, and they definitely consider this Bill wholly unnecessary. This is not the Indian opinion only. I should like the House to note that it is the European commercial opinion. In regard to that opinion when we come up-country we find that the Kisumu Chamber of Commerce—again an institution with European members—is most definitely opposed to the principle of this Bill. We find in the centre here in Nairobi they are in favour of the Bill, but I do not know of any large interests in native produce by European firms in Nairobi, and therefore one could presume they are talking without experience and are guided in their views by European experiments and prejudice. At the one end the export houses and at the other end at Kisumu, the people who buy, are unanimous in their opinion that this Bill is wholly unnecessary. It is not only confined to commercial opinion but even the administrative officers, provincial and district commissioners, and other people have more than once expressed themselves against this Bill. That might not be the case at this moment as they are bound to follow the Government policy which is before the House, but in the initial stages it has been the opinion of various administrative officers that it was not necessary to introduce this legislation in this country and that what was required could easily be attained by a slight widening of the rule-making powers under the Crop Production and Live Stock Ordinance of 1926.

I speak with great restraint but I should like to ask if this opinion from all these sources means nothing? Is the monopoly of wisdom claimed by those who have never studied this question in detail? Is the opinion of the traders unacceptable because they are interested in native produce? On the other hand, I should have imagined that as is the case in other countries and in England that the people who are interested should be the first to be consulted and their opinion in regard to various legislation should carry a very great weight.

Turning to the objects of this legislation. What are the objects claimed by its supporters? In moving this Bill the hon. the Attorney General and the hon. the Chief Native Commissioner in seconding, mentioned certain reasons for which this Bill is considered essential. Summarizing these I should like to deal with them one by one. It is claimed that this Bill is necessary for these objects: first, all native produce should be bought for cash only and bartering should be strictly prohibited; second, the price paid to natives should be a fair market price taking into consideration world prices and the position of the place of production relative to the railway; third, cheating in weight in the obscurity of small shops should be obviated; fourth; improvement in quality of produce for export; and fifth, saving in transport costs.

I shall take these points one by one and examine if for these reasons there is any need of this legislation in this country. The hon. mover and seconder both emphasized the need of buying for cash and against barter. The hon. seconder went to the extent of replying to the statement made in the Menon Report that there was no barter in Kenya and he then mentioned that barter was still in vogue in this country in certain backward areas. In the first place I do not think it is fair for the hon. member to mention a document which has not been published, or the contents of a document to which we have no access. If I were to quote various things which appear in that document, I do not think he would like it. But the hon. member has so emphatically claimed the existence of barter in this country that it is necessary for me to quote an extract from the Report of the Agricultural Economist who studied this question and reported to the Government in October, 1933, in which he said:—

“With the spread of education and general development among the native population the system has given way to cash trading. Barter is now absent from Nyanza Province and rare among the Wakikuyu except in the latter native trade carried on in the native markets.”

This is the evidence of an Agricultural Officer of Kenya Government and while no doubt in backward areas there might be rare instances of barter, I do not think an exaggerated importance should be given to such a thing as justification for this Bill. As far as I am concerned, Sir, I am not in favour of the system of barter in this country and I do agree that there is no necessity for maintaining that system in this country, but I do not consider that there is anything inherently wrong in that system, so that you have to have legislation of this type to stop it. As it has been pointed out, during the old historical days in the time of the Imperial British East Africa Company, the officers bartered a piece of

cloth and a string of beads for ivory, and even now the civilized nations are bartering certain commodities like coffee for aeroplanes. There is nothing inherently wrong in the system of bartering that we should need legislation to stop it. In my opinion even without the aid of this legislation it is possible for Government to take administrative action to stop the system of bartering.

Coming to the second point that a fair market price should be paid to the natives. This bogey has been exposed time after time by us. A properly authenticated case cannot have been presented to Government. Any one who wishes to inquire can go and find out for himself all the facts, but still that bogey persists because that is the only weapon with which traders can be discredited. At one time, under Government instructions, on the complaints of the interested parties, the then Director of Agriculture, Mr. Holm, made an inquiry into the question and he made a statement to the effect that he assured the Government that there was no such question as the native not being paid a fair price for his produce. This statement has more than once been confirmed by the administrative officers who have knowledge of this question. They have said that at any given trading centre the competition was sufficient to ensure a fair market price being offered—in fact the competition was so keen that the tendency was for prices to be greater than the market conditions justified. Some people without going into the question, assume that there must be something wrong when traders offer a price higher than market conditions justify, and they run to the conclusion that they should be making up the loss in trade goods. That is an argument which is advanced by people who do not understand this class of trade. The reason why many times a trader is in a position to offer better prices is because he might have sold that article forward at a better price. On the other hand, it should also be remembered that to-day the business in these areas is carried on of buying and selling together and the overhead is therefore combined, and a lower overhead as a result of that system enables the trader to pay a better price than another man would be prepared to pay if the buying function was performed separately. That very thing which is the result of that combined overhead is being disturbed by this Bill. It is intended that these functions should be separate and it is therefore natural that the moment this is done the price returned to the natives is bound to be lower than what they are getting to-day. It will not confer any benefit in regard to price.

In regard to the question of fair price even as a result of the system which is likely to be introduced by this measure, I am in a position to prove that the price return could not

be more than what is paid to-day. The Chief Native Commissioner of Tanganyika mentioned once that it was doubtful if in general any considerable increase of price could be secured to the producers by marketing systems and he thought that there was little substance in the often expressed belief that middle men make very large profits. This should prove, if any proof is needed, that the legislation would not secure any increased price return to natives, whereas I have already shown that as a result of this Bill they are going to receive a lower price in future.

Coming to the next point that this Bill is necessary to stop cheating in weights. I should like to say this, Sir, that we have not found in this country very many instances in which this cheating is reported. I am entirely against any sort of that system creeping into this country, but in my submission it is not necessary to have this sort of measure of which people are afraid to achieve that purpose which could be achieved by the legislation which we have to-day, that is, the Weights and Measures Ordinance, a little tightening of which would be sufficient.

I now come to the most important point which has been made in regard to this Bill that it is necessary to improve the quality of the produce. It has been contended that the traders mix up the qualities and thus retard the progressive export trade in various articles. We have always contended this to be a bogey which was not founded on facts and as a result of experience in this country I am glad that I am in a position to-day to establish and substantiate my facts that not only has the small trader not been backward and unprogressive, but that he has proved to be actually the real force in regard to the improvement of the quality of native produce in this country. I should like the House to note that this was done without this legislation and it was due to the spirit of co-operation which has been evidenced by the Indian traders and I should like any of the Government officers to dispute that statement. The hon. the Director of Agriculture has been only very recently to Nyanza Province and I think it would be right that he should give us the benefit of his views on the conditions he found there in that province, about co-operation and a good deal of voluntary co-operation in regard to this particular object. I do not take any particular credit for this spirit of co-operation, and I mention this in order to show that we ourselves recognize that if we do want to prove our sincerity of purpose for progress in this country and if we do want to prove that we wish to be with the Government in regard to the improvement of the quality of produce, then it is up to us to satisfy the Government that it is not necessary for this legislation to be forced to achieve that purpose.

I have, Sir, travelled a good deal in the native reserves since 1932. I made a special study of this subject and I visited almost every trading centre and market in the native reserves of Nyanza, of the Central Province and other territories, and as a result thereof I can claim first hand information just as much as anyone in this House can claim. There is no doubt that it will be admitted by the Government that the Indians have given the fullest co-operation in regard to this question. They have gone to the extent of keeping special machines to clean the produce and to pack it in new bags in a proper manner. In order to bring home to the suppliers the responsibility of the quality of the produce, it has been voluntarily agreed or even under rules by the traders to pack the produce with a mark, so that if you found a bag with that mark not equal to standard you could bring home the responsibility of the quality of that produce. All that has been achieved by the voluntary co-operation of the Indian traders in this matter. The Chief Native Commissioner while admitting this yesterday said that there is still a long way to go to put it on a sound basis. The question I should like to ask is whether there should be any question to go that way in the manner in which we have been going up to now. Why should it be necessary, after having been successful in achieving that object in the manner in which we have, to impose this legislation on the people who are prepared to co-operate? I should have thought that the Government would consider it of greater value to obtain the co-operation of the people concerned in preference to doing it by force of law.

Now, Sir, it has been claimed that this system is going to reduce the cost of transport. If the native produce can bear the cost, it is usual, as in the case in regard to cotton in Uganda, for it to be transported from the home of the native to the market by motor lorry. If it is not possible, as in the case of food stuffs like groundnuts, then I submit, Sir, that this system would go against the principle of accumulating produce in markets because the natives would not like to walk about ten miles with a load on the head and the result of such concentration would be to stop the native marketing their foodstuffs and to concentrate on something else. Therefore I do not consider, Sir, that this system can lead to any sort of reduction in the cost of transport as at present. On the other hand, from the experience which I have had and the instances which have been quoted to me in Tanganyika, I was quite satisfied that it will increase the cost of transport.

There is another argument which has not been advanced by the Government officers, but with which I have often been faced, and which has been repeated to me hundreds of times in Uganda and Tanganyika, that the most important reason for controlled markets, is that the Government would

be able to collect the hut and poll tax much more easily than they could otherwise. What is necessary is only for the headman to stand at the gates of the market and no one can enter unless he goes through that gate and when he comes out the money is to be taken against his hut and poll tax. I have no authentic information from the Government that this is their intention and I am not going to impute that intention to this Government, but I just mention it as one of the ways in which it could be abused and if it can be abused in that way it will obstruct the very purpose of the legislation. The natives would not come and the result would be instead of encouraging production and instead of encouraging exports, they will go down.

I should like to deal briefly with one or two arguments advanced by the former Secretary of State, Sir Philip Cunliffe-Lister, during his stay in this country. I want to speak on this with the greatest respect and with restraint, but it would not be fair for me to allow this opportunity to pass without dealing with those arguments. In an interview with the Indian Elected Members, which was reported in the Press, the Secretary of State discussed this question quite frankly and the summary of his arguments in favour of this legislation was :—

- (1) That he regarded it as absolutely vital that the primary producer, be he native, Indian or European, should receive the best possible price for the product he produces.
- (2) That he was pursuing in the Colonial Empire the policy which the British Government had decided to pursue at home in relation to their own farmers.
- (3) That by organized marketing the purchasing power of the producers would be increased and it was really in the interests of the traders.

Dealing with the first argument that the producer should receive the best possible price, I do not think there are two opinions on that question. I have already dealt with it at length when I discussed the question of a fair price and I am quite sure I have proved that as far as that point is concerned the producers to-day are getting the best possible price they could get. As far as I am concerned, therefore, that point has already been replied to.

But the second point which has been made is that organized marketing is based on the policy which is being pursued at home in relation to home farmers. This is an abstract principle of organized marketing. That abstract principle may be quite sound and I do not wish to under-rate the importance of that principle which is derived usually from accumulated wisdom and experience of people, and used for guidance

over dark and difficult grounds may prove to be of inestimable value. But no one has ever argued that mere abstract principle should guide us without reference to circumstances. However desirable this particular marketing system may be at home, its adaptability and usefulness in the atmosphere in which it is to be applied and to the people to whom it is to be applied should be carefully considered and weighed. This reminds me of an incident which happened when Mr. Lloyd George was the Prime Minister of England. He asked his physician, Lord Dawson of Penn, as to what would be the medicine he would prescribe if he was limited to only one. The immediate reply came "Opium". Now, Sir, a very great physician having said that and a man in the street having heard it, if he ran to his chemist and asked for this medicine to apply it to all sorts of ailments from which he might be suffering, we know what we should call him, and we also know what the chemist would call him, and if he is able to obtain it we also know what the result would be. That is an instance. At home perhaps it might be a good thing, but under the circumstances in which we find ourselves in this country and the class of people with which we are concerned in regard to these products, I must submit that it is absolutely not suited here. If, as it is claimed it does wonderful work at home, I cannot imagine why it has not been applied in the first instance to the European agriculturists; they have been definitely debarred from the benefit which is going to accrue to the native producers as a result of this Bill. I should have imagined it would be the first thing which anyone would do because of the similarity of temperament and circumstances and things of that kind, for it to have been applied to the European agriculturists, and make them take their loads of wheat to the market established in the middle of the "blue", let them sell it in that particular market only and nowhere else and let this House pass such legislation and I should like to see the result of such legislation. In my opinion, therefore, it is not suited to this country and that it should not therefore be inflicted on us.

Dealing with the third point that by organized marketing the purchasing power of the producers would be increased and that it was really in the interests of the trader, I have already shown that as a result of this Bill the purchasing power of the natives would be decreased instead of increased and I am surprised at the very strange definition which is advanced by the Secretary of State when he said that "the primary object of the trader is to trade—to sell to others". I consider it very strange because I ask: let us imagine a doctor being told that he would be allowed to treat malaria and not pneumonia; let us imagine what an eye specialist would say if we told him that he would be allowed to operate on the right eye and

not on the left eye; let us imagine it reported to the lawyers that they will be allowed to appear in criminal cases but not in civil cases. Now, Sir, in fact that is exactly the proposal before this House. If such a proposal as the instances I have quoted were brought in, I am quite sure the House would laugh at it. But we are seriously here to-day, if we analyse it properly, considering the passing of legislation in which a trader is defined as having to sell, and I submit, Sir, that a trader has got to buy and sell. As a doctor will treat with different medicines all sorts of ailments, so a trader has got to have the option of buying and selling. In this regard we have here in this country a precedent by which I am guided.

It is well known that at home we have the branches of work of solicitor and advocate. A solicitor at home is not allowed to appear before a court to plead a case and the advocate at home is not allowed to perform the solicitor's work. What do we find in this country? We find that we allow these two branches of a profession to work for both things. In the courts in this country, a solicitor can appear as an advocate and an advocate can work on the table as a solicitor. Why is this so in this country? What is the reason for it? Because we find that there is not enough work for the two branches if they are separate. That is one instance in which the circumstances of the country have been taken into consideration and I ask the same question, Sir, as to why in this country it should be necessary for a trader to limit himself to selling? What would be the result in the native areas in which the trader is carrying on his trade to-day? Because of his facility to perform the dual functions of buying and selling, he is able to make a living. He pays a high price to the natives for their produce and sells them trade goods at a lower price. But as a result of this Bill if we made these two functions separate, as a result of increased overheads the natives would get the trade goods at a higher price which he cannot afford to pay and he would get a lower price for his produce.

Now, Sir, is there any necessity—as I stated in the case of the solicitors—for these functions to be separated? Do we gain anything by it?

Coming to the visit of the Secretary of State for the Colonies to this country, I should like to quote the words in which he expressed himself on this issue in an interview with the European Elected Members, which was published in the Press :

“It is essential in the interests of the native producer that he should get the best price and that he should produce of the best quality, and I am sure that can only

be done by organized production and marketing and, incidentally, it makes it very much easier to get an effective co-operation between the settlers and the natives."

In those words we have the confirmation of our feelings that all this time the insistence of Government on this measure, based on such unsound and flimsy grounds, is due to the desire to create conditions in which in their commercial dealings with the natives the European settlers should get an effective co-operation with the natives. That seems to be the real intention behind the pressure that is being exercised to pass this Bill. This is my reply to hon. members who state that it is not intended to create any differentiation and racial hardship.

That being clear, no further arguments are necessary, I believe, to show the serious consequences of this legislation to the long established settlement of Indians and their trade rights. The real purpose of the Bill is made so very clear by the Secretary of State, rather inadvertently perhaps, but that I do not intend to enlarge upon. I hope, however, that it will provide very good food for thought for those who do not agree with us in our fears that this Bill is fraught with far-reaching consequences and danger to the laboriously built up economic position of the Indians in this country.

With regard to the restriction of licences, the effect would be undesirable but limited if it were brought into practice. But the principle of exclusive licences is fraught with such a danger to the small men in this country that even if such a licence were issued to an Indian it would make no difference to the opposition we are putting up to the Bill. These licences would displace the smaller men and stop them from trading in particular districts. Coming to the question of exclusive licences or monopolies, which is one of the most objectionable features that I find in this legislation, I should like in the first instance to say that this principle is against the common law of England, and it has a great and interesting history behind it.

Even in the time of Manu, the lawgiver in India, this principle of monopoly or exclusive licence has been considered objectionable. In ancient Greece we find exactly the same principle recognized, that is, opposition to the principle of monopoly. In England, the first case appeared in the time of Edward III, and in the time of the Tudor monarchs monopolies were always resented by Parliament. They maintained that a monopoly was against the spirit of the Magna Charta and against the ancient and fundamental laws of the realm and the liberties of the subjects. It would be interesting to know if the arguments advanced since the time of Queen Elizabeth in favour of such monopolies are the same as those

advanced to-day. The argument in those days was that a monopoly was in the public interests; it was opposed by Parliament in the public interests. This Bill is being brought forward to-day with that clause in the public interest, and I am opposing it in the public interest. That is the history, but as a result of the conflicts at various epochs in English history the doctrine that monopolies were against the common law emerged. We base our law on the English model, and surely the principle of the English common law has always been that every individual is free to earn a living by lawful employment, for which purpose he must be left free.

This sentiment and the cardinal principle of the English common law has recently been voiced by Mr. Huggins, Prime Minister of Southern Rhodesia, in a speech at the East African dinner, reported a few days ago. He said :

“And I think to-day that probably one of the chief functions of any Government is to see how it can arrange its affairs so that every citizen who is sane and not a rogue has a chance of earning a decent living.”

The principle is violated by this Bill, because exclusive licences are to be issued, and they will deprive honest citizens not only of earning a decent living but even from earning their daily bread.

It has also been recognized that competition in commerce is very necessary; it is the life blood of commerce. This principle of exclusive licences takes away that very right principle which has been practised from immemorial times.

It has also been laid down that anything which fetters and deprives the people or the traders from free competition is void in common law. A system of monopoly in a country of mixed races has got to be very minutely looked into, for it is very difficult to administer impartially. While admitting the bona fides of hon. members in regard to the intentions of the present Government that this Bill would not be administered in a racial spirit, I do not think that that assurance could extend to the future in perpetuity. What we are afraid of in a country like this by the acceptance of that principle of monopolies, is that it is possible, when we work with human nature, for that principle to be abused in the future. Because of that we are opposed to this principle.

It is not only the Indian opinion which is against this principle of monopoly or exclusive licences, for here is a quotation from the memorandum of the Mombasa Chamber of Commerce which was submitted to the Government in 1933 :

“Your committee think that no legislation designed to create monopolies or any restriction of licence should be considered at the present stage.”

The people in London, the moment they find the price is going down, cut their losses, and in this instance what would happen? The holder of the exclusive licence in this country will make the same profit whether he has sold forward or not. That is one instance of what is likely to happen as a result of this Bill, and the natives would not get a reasonable price which they ought to have got under other circumstances.

These objections are based on experience, but, coming even to Africans, what do we find as regards this provision for monopoly? That even the Africans have registered their opposition to the monopoly system. In a memorandum submitted by the Buganda Native Association to Sir Philip Cunliffe-Lister when he visited Uganda, they say :

“And we do not think that monopolies are good for the country or an encouragement to its agricultural progress.”

There is surprising unanimity as regards the opposition to the dangerous principle of exclusive licences from European and Indian commercial communities, and educated Africans; and in my view, therefore, the clauses dealing with this feature of the Bill should be eliminated.

I should like to say a few words in regard to the experiences which we have had in Tanganyika. This Bill has been framed on the Tanganyika legislation, and it is assumed or contended that that has met with success in that country. If, as we wanted, a committee of inquiry had been appointed to go to Tanganyika and find out the facts for themselves, I am quite sure that the result would have been surprising. However, we have recently had an independent inquiry made into this question by the Government of India. They sent out one of their ablest and trusted officers to inquire into the working of marketing legislation in Uganda and Tanganyika, with special reference to its probable effects on Kenya. The Indian Government sent Mr. Menon, who in the course of his inquiry had access to both sides of the question. His report has not been published, and we do not know what he has written, but he had access to the official documents and other matters in regard to this marketing legislation. At the same time representations were made to him by the Indians who were interested in the question. I do not know what his conclusions are, but as far as I can imagine, from the experience which I have had of this legislation, no independent man would come to any other conclusion except that the marketing system has failed in its objective in Tanganyika, that the prices returned to the natives have not improved, that it has benefited in no way the native producers, and that to a great extent it has proved harmful to Indian interests and is disliked by everybody.

In October, 1934, I made a tour through the Lake Province of Tanganyika to study this question. I went by car from Musoma to Mwanza, visiting every small trading centre, speaking to merchants themselves, and I spoke to the ordinary natives. Throughout that tour I met a desolate sight. This is the province in which it is claimed this legislation has been a success. We met with this desolate sight: the traders were downhearted; many had vacated their stores and gone away; out of fifteen shops in one centre there were not more than two open. One might say that that could not possibly be entirely due to this legislation. I am absolutely convinced that it is largely due to that measure that such a result had occurred in that province. If it were not so, the depression was equally as bad for Kenya and Uganda, but we never found in any centre in Kenya the sight that we saw in Tanganyika. I speak with full responsibility, I have seen it with my own eyes, and I challenge any Government officer to prove otherwise. We never met that sight in Kenya, we never met it in Uganda, but where the legislation is claimed to be a success the trading centres have been completely ruined.

Is that not a reason why we should be afraid of legislation of this type being introduced into this country? Are we supposed only to rely on the Government benches and take for gospel truth whatever they say? or are we supposed to exercise our own judgment, our own mind, and see for ourselves what has been the result of this legislation?

There is no exaggeration in what I am saying this morning, that the legislation has practically ruined the trading centres in that part of Tanganyika. And what I am saying is not merely hearsay.

There the legislation has been consistently opposed not only by the Indians but by the Europeans, and I should like to quote from a memorandum submitted to Sir Philip Cunliffe-Lister when he last visited the country. The Mwanza Chamber of Commerce, which is composed of Europeans and Indians, expressed this view on the question of marketing:

"The new system has resulted in increasing the operating cost of buying the native produce, in encouraging the undesirable competition at the hands of people from outside coming over here temporarily with the bona fide residents of the territory on an uneconomic level, and in rendering the properties valueless.

This Chamber therefore urges the abandoning of the new system the experiments of which have, in the opinion of this chamber proved entirely unsatisfactory, and to adopt the former system which the Chamber considers as most suitable and economic one of marketing the native produce.

The present system further compels the grower to walk long distances to sell his produce which the Chamber submits is not in the interests of the native production at a time when prices of commodities are on a very low level."

That is European and Indian commercial opinion in Tanganyika where it is claimed to be a success. Coming to Indian commercial opinion, only a few months ago a commercial conference at Tabora expressed its view in regard to marketing and made these points :

"That the overhead charges of the buyers had increased which resulted in lower price return to natives.

That buyers have been involved in uneconomic expenditure in transport to and from the markets.

That the value of existing properties in trading settlements have considerably fallen due to this system.

They therefore considered that incalculable disadvantages have resulted from the marketing legislation and urged upon the Government to abolish the system."

With regard to the point concerning transport, experience has shown that increased transport costs have resulted from this system.

Even after the introduction of this legislation over three years ago, every year it is consistently opposed. I cannot imagine why we in this country should try to implement what has proved to be a failure in other countries! I should certainly have thought that we should not be well advised to adopt this legislation at this stage. We should profit by the experience which has been gained in regard to this legislation in other territories, and that we should rather stick to our own system, which is to maintain continued progress in regard to improving the quality of native produce by the voluntary co-operation that we fortunately have in this country.

It is said, and the hon. the Colonial Secretary mentioned it this morning, that the passing of this Bill is not necessarily the final word. It will be reviewed by the Secretary of State for the Colonies with the suggestions made in this House. I thank him for that assurance. But, as far as this House is concerned, once we pass the Bill it is left to the discretion of Government as to how it will be administered. I am not going to say that that discretion will be abused. I know we meet with sympathy generally from the Government officers. But my point of view is this—that it can be abused. Here is an instance which I am going to quote in regard to this particular question.

At Machakos, which is only forty miles from the capital, although there is no provision in law for holding auction sales of hides, such sales have already been held there. In that particular district the discretion of the officer outran the provisions of the law, and as a result of that, even without the force of legislation, I submit, the system of auctions was maintained for a certain time. That is one instance of grave injustice and hardship which would be created as a result of that discretion in the hands of Government. And what is there to prevent the ordinary administrative officer, under the plea of supporting or serving the native interests, inflicting undue hardship to Indian traders in the administration of this law?

So far as amendments are concerned, I should like to gratefully acknowledge those which have been published as the result of representations from our side of the House, but even those do not meet with the requirements of the situation. I desire to have two amendments made in this Bill: one in regard to exclusive licences and the other in regard to the establishment of markets; I should like to see clauses 5 to 11 deleted.

Although it has been maintained and suggested by the hon. and learned Attorney General that a resolution in this House in regard to exclusive licences would be sufficient, apart from the opportunity that would give to discuss the principle as to whether a certain article should be subject to restriction, it would not give us any opportunity of amending the procedure or issue of such a licence, which is very vital and important from our point of view. If by force of circumstances we lose in the struggle and the Bill is inflicted on us, if these clauses are retained they are of a permanent nature and the procedure remains. But if the principle is accepted that every time there is need of issuing an exclusive licence a separate Bill is brought in, it gives us every time an opportunity of improving the procedure and bringing out facts gained from past experience.

But what will happen if this amendment is the only thing likely to be carried? They would allow us to discuss the principle as to whether such and such an article should be subjected to an exclusive licence or not, but the procedure would remain the same as is contained in this Bill.

At the proper stage I am going to move amendments in regard to the change in procedure. If the principle of exclusive licences is accepted, I shall certainly try to amend the Bill by inserting a clause dealing with the system of issuing such licences after they have been publicly auctioned. On the question of the establishment of markets, the hon. the Chief Native Commissioner gave us the assurance that trading



centres generally will be declared markets under this Ordinance. This is a very vital and important point which affects us, and I should like Government to be generous and realize our difficulties and to allay our suspicions and fears by a generous gesture of their goodwill. We are only asking in this instance that all trading centres shall automatically be declared as markets under the Ordinance. In addition to this, as Government will find it necessary sometimes to declare a certain place in a native reserve as a market, this provision is likely to be very dangerous if it is not properly and reasonably applied, and it will nullify the utility and value of any trading centre. In view of that, I should also like to have an amendment that ten miles should be the minimum distance between any market established from a trading centre, so that it would give a five miles radius to the market and the people concerned.

I hope, Sir, to bring these amendments to the Select Committee, and I am sure the members will extend their sympathetic consideration to those points of view.

I shall, Sir, take another quarter or half an hour in concluding my speech, and it is now one o'clock.

HIS EXCELLENCY: I think Council had better adjourn now and resume the debate on Monday.

The debate was adjourned.

*Council adjourned until 10 a.m. on Monday,
8th July, 1935.*

MONDAY, 8th JULY, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, the 8th July, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 3rd July, 1935, were confirmed.

PAPERS LAID ON THE TABLE.

BY THE HON. THE ACTING COLONIAL SECRETARY :

Annual Report of the Registrar General, 1934.

Report of the Standing Finance Committee on Schedules of Additional Provision Nos. 4 and 5 of 1934 and No. 1 of 1935.

BY THE HON. THE ATTORNEY GENERAL :

Report of the Select Committee appointed to consider and report on the provisions of the Criminal Procedure (Amendment) Bill.

Report of the Select Committee appointed to consider and report on the provisions of the Penal Code (Amendment) Bill.

BY THE HON. THE DIRECTOR OF AGRICULTURE :

Report of the Select Committee appointed to consider and report on the provisions of the Sale of Pyrethrum Bill.

Report of the Select Committee appointed to consider and report on the provisions of the Coir Fibre Industry Bill.

BY THE HON. THE COMMISSIONER OF CUSTOMS :

Report of the Select Committee appointed to consider and report on the provisions of the Excise Duties Bill.

NOTICE OF MOTIONS.

The following notices of motion were given :

By THE HON. THE ACTING COLONIAL SECRETARY :

That the Report of the Standing Finance Committee on Schedules of Additional Provision Nos. 4 and 5 of 1934 and No. 1 of 1935 be adopted.

By THE HON. THE ATTORNEY GENERAL :

That the Report of the Select Committee appointed to consider and report on the provisions of the Criminal Procedure (Amendment) Bill be adopted.

That the Report of the Select Committee appointed to consider and report on the provisions of the Penal Code (Amendment) Bill be adopted.

By THE HON. THE DIRECTOR OF AGRICULTURE :

That the Report of the Select Committee appointed to consider and report on the provisions of the Sale of Pyrethrum Bill be adopted.

That the Report of the Select Committee appointed to consider and report on the provisions of the Coir Fibre Industry Bill be adopted.

By THE HON. THE COMMISSIONER OF CUSTOMS :

That the Report of the Select Committee appointed to consider and report on the provisions of the Excise Duties (Amendment) Bill be adopted.

By LT.-COL. THE HON. J. G. KIRKWOOD :

Be it resolved that this Council sympathises with the Agricultural producers in their protest against the increased price of power kerosene and urges Government to consider sympathetically the granting of a rebate on power kerosene used for the transport of agricultural produce.

ORAL ANSWERS TO QUESTIONS.

THE POWYS CASE.

No. 14.—LT.-COL. THE HON. LORD FRANCIS SCOTT asked :

“(1) What is the number of murders by spear that have taken place in the Laikipia and North Nyeri districts during the years 1928–34?

(2) How many prosecutions have been instituted and how many convictions obtained?

(3) Is Government aware that in the opinion of the public the insubordination of the Samburu tribe is due to maladministration and, further, that the attitude of the District Commissioner, Mr. Cornell, has been instrumental in obstructing the course of justice and the punishment of crime? If so, what disciplinary action has been, or is to be, taken?

(4) Is Government aware that at the time of the prosecution of Kibarengi for making false statements in regard to the death of Mr. Powys, the Police had already received statements from two Samburu largely corroborating that of Kibarengi and that these statements were not produced before the magistrate trying the case and that neither of the Samburu in question was called to give evidence?

(5) Is Government aware that the prestige of the witch doctor in the eyes of the Samburu and neighbouring natives has been dangerously enhanced at the expense of Government by the failure of the prosecution in the Powys case?

(6) Is Government satisfied that the prosecution in the above case was conducted in a competent manner and that full use was made of all the available evidence? If not, will the Attorney General in future take steps to see that the conduct of such prosecutions will be entrusted to counsel of adequate experience and ability?

(7) In view of the bad state of the Samburu tribe during that period, will Government institute a full inquiry into the administration of the tribe during the years 1930-33 and all circumstances in connection therewith?"

THE HON. THE ATTORNEY GENERAL: Before replying to the specific questions asked by the hon. member, I would refer him to the papers regarding the death of Mr. T. L. Powys laid on the table during this session.

The replies are as follows:—

(1) The number of murders by spear that have taken place in the Laikipia and North Nyeri districts during the years 1928-34 are thirty-three.

(2) The number of prosecutions that have been instituted is eighteen. The number of convictions obtained is six. Three of the convictions recorded were in respect of one murder. The figures have been obtained by telegram and are subject to confirmation.

(3) The answer to the first part of this question is in the negative. The second part of the question does not therefore arise.

(4) Government has caused inquiries to be instituted into the allegations that statements had been made by certain Samburu substantiating information relating to the death of Mr. Powys furnished by Kiberenge. Confirmation has not been found of the allegations that statements were made to the Police by those Samburu disclosing personal knowledge of circumstances connected with the death of Mr. Powys. Further, the Samburu in question, on interrogation by a police officer, on the 14th of December, 1931, before the prosecution of Kiberenge in 1932, denied any such knowledge. They have recently been traced and re-questioned on this point and again denied any knowledge of facts corroborating the statements of Kiberenge, or that they have ever made any statements to the Police to that effect.

(5) Government is not aware that the prestige of the Laibon, Ole Odume, to whom it is presumed reference is made, has been dangerously enhanced in the eyes of the Samburu and neighbouring natives at the expense of Government by the failure of the prosecution in the Powys case. The Laibon was deported to Kwale in the Coast Province on the 15th of February, 1934.

(6) The answer to the first part of this question is in the affirmative. The second part of the question does not therefore arise.

(7) Government is not of the opinion that any useful purpose would be served by the institution of an inquiry into the administration of the Samburu tribe during the years 1930-33.

During 1934 the following punishments and restrictions, *inter alia*, have been placed upon the Samburu tribe:—

- (a) A collective fine of £900 has been imposed and collected.
- (b) Special police have been stationed in that area at the expense of the Samburu.
- (c) A new administrative station has been erected at Maralal.
- (d) The Moran have been disarmed, and Ole Odume, a Laibon, has been deported to the Coast.

The position at the moment is considered to be satisfactory.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, in view of the fact, the disquieting fact, disclosed that out of thirty-three murders in only four cases have convictions been obtained, I give notice that I shall move a motion later in the session on this question.

KENYA LAND COMMISSION RECOMMENDATIONS.

No. 20.—MAJOR THE HON. F. W. CAVENDISH-BENTINCK asked :

“Whether Government can give any information as to what steps have been taken to impiement the recommendations of the Kenya Land Commission contained in paragraphs 1441, 1449, 1469, and 1979 of the Report which can be summarized as advocating that the boundaries of the White Highlands be safeguarded and declared by Order in Council?

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: The memorandum presented to Government by the European Elected Members and this Government's views thereon have been forwarded to the Secretary of State for his consideration.

KENYA LAND COMMISSION RECOMMENDATIONS.

No. 22.—MAJOR THE HON. F. W. CAVENDISH-BENTINCK asked :

“What steps have Government taken in connection with the recommendations of the Kenya Land Commission Report to render section 31 of the Crown Lands Ordinance, 1902, and section 86 of the Crown Lands Ordinance, 1915, inoperative both in existing and future leases?”

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Provision for carrying out this recommendation in the Kenya Land Commission Report has been made in the draft of a new Native Lands Trust Bill which has been forwarded to the Secretary of State for his consideration.

THE HON. CONWAY HARVEY: Arising out of that, Sir, if answers are not forthcoming in a reasonable time from the Secretary of State, in view of the very great importance of the matter will Government endeavour to secure speedy replies?

KENYA LAND COMMISSION RECOMMENDATIONS.

No. 23.—MAJOR THE HON. F. W. CAVENDISH-BENTINCK asked :

“Whether any steps have been taken to appoint the Committee referred to in section 2040 of the Report of the Kenya Land Commission?”

THE HON. THE ACTING COLONIAL SECRETARY: The recommendation of the Kenya Land Commission in paragraph 2040 of the Report for the appointment of a

Committee to examine the question of overstocking in native reserves has received the careful consideration of Government, and in view of the exhaustive examination which this problem has received in recent years, and of the comprehensive accumulation of data which has resulted from such examination, and of the fact that the Provincial Commissioners in conference are in effect a permanent committee for the consideration of this problem, it has been decided that no useful purpose would be served by the appointment of a further committee at the present time.

Government is fully alive to the urgency of the problem and holds the view that the first step towards its solution must be the provision of means for absorbing part, at least, of the surplus stock from the reserves, and with this object in view (a) an application has been made for a grant from the Colonial Development Fund for the erection of a by-products factory which would absorb 10,000 animals per annum, and (b) the possibility of developing an export trade in frozen meat to West Africa and Palestine is under active investigation.

KENYA LAND COMMISSION RECOMMENDATIONS.

No. 38.—VEN. ARCHDEACON THE HON. G. BURNS asked :

“Will the Government please give some guarantee that in carrying out the findings and recommendations of the Carter Land Commission consideration will be given to the needs of some 550 landless Wanderobo living in the Kiambu and Dagoretti sections of the Kikuyu Reserve?”

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT : The Kenya Land Commission recommended that, in addition to the areas to be added to the Kikuyu Native Reserve as compensation for land lost and for disturbance, a further area of 1,000 acres should be added so that the Kikuyu tribe might accommodate certain Dorobo now living in forests near the tribal borders. The Commission further recommended that the Dorobo should not be bound to occupy this block, but that the administration should charge itself with the duty of finding places for them in the reserve.

The question of accommodating the natives in the areas to be added to the Kikuyu Reserve, is now occupying the attention of the administration, and the requirements of the Dorobo will be given every consideration.

VEN. ARCHDEACON THE HON. G. BURNS : Arising out of that answer, Your Excellency, may I ask that a decision on this settlement be not left entirely in the hands of interested parties?

KENYA LAND COMMISSION RECOMMENDATIONS.

No. 39.—VEN. ARCHDEACON THE HON. G. BURNS asked :

“With regard to the natives who are to be removed from the Tigoni Location, what steps are Government taking to ensure that a convenient and plentiful water supply for people and cattle is ensured before the move is made?”

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT LANDS AND SETTLEMENT : Certain modifications in the details of the Commission's recommendation regarding the areas of land to which the Tigoni natives should be moved, are under consideration by Government, and the question of water facilities is one of the points to which attention is being given.

BILL.

SECOND READING.

MARKETING OF NATIVE PRODUCE BILL.

THE ATTORNEY GENERAL having moved that the Marketing of Native Produce Bill be read a second time.

THE HON. THE ACTING CHIEF NATIVE COMMISSIONER having seconded.

The debate having been adjourned.

The debate was resumed.

(Messrs. Isher Dass, Mangat and Shamsud-Deen and Dr. de Souza withdrew from the Council Chamber).

THE HON. J. B. PANDYA : Your Excellency, I have dealt with the arguments advanced by the supporters of this Bill, and I have also dealt with the potential dangers to native interests as the result of this Bill. I have dealt, too, with the experience gained from the working of similar legislation in Uganda and Tanganyika, where it is opposed by all sections of the community—Europeans, the Indian commercial interests and the natives.

I should like to emphasize one point, that the demonstration of the failure of this legislation in Tanganyika is proved by the fact that natives, when the markets are open for the sale of native produce in the beginning of the season, bring in only small quantities. When the Government consider that the season is practically over the natives are allowed to sell their produce to the trading centres. When that time arrives, the natives go to the trading centres with large quantities because in view of the restrictions imposed at these established markets and the low prices obtained therein as a result of that legislation they would willingly, if they could possibly afford

to do so, keep their produce back to await the opportunity of getting better prices by selling at the trading centres.

It is an open secret—nobody can deny it—that the natives do not like this legislation, and they have not in three years taken full advantage of it. But the real danger, as far as the application of this legislation to Kenya is concerned, is in regard to the clauses of this Bill which, like a magician's wand, are presumed capable of producing various unknown, unimagined, and unimaginable results. As an instance, though it is claimed that this Bill will only be applicable to the export crops, it is actually being applied in the neighbouring territories to the food crops such as simsim and groundnuts. It has been used for encouraging as well as checking over-production. The issue of exclusive licences under this Bill is intended for new articles and crops, but in actual practice in the neighbouring territories it has been used in respect of old-established crops such as groundnuts. Moreover, the Bill is intended to secure high prices to the natives, but instead it is actually being used in the other territories to accustom natives to a low price level. As an instance, in Uganda tobacco leaf is now controlled by Government at the selling price of 20 cents a pound; without that restriction it could easily sell at 60 cents a pound in the local market.

These are some of the potential dangers of this Bill, and because of that we are opposed to its introduction in this country. In this House, I belong to that section of the members who are in a minority, but I take courage from what the former Secretary of State said in regard to this question. In the course of an interview with the Indian elected members, he is reported to have said :

“I am not impressed by mere numbers. What I am impressed by and what I am perfectly certain carries weight with His Excellency and with the officers of Government here, is the reasonableness of the claim which is put forward and the lucidity with which it is expressed.”

That shows that we are not at a disadvantage in this House by the fact of small numbers, and I am sure—and I say it with all humility—that I have tried to prove the reasonableness of the claim which I have made, and our viewpoint has been expressed very lucidly. In addition, I do appeal for sympathy from the unofficial European members on this side of the House. I do appeal to them that they should investigate this question from a broader viewpoint, whatever the differences in the temperament of Europeans and Indians may be, and whatever their differences are in regard to various questions. This measure particularly does not affect the European interests. Would it be unreasonable for me to appeal to them not to rush to conclusions, and to give this

measure their unbiassed and impartial consideration and attention? They have had experience of this kind of measure when it affects them. May I request them to picture themselves in the position in which we find ourselves to-day? If their interests were threatened in the manner in which our interests are threatened to-day, I am sure they would do their utmost to oppose this Bill and have it turned down. They would leave no stone unturned to defeat this Bill. We are not in a position of such influence, and we are not in such a powerful position. Even in this issue, if the European elected members on this side of the House were with us, we are not in a position to defeat this Bill. I would remind them of a wise saying, that those who cast their lot together can only progress by mutual goodwill, forbearance, and co-operation. The Indian population is a permanent part of the population of this country. The sympathy of the European elected members with us might not be sufficient to defeat this Bill, but it would certainly be of very great importance in lessening the harshness of a Bill like this and in persuading Government and the Secretary of State to accept amendments—it would carry a good deal of weight outside also. In appealing to those unofficial members, I may make bold to quote the Rt. Hon. Mr. Sastri, who, on one occasion of this nature, said :

“Within the ambit of the British constitution and British institutions the Parliament is there not only to make Government from time to time but to keep the Government up to its mark. It is there for anybody to find his voice and to speak out the minds and wishes of any fraction of the population however small. In fact the smaller the section represented by a particular member, I know in chivalrous parliaments, the greater the attention paid to him when he appeals.”

In this House I belong to that small section of members, and I do hope that this appeal of mine will not fall on deaf ears.

On the subject of consideration of a claim by the politicians, opinion is divided, and Mr. Sastri—who has had very great experience of British politicians and statesmen, and whose knowledge of British institutions could hardly be surpassed by anyone—once describing the politicians' habits in England, said :

“The habit of politicians in England is to judge the urgency of a matter by the noise it has made, and by the earnestness of the men that champion it. In this struggle for attention it has often happened that a movement wins on account of the trouble it has caused the Administration

measure their unbiassed and impartial consideration and attention? They have had experience of this kind of measure when it affects them. May I request them to picture themselves in the position in which we find ourselves to-day? If their interests were threatened in the manner in which our interests are threatened to-day, I am sure they would do their utmost to oppose this Bill and have it turned down. They would leave no stone unturned to defeat this Bill. We are not in a position of such influence, and we are not in such a powerful position. Even in this issue, if the European elected members on this side of the House were with us, we are not in a position to defeat this Bill. I would remind them of a wise saying, that those who cast their lot together can only progress by mutual goodwill, forbearance, and co-operation. The Indian population is a permanent part of the population of this country. The sympathy of the European elected members with us might not be sufficient to defeat this Bill, but it would certainly be of very great importance in lessening the harshness of a Bill like this and in persuading Government and the Secretary of State to accept amendments—it would carry a good deal of weight outside also. In appealing to those unofficial members, I may make bold to quote the Rt. Hon. Mr. Sastri, who, on one occasion of this nature, said :

“Within the ambit of the British constitution and British institutions the Parliament is there not only to make Government from time to time but to keep the Government up to its mark. It is there for anybody to find his voice and to speak out the minds and wishes of any fraction of the population however small. In fact the smaller the section represented by a particular member, I know in chivalrous parliaments, the greater the attention paid to him when he appeals.”

In this House I belong to that small section of members, and I do hope that this appeal of mine will not fall on deaf ears.

On the subject of consideration of a claim by the politicians, opinion is divided, and Mr. Sastri—who has had very great experience of British politicians and statesmen, and whose knowledge of British institutions could hardly be surpassed by anyone—once describing the politicians' habits in England, said :

“The habit of politicians in England is to judge the urgency of a matter by the noise it has made, and by the earnestness of the men that champion it. In this struggle for attention it has often happened that a movement wins on account of the trouble it has caused the Administration

and the disorderly manifestation it has made of its strength and intensity.”

I am very much pleased to find that among those politicians the former Secretary of State, as I have said before in quoting him, is not affected by this noise, and that he includes the officers of this Administration with him. I am quite sure that although it cannot be denied that in one or two instances in this country the conditions which Mr. Sastri described had success, I do not think that that is the position in which I am standing to-day.

But politicians generally have very strange habits. This reminds me of a story which was told by Mr. Bonar Law to Lord Reading in regard to a Canadian politician who—shall we say?—was a little the worse for a good lunch and made a somewhat injudicious speech. The reporter who took down his notes waited until the politician had returned to his usual mood, and then went to his room and said “I have come to check over your speech.” When he had read the notes the politician glared at him and said he had never said anything of the sort, and thereupon dictated to the reporter a very good speech. As the reporter was leaving the room the politician called him back and said solemnly to him, “Look here, young man, take a lesson from this: you must never try to report a speech when you are drunk.” (Laughter.)

Coming to the seriousness of the question. I should like to say that on an occasion like this Mr. Sastri, speaking in the Council of State at Delhi in 1923, said:

“I can only say that our people have shown such humility, such respect for order, such patience under the greatest provocations, and such forbearance and modesty in their demands, that what an American lady told me recently is perfectly true, that we Indians are about the only Christians left now on the face of the earth.”

My speech to-day in this House has proved this claim of Mr. Sastri. I have spoken with great humility and modesty under exceptionally grave circumstances with which the Indian community is faced, when a little hot air could have been justifiably excused. The economic interests of my community at stake to-day are not insignificant and trivial, and from the facts which I shall now submit it will be seen that they are very important indeed.

I should like now to give some detailed figures showing the extent to which we have trade interests in this country. I have taken them from the annual report submitted to Parliament showing the economic and social progress of the people

of Kenya in 1933. They are available for the 1931 census, and I now quote the Asian population in Kenya classified under eight heads :

Agriculture	...	...	...	...	...	640
Industry	...	...	...	...	...	6,446
Commercial	...	...	...	...	...	14,338
Government and Municipal	...	...	...	...	...	2,972
Professional	...	...	...	...	...	264
Personal or domestic servants	...	...	...	...	...	1,452
Retired, married, women and children	...	...	...	...	...	11,383
						37,495
				Total	...	37,495

Deducting from this the total retired, married women and children, the total number of Asians employed in various vocations is 26,112. Out of this 20,784 are employed in industry and commerce which works out to 79.40 per cent of the total employed men. All the other heads—agriculture, professions, Government and private service, etc.—work out to 5,328 men, equal to 20.40 per cent.

For the sake of comparison I shall give figures for Europeans. In 1931 there were under all the above heads 11,098 Europeans out of which 2,215 were retired men, married women and children, which leaves the total employed of 8,883 persons. Of these, those employed in industry were 991 and in commerce 2,168 or a total of 3,159, or 35 per cent of the total employed, and those employed in agriculture were 2,522 persons, or 28 per cent of the total employed Europeans. I wish the House to bear these figures in mind.

These figures will show why we are alarmed at the introduction of this Bill. About 80 per cent of the Indians employed in this country make their living by industry and commerce, and commerce is particularly affected by this Bill. It would be no exaggeration to say that a large percentage of Indians employed in retail trade would be affected, and may I ask if, having regard to these important interests which are threatened by this Bill, is it not to be expected that we should feel strongly about it?

May I further submit that the largest interests claimed by Europeans in this country are in agriculture, and under this head they have 2,522 persons employed, or 28 per cent of the total Europeans employed in the country. If this 28 per cent interest could be considered very large and if anything that threatens that interest could be compared to earthquake, what shall we say when interests to the extent of 80 per cent are at stake which are to-day threatened? The effect might

not be immediate, but it would be the beginning of the attack on the vital economic position of Indians in this country.

Before I conclude, Sir, I should like to say one or two words in regard to this Bill which confers quite large rule-making powers on the executive Government. It would depend on the sense of justice and fairness of the executive Government as to whether it would be administered harshly or softly.

It is very fortunate that at the present moment we find yourself, Sir, and Sir Joseph Byrne at the head of the executive Government. In this Government, and I can speak from personal experience and knowledge, Sir Joseph Byrne and your good self have always been willing at any time without any restraint to hear our complaints and to give personal attention to those complaints. Sir Joseph Byrne has always been accessible, which is a great thing for the head of the Administration, and we have always had unfailing courtesy and attention. But a measure of this kind very largely puts power into the hands of the administrative officers of districts for a majority of whom my experience unfortunately has been entirely different, and not very complimentary. In the different environments in which they live and the class of people with whom they come in touch, their habits are different. It is very difficult many times to obtain access to them, and their treatment of Indians is often very offensive. Under those circumstances, the administration of this Bill will largely depend on the sympathy with which the head of the Administration would look into the complaints that would come in in regard to this Bill.

I appeal for sympathetic consideration by the Central Government of the various matters which will come to them when this Bill is in operation.

Before I resume my seat, I should like to quote Mr. John Bright, whose political insight and wisdom has hardly been surpassed by anyone; on a similar occasion in which I find myself to-day he said in Parliament:

“It is a great thing in statesmanship when you are about to make a change which is inevitable, and which shocks some, disturbs more, and makes hesitating people hesitate still more—it is a great thing I say—if you can make the past slide into the future without any great jar, and without any great shock to the feelings of the people, and in doing these things the Government can always afford to be generous and gracious to those whom they are obliged to disturb.”

Those are words of wisdom and full of worldly experience, and they are very appropriate and applicable to the present situation.

Here is a Government making a fundamental and revolutionary change in the marketing system of the country, and at this juncture it should be so effected as to cause the least hardship and disturbance to those who would be mostly affected. The Indian traders are the people mostly affected by this Bill, and I appeal to Government in the words of John Bright to be "generous and gracious to those whom they are obliged to disturb" and try to secure the willing consent and support of the people.

Mr. John Bright further observes :

"In all these things we endeavour, if we are faced with a great change, to make it in such a manner as that we shall obtain the acquiescence and the support if possible of those who are most likely to be really affected by it."

I hope, Your Excellency, that Government will realize the importance and wisdom of these expressions of Mr. Bright, and give our views the importance and weight which our interests on this issue deserve. (Applause.)

CAPT. THE HON. H. E. SCHWARTZE : Sir, in supporting this Bill on behalf of the European elected members on this side of the House I do not propose to occupy the time of the House to any great extent. I would say to start with that we support this Bill wholeheartedly. Our only complaint, but a very real complaint, except on matters of detail, being that the Bill does not go far enough and has, I will not say entirely, but has to a large extent emasculated the principles in which we believe and in which we believe Government believes, by virtue of the inclusion of the proviso to section 5 of the Bill. I will deal with that shortly in a moment.

Before I deal with that and other specific clauses of the Bill, I feel bound to say, with the usual kid glove oratory that is used in debates in this House, that the attitude of Government in connection with this Bill can only be described and described in a complimentary manner as that of the attitude of a pack of spineless invertebrates. I believe that the reason this Government have become spineless is due to causes beyond this Government. I believe this spineless Government has been ossified by a Colonial Office injection and therefore one feels justified in looking upon the acts of Government with regard to this Bill more with pity than with anger, but our anger if not directed towards Government is certainly directed towards the Colonial Office with respect to this matter. When the Secretary of State was out here in 1933, we have heard in a speech—I cannot remember whether it was the

hon. Mr. Pandya or the honourable gentleman who was not going to intervene in the debate and told us so in half an hour—that the Secretary of State approved the principle of the Marketing Bill and proposed it should go on. That was in 1933. This Bill was published exactly a year ago in July, 1934, and nothing has happened until July, 1935, and I would particularly draw the attention to those dates of the hon. Mr. Shamsud-Deen who referred to the way this Bill was being rushed through and he mentioned that there was no cast iron hurry. I suggest that a Bill, the principle of which is agreed to in 1933, published in July, 1934, and is not produced before this House for consideration and passing till July, 1935, cannot be described as a Bill which is being rushed through in a cast iron hurry.

Now, Sir, it is I suggest the duty of Government to govern and I suggest it is the duty of the Colonial Office to approve immediately any principles of which in fact they do approve, and we therefore have to ask ourselves how it is that this Bill has been held up for this length of time. There is only one answer and I do not think there can be any denial of the answer and that is that the whole of this Bill has been held up and all this delay occasioned owing to the attitude adopted by and the interference of the Government of India. (Hear, hear.)

There is nothing racial about talking of the Government of India. I should say the same if it was the Government of China or Italy, but I do suggest it is quite time a protest was made against the interference in the domestic affairs of this Colony and the decisions of the Secretary of State for the Colonies, by the Government of India and the Secretary of State for India. (Hear, hear.)

Sir, the Secretary of State for the Colonies is one of His Majesty's Principal Secretaries of State, just the same as the Secretary of State for India. This Government and the people of this country suggest legislation involving important principles; that goes home for consideration by the Secretary of State, and in 1933 the Secretary of State approves the principle. I suggest that while this Government, as I have said before, could probably not help themselves, it shows a state of mind bordering on the utmost weakness that the Secretary of State could not stand up and say "I am responsible for the Colonies and I propose to instruct the Government of Kenya to put in force a Bill involving principles of which they and I and the vast mass of the people in the Colony approve". (Hear, hear). I do not wish to flog this horse any more but when I say that I am sure I speak for every one on this side of the House and I believe in their hearts every one on the other side of the House when I protest against

this interference, and that there has been this interference is undeniable in that not only had the whole thing been published in the Press and the Government of India stated they were watching the matter carefully, but the hon. Mr. Pandya and his colleagues, again, as announced in the Press, sent a cable to India asking the Government there to use their influence.

THE HON. J. B. PANDYA : On a point of explanation, Your Excellency, I have not sent any cable.

CAPT. THE HON. H. E. SCHWARTZE : I am not imputing to Mr. Pandya any action which he has not taken. I am simply referring to a telegram which was published in *The East African Standard* and I understood it was sent by the hon. Indian Members organization.

THE HON. J. B. PANDYA : I am not a member of the Indian Elected Members organization.

CAPT. THE HON. H. E. SCHWARTZE : I apologize. It is the absentee gentlemen.

So much for the Bill, Sir. Before entirely leaving it, I would suggest that possibly we shall have to amend the very important section appearing in the Report of the Joint Select Committee of the two Houses of Parliament dealing with paramountcy. Speaking without the book, I believe that they said that when the interests of the natives and those of the immigrant races conflicted, that the interests of the native must be paramount. I understand that I am wrong in saying it was in the Joint Committee's Report. It was the Joint Committee that put the seal on it. But at all events, in whatever document it was, we should now add the proviso : "Provided always that the Government of India does not object."

Now, Sir, I will refer to the proviso to section 5. That proviso, as all hon. members are aware, is that dealing with exclusive licences and states that : "Provided that no such licence shall be granted in respect of the products of husbandry except for the purchase of one or more kinds of native produce the cultivation or production of which is new to the said area or for which new or improved mechanical methods of preparation or packing are essential." That so far as exclusive licences are concerned practically makes the Bill a dead letter because things such as the chief product maize will be excluded as it is not new to probably any of the areas to which this Bill will apply. There will be many other native products which will be similarly affected. I know that it would be a waste of time to move an amendment to cut out that proviso, but I would ask the Colonial Secretary, or whoever speaks

for the Government later on in this debate, to give an assurance that the inclusion of this proviso is not locking the door to any legislation which may be introduced in another Bill to provide for such important products as maize and others which are not new, that this is not going to be taken as meaning that nothing is to be done with regard to the marketing or improved marketing of such products. I rather gathered that it was never the intention that this proviso should be quoted against us always in connection with any further measures that may be necessary, and provided we can get such an assurance—though of course we would rather have the proviso out—I think it will go some way towards satisfying us.

With regard to one other clause in the Bill, we have to read two clauses together—clauses 7 and 15. Reading those together it provides that the Governor in Council may suspend or revoke any exclusive licence if he is satisfied that the licensee has been guilty of an offence under this Ordinance, and it goes on to say that upon the revocation of any such licence a proportionate part of the fee paid for such licence may be refunded to the licensee. Section 15 provides penalties for offences against the Ordinance. The position, therefore, is this: that first of all an offence has to be committed and if an offence is committed, the licence can be revoked by the Governor in Council and also if a prosecution is instituted the person can be fined. Having brought this on himself by committing an offence, having lost his licence, he is then immediately refunded a proportionate part of the fee that he has paid—no doubt in order to help him to pay the fine. I suggest that is a wrong principle, but whether it is a wrong or right principle, I would point out to Government that it is unfair—the principle that someone who has done wrong is to get a refund of the proportion of the licence fee paid—and I would ask Government how they support that principle contained in a letter written by the Acting Provincial Commissioner of Nyanza to the Manager of the Watende Mines, as follows:—

“I am to inform you that legislation is likely to be introduced providing that a lessee, on premature termination of his lease, shall have no claim to a proportionate refund of the lump sum of commuted rent originally paid by him. This provision will apply to leases whether granted before or after the enactment of such legislation.”

So we find that there are two policies enunciated by Government: one in this Bill that if you commit an offence you get part of your fee back, but under the other proposed legislation, although you have committed no offence, you do not get any part of your fee back. I suggest that it is quite impossible to dovetail those two principles. If it were the other way round, there would be something to say for it.

Those are the only points I am raising. I am not dealing with any of the points raised by the hon. Mr. Pandya. Other members may or may not do so, but in effect and in brief I repeat that we welcome the Bill. We are quite certain that it is in the general interests of the native population, but we only believe that the Bill would have been much better if the proviso with regard to exclusive licences did not appear in it.

DR. THE HON. C. J. WILSON: Your Excellency, the object of this Bill is to improve native agriculture. Is the Bill likely to achieve that object? That to my mind is the primary consideration. Everything else is secondary. The greater part of the discussion on the Bill so far has been the question of protecting the interests of the alien Indian traders. That to my mind is quite a secondary consideration. I do not want to be offensive and I hope I shall not be misunderstood. I have the greatest admiration for the one remaining elected Indian member in his single-handed fight against this Bill, and no one can fail to admire and sympathize with him, deserted by his comrades, fighting alone against such odds. If only the odds were more even—being only one does not justify a ruthless counter-attack—my reply to the attack on the Bill would be simply this: We are now concerned with the welfare of the natives in their native reserves; we are neither concerned with, nor interested in, alien traders in the reserves. If such traders find conditions unfavourable to their interests, they need not remain. Let them go and seek their fortunes elsewhere. But in the circumstances such a retort would be rather unsporting and besides being not tactful it is not altogether truthful, because any one who is concerned with the native reserves must be interested in the Indian traders. There is no denying that the Indian has been an important factor in the economic development, such as it is, of the natives in the reserves, and that trading conditions in the reserves at present are largely dependent on the Indian organization and would suffer with any serious dislocation of that organization. But granting that Indian traders have been useful in the past and even not only useful but indispensable under present conditions, that is not to say that the interests of the Indian traders must be considered before the interests of the African. The trader exists for the African, not the African for the trader. Further, whatever Indian traders have done in the past and whatever they are doing under present conditions, there is no reason to argue that those conditions must not be altered. I think we are all agreed that methods of marketing which were tolerated when conditions were more primitive in the reserves are not good enough to-day. I think we all realize the importance of not standing still in a very rapidly moving world and I think we all agree that

changing world conditions demand organized control and development of the whole process of native produce and marketing. Very well then, it may be that in the exercise of that control and in the process of development certain interests or individuals may suffer. It is the old story of Stevenson's locomotive and the hypothetical cow. If the cow gets in the way of progress so much the worse for the cow, but I do not see that there is any such great danger of serious injury to anyone from the provisions of this Bill.

I think there has been too much fear and distrust of the system of licensing proposed. Clause 3 is not very fierce. It only enables Government to take limited action in certain circumstances, if action is considered desirable, and the exclusive licence is hedged round by all sorts of conditions. I should have thought that the Indian community, with their experience of so many years of prosperous trading, would have been satisfied that British administration could still be relied on to give the Indian traders a fair deal. I do not understand this strange fear of administrative officers who have been very good friends to Indian traders in the past, in spite of what my hon. friend said. I think it is the general experience that the administrative officer has been a friend of the trader. I do not understand why it should be imagined that he should suddenly become their enemy. It seems too fanciful and unreasonable. I can only imagine one sort of trader who need view this Bill with apprehension and that is the dishonest trader whose method of business with the African will not bear investigation. It may be that there have been such traders in the past and there may be some to-day. There is no doubt that under the new system the dishonest trader will find the way of the transgressor so hard that he will have to explore other avenues in his attempts to turn a dishonest penny. But I trust that those who are opposing this Bill agree that the discomfiture of the dishonest trader is a consummation devoutly to be wished and if it can be shown that this Bill will be an obstacle to dishonest dealing then it should be unanimously approved. To my mind this Bill stands for honesty in dealing with the African. It takes for granted that honesty is the best policy even in business and intends that honesty should be the only policy possible in business with the African. I see no reason for suggesting that the Indians particularly will suffer under such a policy. That would be a most improper suggestion.

There is one possible change I can see in trading conditions in the reserves, nothing to do with this Bill, a change from which the Indian trader may suffer. That will be the time when the African takes a bigger share in commerce and plays a bigger part as a general trader, and perhaps about the time that the hon. member Mr. Isher Dass

is rejoicing over the introduction of Africans into this House and the installation of Africans into the two seats occupied by my venerable friend and myself, he will be witnessing with equal rejoicing I hope the elimination of the Indian trader by his African competitor.

I do not intend to discuss how the many altered trading conditions will benefit native agriculture. I leave that to those better qualified than myself to do so, but I am satisfied with the opinion of those best qualified to judge and who are unbiased; I am not convinced by the arguments I have heard against the probability of this Bill being a benefit to the African. For many reasons I am not much taken by the picture of the multitude of petty traders eking out a precarious livelihood at the expense of the African. I say at the expense of the African because it stands to reason they must be deriving a living from him. It has been said that as a result of this competition between small traders, the African is able to get a better price for his products. I am quite sure that that is more than compensated by the increased price of what he buys.

The hon. Mr. Pandya in his masterly and monumental speech said I think that the Indian traders have been in contact with the native in East Africa almost from time immemorial. I think he said A.D. 60 and he claimed that the Indian trader had been the principal factor in the civilization of the East African native. Well, Sir, I do not know whether it would be unkind to ask if conditions in the native reserves are a very good testimonial to the efficacy of that civilizing influence. It is very disappointing to find such opposition to this Bill. It is disappointing but not surprising because it is usually the case that Government may be criticized for inaction or lack of policy, but that criticism is nothing to the storm of abuse which is aroused by the exhibition of an active policy. It is disappointing to find that when Government makes an attempt to foster native industry, there is opposition to that proposal from a section of the community which considers that its own particular interests will suffer. I suggest to the hon. Indian elected members that in opposing this Bill they are not only acting in opposition to the interests of the country as a whole, but more particularly are acting in direct opposition to the interests of that section of the community which they represent.

There is one final point mentioned by the hon. Chief Native Commissioner when he was seconding this motion. Measures such as those proposed in this Bill, primarily designed for the benefit of the African, may have a far-reaching effect on the prosperity of the country as a whole for in the native population of Kenya there is a reserve of man power not yet pulling its weight in the economic scheme. If you can direct that man power along the right lines you have an economic

factor of almost unlimited possibilities. This Bill is one attempt to direct native energies along the right lines and if it results in increasing the economic value of the African, then it is laying another foundation stone in Kenya prosperity. The prosperity of this country can be most surely founded on an industrious and progressive native population. (Applause.)

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I rise to support the principle of the Bill before the House. I am afraid that at a later stage I shall have to severely criticize some of the details.

It is within the memory of hon. members that when Sir Philip Cunliffe-Lister recently paid a visit to this Colony he went carefully into the co-operative movements instituted by the European producers for the marketing of their produce. He had an interview at Nakuru with the Kenya Farmers Association, an association which contains well over 90 per cent of the maize growers of the Colony, and I gathered from his remarks that he was astounded at the manner in which the organization had set out to help those on the principle that God helps those who help themselves. Sir Philip had the example of the maize industry, as to how the product was handled by co-operation; he had the example of how the wheat was marketed through the Wheat Control Board; he had concrete examples again of the dairying industry and of the Co-operative Societies Ordinance which is on the statute book; also of the coffee planters co-operation which resulted in the formation of the Coffee Board.

There is no doubt that he saw it would be a great advantage to the natives if something on similar lines could be introduced in the marketing of native produce; that is, the scientific growing of the crops, scientific instruction to the natives, the scientific handling of the products such as packing, cleaning, transport, etc., and eventually the scientific marketing of that produce overseas. That cannot be done by individuals, whether they be Europeans or natives: it must be by collective dealing, and on that principle I am satisfied in my own mind that Sir Philip Cunliffe-Lister was so impressed that he did tell a deputation which interviewed him in opposition to the suggestion that there should be legislation to help natives on the lines I have indicated that he considered the matter vital. I am only sorry that he has not stuck to that determination and made it a vital matter.

In the objects and reasons of this Bill it says:

"The proposed amendments to clause 5 of the Bill are designed to meet objections which have been raised to the Bill as published and to ensure that the grant of an exclusive trading licence will be subject to the prior approval of the Legislative Council."

“The proposed amendments are designed to meet objections.” We are well aware from the Press that this matter has been debated in the Indian Council at Delhi. The Indian Government have interfered intensively with what is a parochial matter. What is the matter with the Imperial Government, and what is the matter with the Secretary of State for the Colonies, and undoubtedly they have influenced, as I will point out later, this measure. I regret that the Secretary of State has wavered on that vital principle when he considered it so necessary for the improvement of native produce and its marketing.

There are very many items on the native side which could be controlled collectively by co-operative growing and marketing. I noticed in passing through that wonderful agricultural show held last week that the sale of hides in the Kavirondo Reserve was very little short of an amount which would have paid the taxation of the whole of the natives in that reserve. I was very pleased to see those figures tabulated on a large card; they were very illuminating. Then again, we have potatoes, which are very largely grown by natives. Owing to the unscientific marketing of this produce, the natives have simply cut one another's throats as well as the throats of the European producers to such an extent that the latter have been put out of action. It is due to want of action by Government in some co-operative movement to market those potatoes, for there is a tremendous market in India which I think is chiefly supplied by Italy, although Kenya is in the better position. That this has not been done is due to lack of interest by Government and the natives in marketing the produce, so that at the moment they are selling potatoes for Sh. 3 and Sh. 4 a bag. Again, beans, groundnuts, cotton—they are all susceptible to some assistance being given by Government, and if that were given honestly and genuinely a great future lies before the native producer as well as a greater future before the Colony, if natives were assisted in marketing their produce scientifically.

I should like to quote you, subject to correction, a statement which I took down made by the hon. and learned Attorney General: “Real object to stimulate and increase native production and increase our exports, get best quality possible, see natives have fair deal.” That does not coincide with the objects and reasons published with the Bill.

THE HON. THE ATTORNEY GENERAL: On a point of personal explanation, the hon. member has quoted the objects and reasons at the back of the Bill when we were explaining why there had been an alteration in the original Bill. My speech was dealing with the Bill as a whole.

LT.-COL. THE HON. J. G. KIRKWOOD : I am also dealing with the Bill as a whole, and repeat again to drive it home :

“The proposed amendments to clause 5 of the Bill are designed to meet objections which have been raised to the Bill as published and to ensure that the grant of an exclusive trading licence will be subject to the prior approval of the Legislative Council.”

To come back to it, we are well aware that that is the truth, that the objections came from the Government of India at the instigations of Indians in this Colony who have been exploiting the natives ever since they have traded among them. You also suggested in your real objects that it was to give the native a fair deal and to ensure him getting cash. I will quote you a little instance that I saw myself many years ago. I priced a wagon quoted to me at Mafeking at £35, and three months after found it had been sold for twenty head of oxen, and at deadweight on the market at Kimberly realized over £100. That was barter. You could, travelling down from Mafeking along the River Limpopo, get a dozen eggs for a dollar, which is two shillings, but if you produced a cup full of salt you could get the eggs for that. That is barter, and that is how natives have been exploited in these reserves to my knowledge. I am expressing my own opinion.

I would point out to the hon. Member Mr. Pandya, that, whatever date the Indians arrived at the Coast, the natives were here, and had there been no natives there would have been no Indians. There is never a jackal unless there is a carcase !

This racial question has been brought up again on this Bill ; it has been raised on every specific occasion since I have been in this Council since the hon. the Indian members decided to come back ; and they continue to raise it. If they want the issue they are going the right way about it to get it. That issue was raised in 1923, and it was met openly and honestly by the European population in this country.

THE HON. J. B. PANDYA : I submit that there was no racial issue in my speech.

LT.-COL. THE HON. J. G. KIRKWOOD : There are thousands of things, Sir, that will not be said in my speech that were said in the hon. member's speech ! (Laughter.) I am very thankful that he was the only hon. Indian member left in this House to speak. If we had had to suffer three hours odd from another four hon. Indian members—(laughter)—I am afraid that it would have been an all night sitting and that I should have been sound asleep. (Laughter.)

I want to talk on this Bill at very great length, but I do not believe in the hon. Indian members' method of trying to express my case in a lengthy speech. We had better be honest, Sir, about the thing, be precise and concise and get down to the meat; when we have got rid of the meat we can get down to the bone.

HIS EXCELLENCY: I should like to ask the hon. member if he intends speaking for any length of time or would he like to adjourn for the usual interval now?

LT.-COL. THE HON. J. G. KIRKWOOD: I should like to adjourn now for a drink, Sir! (Laughter.)

Council adjourned for the usual interval.

On resuming.

LT.-COL. THE HON. J. G. KIRKWOOD: Sir, when I was interrupted in my remarks by the desire of the whole House to retire for a few moments, I was going to speak with reference to the barter versus cash system. I am certainly in favour of compulsory cash payment for produce sold by natives. It would be greatly to the advantage of the natives and, if to them, then it must be to the advantage of the Colony.

The trader, of whatever nationality he may be, does not interest me as far as this Bill is concerned, but the Bill, at least I thought it did, is designed to assist the native. Latterly, as I will explain, I hold different views, but I intend to vote for the measure, as I am voting for the principle of the Bill, the principle of scientific marketing, the co-operative way of marketing, the exclusive rights of purchasing in certain areas when Government so decides to grant these or any other licences that will control buying, whether in native centres or whatever rules Government may make to meet conditions under which natives sell their produce to the buyers in the reserves. I have been in most of the reserves myself, and have often stopped at native trading centres and *dukas*, and I have been astounded when I have seen the primitive and ante-deluvian machines used for weighing. The measure is invariably a four gallon petrol tin, and when the maize is as high in the tin as it will stand on top, that tin will probably hold at least four and a half or four and three quarter gallons instead of four. I am very pleased that the Bill calls for the weights and measures to be controlled. That will also be to the advantage of the native and will prevent him to some extent from being exploited by the trader.

There is one very grave objection which I have, and the only one on which I wish to touch in detail, and that is to clause 5. The first proviso in that clause is :

“Where the Governor in Council is satisfied that the production of any particular kind of native produce in any declared area is susceptible of development or would be stimulated and advanced under technical direction and management or other special control he may, subject to the approval of the Legislative Council, signified by resolution and to the provisions of this Ordinance, grant in respect of such declared area or any part thereof an exclusive trading licence for the purchase of such particular kind of native produce.”

The clause really contains three provisos. The first relates to the Governor in Council, the second to the Legislative Council, and I am perfectly satisfied that every right-thinking man would come to the same conclusion as me, that in the second proviso every safeguard necessary for granting exclusive licences is therein provided. Having come to that conclusion, when I read the Bill I wondered why the third proviso was put in. It says :

“Provided that no such licence shall be granted in respect of the products of husbandry except for the purchase of one or more kinds of native produce the cultivation of which is new to the said area or for which new or improved technical methods of preparation or packing are essential.”

Having concluded that the first and second provisos, and more especially the second, are ample and sufficient for all purposes under this Bill, it staggered me to find still a third proviso. And that third proviso stultifies the intention of this Bill to protect the marketing of native produce by the granting of an exclusive licence in an area.

I maintain that that is not put in there for any other reason than as class legislation. It is not in the interests of the native. If this Bill is genuine, and it is considered an exclusive licence may be essential—as it most likely will be in certain areas—then why put in a proviso that a licence cannot be granted? The third proviso is class legislation inasmuch as it is there to kill the operation of this Bill and to prevent an exclusive licence being granted for any particular crop that is being produced at the moment. I would ask you all, what is there not grown in any native reserve? In North Kavirondo they grow cotton, they are growing cotton on the coast, they are probably growing it in other areas. The third proviso will prevent an exclusive trading licence being granted in the area where cotton is grown to-day. Where potatoes are grown

to-day it will prevent a licence being granted to exploit the scientific marketing of that crop. Why is it put in? The whole of the native reserves to some extent are now growing maize. In North and South Kavirondo and in the reserves in and around Nairobi, the reserves are large producers of maize, and it is increasing every year. Under this Bill, you will be prevented from granting a licence in those areas for maize. It does not mean that you may, but you will be. I maintain that that third proviso was put in there to satisfy the Government of India; it is not put in for the benefit of the native.

I think it is astounding that the natives should be exploited in this manner, and that our intelligence should be put at such a low ebb by Government, which I think in this case means the Secretary of State, that we are going to swallow that last proviso. I intend at a later stage to move the deletion of that proviso, and ask Government to seriously consider any amendment with that object. It can serve no good object by leaving the proviso in which is, as I say, in these days class legislation, and to give the Asiatic trader a free hand in the reserves to exploit the native still further. It is a betrayal of native interests, nothing more and nothing less, it is a betrayal of the trusteeship of the native. We have been told by the Imperial Government that they cannot share the trusteeship of the native with the Europeans in this Colony. I maintain here and now that the true trustees of the native are the European producers in Kenya and nobody else. If it were not for the Europeans the native would be 50 per cent worse off than he is to-day, and when it comes to championing his cause in any straightforward legislation it is all done from this side of the House; it is not done by the Secretary of State notwithstanding that he thought it right and expressed his opinion that a measure of this sort should be introduced to protect the native and to assist the scientific marketing of native produce. But the third proviso which has been put in will make it a washout. I tell you, Sir, it is almost intolerable, when one comes to a stone wall like that, or even to be patient about it. It makes one hot under the collar.

We have had a lot of sob stuff coming from the official side to the hon. the Indian members assuring them there was no class legislation. There should be no class legislation in the interests of the natives, but if the Bill passes this House as it is printed it is class legislation in favour of the Indian trader in the reserves who, I definitely state, has exploited the native in the marketing of his produce for many, many years.

For that reason I shall oppose it. It seems to me that the Imperial authorities are not sincere when they talk about the trusteeship of the native, that that is sob stuff too; purely

sob stuff. It is not genuine, it is not honest, and they have not the interests of the natives at heart when they put that proviso in the Bill. It is as dishonourable to put in the proviso and to claim that they are the trustees of the native as it was to hand over Jubaland to Italy or a piece of land fifty by twelve in British Somaliland to Abyssinia which includes the natives as well as the land!

I have no intention of keeping this House very much longer. I should be very disappointed indeed if this proviso is retained in the Bill, and I hope that Government, in view of the second proviso—which I claim covers every reasonable precaution to protect the native, and the native only—will agree that that will suffice, and that the third proviso, which is in the interests of the Asiatic trader, will be taken out.

THE HON. CONWAY HARVEY : Sir, I intend to support the principles underlying this Bill as I regard it at least as a foundation on which a useful structure may ultimately be erected.

Having lived for twenty-five years in the middle of Nyanza Province, I have had most excellent opportunities of studying the development of native agriculture, and it has been considerable both in volume and quality during the last twenty-five years, and also the studying of the native methods of marketing their produce. Everyone who knows anything about the subject is fully aware that some very substantial and drastic improvement in that marketing is highly necessary. In view of the fact that this has been urged on Government for at least ten years by a very large number of non-political and responsible bodies, it is singularly disappointing to find in this Bill before us an emasculated travesty of what the situation demands. I sincerely trust, Sir, that this really is a genuine attempt on the part of Government, somewhat feeble though it is, to benefit the native and that there is no truth in the allegations which have been made in the course of this debate that the provisions of this Bill will be used to facilitate tax collections from the natives. (Hear, hear.)

I associate myself with all that has been said in respect of section 5. The original Bill was bad enough, but the amended version is very much worse, and I ask this House—how will development be encouraged and how will capital for that development be encouraged under the very serious limitations imposed by this abominable amendment to a singularly imperfect clause as it originally stood?

Just think for a moment of the procedure involved before an exclusive licence can be granted. First of all, three weeks notice must be given in the Press, after which there is to be a debate on a Bill or a motion in this House. That will take

some time. After that, no less a period than three months, I think I am right in saying, has to elapse before any decision of His Excellency's executive Government can become operative. By that time, the indications of rain will have gone, the seed will have rotted, people will have lost their enthusiasm, and nothing will be done.

I do particularly deprecate the apologetic attitude of the three hon. gentlemen on the Government side who have spoken to this measure. (Hear, hear.) To me it is singularly irritating that three able, responsible, hitherto respected—(laughter)—heads of Government departments should have descended to the level of beggars at the gate! (Laughter.)

Much has been said about the pioneering efforts of the Indian traders. They were pioneers. I am told by people who knew them that they sold chupatties under the guns of Fort Jesus in Mombasa! Another part that they played in the development of this country in the interests of natives, I am told by people, is the part they played to their Arab masters which the Jews played to the barons in England a thousand years ago and, as everyone knows, the chief activities of those Arab masters were very largely concerned with the slave raids in the interior of Kenya. No, Sir, on the contrary they never pioneered up country at all until the trail had been blazed by missionaries, administrative hunters, and big game hunters. I do not desire to enter into a vindictive and wholesale condemnation of all Kenya Asians, many of whom have played a worthy part in the development of this Colony. But I do suggest in all seriousness that it is a thousand pities that in spite of their protestations for native well being and the prosperity of the Colony as a whole, all that has to go by the board for the sake of purely personal selfish interests.

The two Indian members who have so far spoken, in accordance with precedent have destroyed each other. One hon. gentleman objected to this Bill because he had not had an opportunity of looking into its workings in adjacent territories. The other hon. gentleman objected to the Bill because he had had an opportunity of seeing how it worked in adjacent territories.

The hon. Member Mr. Pandya in his marathon effort, worthy of a better cause, spoke very extensively about the valuable work which Indians had performed as traders in the native reserves. I suggest in all seriousness that there is nothing in this Bill to prevent Indians continuing and extending the valuable work which it is alleged they have performed.

It was also stated that this was a class measure inasmuch as it was not applied to Europeans. Nor is the hut tax, Sir! As is well known, European agriculturists are very well able

to look after themselves in this respect, and during recent months an enormous amount of time has been occupied by various agricultural organizations in Kenya in endeavouring to improve their marketing organizations which, under the stress of present world economic conditions, are more essential than ever. Still greater is the need apparent in the case of the less sophisticated natives.

In conclusion, Sir, I would urge Government to abandon this servile attitude of capitulation to Indian agitation, and administer this Ordinance in such a manner as will redound to their honour and glory and enhance the prosperity of the subject races whose interests have been committed to their charge!

THE HON. H. R. E. E. WELBY (PROVINCIAL COMMISSIONER RIFT VALLEY PROVINCE): Your Excellency, the hon. Mr. Pandya early on in his speech suggested that Provincial Commissioners and district commissioners were opposed to this Bill and had altered their view to one of support in order to be in accord with the wishes of Government.

I need not emphasize before this House that you, Sir, and Government, would be the last to appreciate expressions of opinion from us which you thought had been modified to accord with your wishes.

With regard to that alleged opposition to the Bill by Provincial Commissioners the position is that in the early discussions Provincial Commissioners were opposed to any measure which went into detail with regard to the control of any individual crops and so superseded regulations under the Crop Production and Live Stock Ordinance. They were not, of course, and never have been opposed to the principle of control and regulation of native marketing. Their intention was that any legislation should provide sufficient elasticity to be administered in conjunction with the regulations under the Crop Production and Live Stock Ordinance for individual control of various crops and it is because this Bill, before the House now, contains that elasticity that I support it.

With regard to sections 8 and 12, which deal with the prohibition of barter or the power to prohibit barter, it has been suggested in some quarters that barter practically does not exist. Well, Sir, I am in a position to refute that. In certain districts it does still exist. Last year in one district when the effect of famine and drought were still apparent, I asked the price of hides and was told that the present value of a hide was one plate of mealie meal. I then asked what the size of the plate was and was told that it depended on the crockery, or rather tin ware, of the particular trader. It is then suggested by the hon. members who spoke in this House that

barter was not particularly deleterious to the native trade. Well, Sir, I cannot help thinking that even our East African shilling, though it may be to some extent discredited in certain quarters, is a better medium of exchange than an indeterminate quantity of posho. (Hear, hear.)

The hon. Member for Trans Nzoia has dealt with that aspect of barter which affects the question of whether the native obtains a fair price, but there are other aspects and other objections to the system of barter. To my mind one great objection is that this system of barter discourages a regular tendency on the part of the native to dispose of his produce except at times when he is in need of other commodities. This obviously discourages the volume of trade and further discourages the improvement of quality. The native whose main trading is done through barter holds his produce. I am thinking particularly of such an item as hides. He does not think much of the value until he is actually in need of some commodity for which he can exchange it. It is the regular trade for cash as and when produce is available that will encourage the increase in production and the improvement in quality.

To listen to some of the hon. Mr. Pandya's objections to this Bill an outsider would have thought that the Bill was a comprehensive attempt to substitute Government trading for that of individuals. On the contrary; it is of course a Bill to improve and control and regulate marketing through the traders. And, Sir, in spite of the hon. Indian member's apparently unfortunate experience of administrative officers and their treatment of the trader, I believe that the country can rest assured that this measure, if passed, will be administered in such a way as really to be a help to the producer and if it is a help to the producer it must necessarily, Sir, be of assistance to the reputable trader.

THE HON. S. H. FAZAN (OFFICER IN CHARGE OF THE MASAI DISTRICT): Your Excellency, it would be a mistake I think to allow the impression to pass that this Bill is a first effort, that is not founded on experience here but is got from other countries. I have been in this country, mostly in the native reserves, for very nearly a quarter of a century. My first part, if I remember, was in the beginning of 1912, to go out in the Kavirondo district and try and encourage the cotton industry. I think ever since there has been no remitting of the efforts to encourage native trade and over the last six years it has been intensified. We have already an Ordinance entitled the Crop Production and Live Stock Ordinance which allows rules to be made for marketing. A great deal has been done as a result of that Ordinance but it has been found in certain respects to be inadequate. This Bill has been in draft and under consideration for a considerable time and whatever the

causes of that may have been it has had at least the advantage that we have all had the opportunity of studying it and considering what our attitude is to it. Some amendments have been suggested and some amendments have been rejected. As I understand the particular difficulties which existed under the other legislation have been mostly in the Kikuyu and Kavirondo areas with which I am not immediately concerned. I understand that the picketing of markets which I remember very well myself is a major difficulty which is hard to tackle, when old women and others are waylaid by persons who should have better things to do and made to sell their produce for a song and they do not get what they should out of the market. Another matter is the inspection of crops. That has gone ahead very much since I left the Kikuyu Province four years ago. The quality of native produce left a great deal to be desired and I understand that the quality has been improved enormously and it is a matter of common knowledge that this has been done as a result of inspection by agricultural officers. These officers as I understand require rather more the sanction of law before they can carry out those inspections to their satisfaction.

Turning to the area of which I am now in charge, the Masai Reserve, I wish to support what the hon. Provincial Commissioner for the Rift Valley said and that is that barter does exist very much in the less developed reserves. I have made a study of the marketing of the Masai with a view to ascertaining whether they were in fact engaging in barter. I went into it very carefully. I discovered that while the sale of live stock on the hoof is generally for cash, the sale of hides is not for cash at all, except very occasionally when the price of maize has fluctuated to such an extent that the traders find it rather better to hold it for a moment, then it is by cash. As a figure which has been estimated I put down that only one-sixth of the price which the natives receive for their hides is received in the form of cash. The two district commissioners considered that to be an over-estimate. It is not altogether the shortage of cash which makes the difference. They do want maize, though they do not grow very much themselves. That is not the difficulty so much but while a hide is sold for maize, they do not know how much they are getting. I have been recently on *safari* all round these *dukas*. You can hardly call them trading centres. They exist in groups of two or three shops and are generally separated by about twenty miles. In these *dukas* I have asked particularly and I have watched to see how the hides are sold. They come in and simply go on to the weighing machine and payment is made by their weight. No distinction whatever, except in one shop I went into, where it was made by quality. If we were to issue instructions at all events to put two or three pegs in the ground and put

the hides according to quality, they could see what they were getting and see what price they are offering. That we can do by means of exhortation and so forth, but we have not statutory authority. Until that is done we shall never get the proper price for hides. Last year 1,100 tons of hides were exported from the Masai Reserve and the price realized £29,000 odd. Something like a third of that amount was sold in Kavirondo and the price was just about £29,000. So that it shows that at first sight as if the Masai could get three times the price they are now getting. That of course is not true. The Masai hides are those from fallen cattle and the Kavirondo hides are from slaughtered cattle, which makes a difference. When we have the opportunity of making arrangements for the shade-drying of hides and drying by what is called the east to west method, we shall undoubtedly be able to put up the quality of hides to a very large extent if we are backed by this legislation. The loss annually to the Masai might be put down on that item alone on a conservative estimate at £10,000.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE : Sir, I am satisfied that the aims and objects put forward in this Bill are undoubtedly for the benefit of the welfare of the natives and on those grounds I cannot understand the opposition by the Indian politicians, which opposition I can assure this House is not generally endorsed by the Indian traders themselves throughout this country. We have repeatedly lately heard from the Indian politicians how deeply interested they are in the welfare of the native, yet when a Bill is brought forward which is undoubtedly for the welfare of the natives, they oppose it to their utmost and consider it another injustice to the Indians. These remarks are also endorsed by the Government in India as being an injustice to the Indian community. On what ground the Government of India has the right to interfere in our domestic affairs, I do not know. We, Sir, might just as well appeal to the home Government to ask them to adjust the civil injustices suffered from the Indian Government.

On Wednesday we witnessed the somewhat ludicrous exit of certain of the Indian politicians, who however left behind them their most capable member to explain their objections to this Bill.

THE HON. J. B. PANDYA : They have not left me behind. I am left by myself.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE : I said the Indian politicians and I think Mr. Pandya is one of them.

This country depends very largely on agriculture, both by Europeans and natives. This fundamental industry of agriculture is hereditary in the British nation. Wherever Englishmen have gone to other countries they have first of all started to take up land and till the soil. This, Sir, is different with Indians. There is an agricultural class in India who will not emigrate. The Indians we have in this country are not agriculturists. The hon. Mr. Pandya says there are 640 out of 8,000 engaged in agriculture. I think most of those are engaged in growing sugar cane at Miwani. You cannot call it another injustice that they cannot take up land here. They can. Some years ago they were offered agricultural land between Taveta and Voi and they refused to take it and it has now been taken up by Europeans most successfully and it is one of the most fertile parts of the country. It is the same at the coast. Yet they complain bitterly of injustice.

I trust that very shortly this Bill will be made law.

VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, I rise to support the principle of this Bill. In doing so there are certain aspects which I hope when it comes to Select Committee, if it is sent to a Select Committee, will be clarified. I am speaking this morning, Sir, on behalf of the native producers more even than on behalf of the traders whatever their nationality may be. The people who spend their time and their lives in cultivating and planting and in reaping are the people that I want to make an appeal on behalf of to this honourable House to-day.

We have come to the time in the development of the African when he is himself intensely anxious to enter into trading along the lines that will be profitable to himself and heretofore I have no hesitation in saying he has been—perhaps he was not fit for it—he has been prevented from taking that share in the development of the native reserves that is his just right. Every effort that is being made whether by the Government or anybody whatever to help the native in the native reserves to take his true position in production and other things, the native, Sir, and nobody else is entitled to all the help that can be given to him along those lines. (Hear, hear.)

We heard on Wednesday and I should like, Sir, here whatever others may feel about it, to pay a compliment to the hon. Mr. Pandya for the wonderfully able digest of the functions and modern history which he has given to us with regard to the Indian in this country. But during his speech on Wednesday, he told us about the journey that he made down into Tanganyika Territory and there, if I remember aright, there was a trading centre which at one time had fifteen *dukas* in it. A little later on only two out of those fifteen were to

be found in that trading centre. I think those were the figures Mr. Pandya gave us. He was of course down in Tanganyika on the way to Mwanza. He was making out a case for the Indians along those lines, but when I heard that statement the thought came to me, where have the profits that have kept those fifteen *dukas* going in the past disappeared to? Have they gone into the pockets of some wily European who has come along and taken the profits from the natives, or have they gone back to the natives owing to the legislation that has been brought in in Tanganyika Territory for the sale of native produce in that land? Then, Sir, if those profits have gone into the natives' pockets, the legislation in Tanganyika has absolutely justified itself.

We were told this morning about other aspects of the sale of produce in the native reserves. I have been in connection with natives and intimately connected with this aspect for thirty-five years in the Colony. I have lived and worked in Nairobi for twenty-six years and I know something of what the natives have had to put up with during some of those years. I have no complaint or no quarrel with the Indian population of Kenya Colony. I have always had the closest friendship with many of the Indians and who are to-day also my friends, but on the other hand, it is without question, Your Excellency, that the natives heretofore, by perhaps unprincipled traders, have been exploited. There is not the slightest doubt about that at all. Even at this present time I mentioned in regard to maize when I spoke on another occasion during the session, the fact that in part of the Meru district, part of the Kabare and Mutere districts, at the present time, maize is being sold for Sh. 1 a bag. The bag costs 50 cents and the producer gets the enormous and handsome sum of 50 cents for his maize. This is brought into Fort Hall and there that sack of maize is sold for Sh. 2/50 to Sh. 3. Well I will not say that is a great profit, but still, considering the native who has had to produce that, I think it is time that something was done to prevent any possibility of such a thing as that taking place.

Further, where I live up at Limuru it is a great country for *maka* (charcoal) and the charcoal industry is a very, very real one indeed. The natives have come to the position now where they are buying plantations from Europeans, cutting down the trees, taking the bark and bringing it to the Kiambu factory there and then converting what remains into charcoal. A load of charcoal is bought from the natives in Limuru at forty bags for Sh. 30. One lorry goes out and gets those forty bags and they are brought into Nairobi. I made inquiries, Sir, and I understand that a bag of charcoal is sold in Nairobi to-day for Sh. 1/50. That is, the charcoal is bought at

Limuru for Sh. 30 for forty bags and is sold in Nairobi for Sh. 60 for the same forty bags. That I think, Sir, can be proved up to the hilt.

With regard to this Bill itself, I spent over three hours on Saturday morning last with some of the most intelligent natives that I could get. We had about seven or eight there and I questioned them as closely as I possibly could with regard to this Bill. I asked them perfectly honestly and I believe they gave me an honest answer: "Would your people, as far as you know, in the reserves, would they rather have things go on as they are now, or do you think that some alteration such as this Bill proposes should be made?" I said to them "Is it your opinion that things will be better to leave them as they are now?" and without a moment's hesitation everyone man said: "*Hapana, hapana, kabisa*". (No. not at all). One of the reasons they gave me was that in the sale of bark, for instance, of black wattle bark, some of them in the Kikuyu Reserve have been doing their very best to recognize the regulations laid down by the Government as to the treatment of bark, but they said to me they go to that trouble, build huts to keep the bark dry during the rainy season and pack it in accordance with the regulations; when that bark is brought in, the man who does not go to that trouble and allows his bark to be out in the rain and does not pay very much attention as to how it is packed, gets exactly the same price as the man who has gone to the extent and taken the trouble to adhere to the Government rules and regulations, and they say to me, "one of the things we want more than anything else is the classification of our produce so that if we go to the trouble and extent of fulfilling the Government's demands, we should get the benefit which accrues or should accrue to us from taking the steps that the agricultural official lays down for us. Instead of that when we bring our bark to the factory, very often we come back, after taking the half-ton or whatever it may be, without a single penny for that bark which has been thrown out as no good. We do not understand this. We are doing our best to act upon the Government's advice and getting no benefit." So there again they pleaded that with regard to the sale of bark, classification should be one of the first things that the Government pay attention to and whoever examines that bark should mark it with chalk first or second class, as the case may be, so that when a man comes to sell his produce he can point out that the Government inspector has put on his pile of bark first class and therefore demand the first class price for it.

It is the same thing with regard to maize. We heard that some of the Indian traders—I am not speaking for or against Indians. If I was out for the welfare of the Indian

I would go and stand by the hon. Mr. Pandya who has so ably championed their case. My position is for the welfare of the natives. With regard to the sale of Indian corn, we were told that some of the Indians have established machines by which they can clean that corn and make it fit for export. But I submit that that cleaning process and that sifting or making it fit has taken place after the native has sold his corn to the Indian dealer and he has not waited for his price until it has been so cleaned.

With regard to what has been said on exclusive licences for the purchase of maize, I know that I will be thrown out of the door for saying this, but I am in entire agreement that exclusive licences for the purchase of maize should not be allowed in this Bill. I feel that very, very strongly, because after all the licence which is an exclusive licence and human beings being what they are, it is a dangerous weapon. No matter who holds it, it is a great incentive to whoever holds that licence to do the best for himself that he possibly can and I hold that with regard to the sale of maize the native should be in a position to sell his maize, to prepare it, trained as he would be or I hope he will be by the agricultural officers engaged in this work, he should be in position to sell his maize at the highest price he can possibly get. The only reason that would make me accept an exclusive licence being given for any commodity other than new commodities, in which I suppose one might include coffee and I hope it will be included before long, and also wheat, I suppose, on the Highlands can be grown, or any other crop, would be better marketing by an exclusive licence, but in Kikuyu to-day it holds such a strong place that I feel it is not fair that the lives of the natives should be handed over to the exclusive licensee. The licensee might treat them all right; he might not.

There is one other aspect of which the natives are afraid and that is that every native who brings his produce to these markets that are to be established throughout the land will be charged a fee before he can go into the market to sell his maize.

I asked them what they would do if a fee of 5 cents were charged, and they replied "Why should we be charged to bring our produce into a market in our own reserves, a market set up by Government, before we can sell it?" I told them that I would bear this in mind and would bring it before Council when I spoke on the matter. They are afraid that a fee is going to be charged. Another thing that I asked them was about the people who go on to the roads and meet those who are bringing in their produce, who sit down, and perhaps over a cigarette on the side of the road talk about things until they buy the produce at a cheap rate without it going any

further. They told me that the people who go out and do that sort of thing are servants of traders, that they are sent out by the traders to meet people bringing in their produce to buy it from them at as cheap a rate as possible before it gets to the market. Who these traders are I do not know; Africans, perhaps Europeans. I asked them if they thought it was a good scheme to stop these sales on the roadside, and they replied that they wanted it stopped very much indeed.

There are several other things, Your Excellency, in connection with this Bill which the hon. and learned Attorney General might be very angry with me if I mentioned, several things that require elucidating and require close attention. I think that whatever products a man gets an exclusive licence for, if Government is going to help the natives really benefit from this Bill such products must be priced, the price must be laid down on a board in the market, or wherever it is sold, where every intelligent African who goes there to sell his produce or to buy can see the price of a particular commodity. Unless that is done, the African himself will exploit his fellows, and no one is more clever in doing that than the African if he gets the opportunity of doing it. But if we are to protect the producer, which is my great point, the price of the commodities for which exclusive licences are granted must be safeguarded by Government, and no one allowed, no matter who he is, to put whatever price on that he wishes, because if an exclusive licence is given and Government and the administrative officers in the reserve have very very careful supervision of this thing, it can be abused. I therefore plead that in the rules which will be issued it should be laid down that the pricing shall be according to the market rate for the time being.

Before I sit down, I should like to pay a compliment to the administrative officers, especially the agricultural officers who are working in the Kavirondo area. There, of course, is where we see what co-operation can do and what is being done in regard to native produce. No one could have gone to the agricultural show last week and seen the exhibits without realizing what a tremendous step forward has taken place in the Kavirondo Reserve where most of the native exhibits came from. There you have sympathetic Government officers working and educating the Africans until they have come to realize the benefits that are to accrue to them from the proper preparation and marketing of their produce. And what has happened in Kavirondo will, I am sure, convince the natives in other parts of the Colony, and especially the natives in the great Kikuyu country, that they can in time be taught to do the same things and to appreciate what Government is doing for them or trying to do in introducing this Marketing Bill.

I am convinced further that the provisions of this measure when brought into operation in the reserves will not hurt the Indians concerned in any degree such as has been stated to this House by the hon. member representing them. I am convinced that they will not. The honest, decent trader wherever he is and wherever his place of business will find that not only does his trade increase but that it will be easier for him to carry on his business because of the provisions of this Bill.

Therefore, before I close, I should like to appeal to the Select Committee before this Bill is to go, to give consideration to the points I have tried to raise—the classification of goods, the setting up of prices for goods of which the Africans really do not know the prices, and for the protection of Africans even from themselves. If that is done, it will be closely watched by everyone who is interested in the African, and I am convinced that in five years time

There was one other point which I wanted to bring up, and I hope that while the Bill is in Select Committee the period of seven years for an exclusive licence will be reduced to five years. The term of seven years is, I think, too long; five or three years is quite long enough. I know that the Governor in Council has power to revoke such licences, but once given serious reasons must be brought out before a licence can be revoked. I therefore suggest that the period should be five instead of seven for which a licence can be issued.

THE HON. THE DIRECTOR OF AGRICULTURE: Your Excellency, I wish only to emphasize briefly the need for the organization of marketing from the agricultural point of view and also to deal with some of the agricultural points raised in this debate.

The methods by which native producers are deprived of the full value of their produce have already been mentioned by various speakers. Agricultural officers frequently write to me about methods of this sort. There is the unfair practice of under-weighing. There is absolutely no doubt that this practice alone is very serious in some of the native reserves. The officer in charge of the Masai District has already mentioned the barter system. There is no need for me to emphasize that point, but there is the method of sale under which goods are given to the producer to be paid for by produce on harvesting. On this point there is a resolution from the Coast Advisory Committee.

One of the most serious defects of the present system is the itinerant buyers to whom the seconder of the motion referred. Agricultural officers tell me they have seen cases in which native women have been induced to part with their

produce for less than half its value. In some markets there is lack of competition. The hon. Member Mr. Pandya mentioned that he had recently toured the Nyanza Province and noted the good co-operation that existed between many trading centres and agricultural officers. He omitted to mention, however, that there are some trading centres in which we do not get co-operation. Cases have come to my knowledge in which a sudden rise in price at a native market or trading centre has occurred when the native producers are not bringing in their produce. This has been succeeded by a lower price immediately the natives have brought in their produce. It is difficult to avoid the conclusion that collusion has occurred in such cases.

In passing, I should like to mention that the defects of the marketing system in Kenya are not peculiar to Kenya; they occur in every native country where marketing is not organized. In West Africa, for example, we made a survey in a village which sold their growing crops in advance for three shillings a load when it was actually worth eight to ten shillings.

I agree that the quality of native produce to-day has improved, but the point is that the organized marketing under the system provided for natives in this Bill lends itself to improved quality by compulsory inspection. And such inspection can be carried out more cheaply at centralized markets.

The provisions covering exclusive trading licences seem to me to be adequate to ensure that such licences will not be granted except when necessary. We have the results of experiments in neighbouring territories to guide us. Exclusive licences are definitely necessary where an inducement is required to persuade an interested person to incur capital expenditure or in some cases where ordinary buying methods have failed or are likely to fail.

The hon. Member Mr. Pandya saw no reason why organized marketing should be applied to Kenya because it was the policy in Great Britain or because a similar Bill to this one had already been enacted in Tanganyika, Uganda, and more recently in Zanzibar. I submit, however, that the fact that those countries have enacted such legislation, that farmers the world over have sought or are seeking such legislative aid in the organization of marketing, is strong evidence that the principle of organized marketing is sound and that in fact if this country rests content with unorganized marketing its producers will be at a disadvantage in competing in the overseas markets. Government, realizing the value of organized marketing, have encouraged it for non-natives. Is it fair that Government should withhold similar measures of organization

in the case of the natives? Unorganized marketing cannot be cured by any single method, and methods suitable for natives are not necessarily suitable for non-natives. The natives of Kenya are not ready for complicated methods of marketing such a co-operative marketing practised the world over; control by boards which deal with individual growers as in England; compulsory prorating which involves production quotas as in California; sales through an agency as in the case of wheat in this country. The most suitable methods for the organization of native marketing in this country are provided in this Bill, which is simply the collection of produce centrally for offering in bulk. I stress this point because it has been suggested that this Bill merely provides a universal remedy, whereas in point of fact it is designed specifically to suit local conditions.

As hon. members are aware, an increased production campaign is being conducted in the reserves by agricultural officers and by the Administration. For their own good, natives are being urged to produce more by the issue of good and improved seed and by the adoption of improved methods of production, and they are being guided as to what to produce and how. There is no doubt that results are being achieved and that the natives are responding. In my opinion, it is essential that an increased production campaign should be accompanied by the organization of marketing. In my opinion, Government would be lacking in its duty if it failed to take the necessary steps to ensure that the native gets the highest possible price for the produce he is advised to produce, a result which can be achieved only by organized marketing. Organized production with unorganized marketing may spell failure, but organized production and marketing together will make for success.

The application of this Bill will in my opinion have a definite psychological effect on the native producers, and from my experience in other countries I consider they will respond to the knowledge that Government is leaving no stone unturned in its efforts to secure for them the greatest return for their labour and that they will be helped in their efforts to gain a higher standard of living. Increased production in the native reserves will benefit every section of the community, and not least the dealers licensed under this Bill.

The hon. Member the Officer in Charge of the Masai District has already mentioned that a lot has been done to help the marketing and inspection of native produce. We have regulations for maize, simsim, legumes, hides and so on, but this is the first time that organized marketing has been dealt with comprehensively in a Bill. I should also mention, in reply to the hon. and gallant Member for Trans Nzoia that a considerable amount has also been done to assist the potato

industry. We have grading rules, and we have tried to build up a trade with India. Actually, it was not successful, largely owing to the price, we believe, which can be obtained in India. It is true Italy has the market there to a very large extent, but at the moment we are hoping that we are three weeks ahead of Italy as our crop is slightly in advance of the Italian crop.

I do not think, Sir, that any other agricultural point was raised. I should say that I am heartily in favour of the Bill, and that I consider its passage is overdue, for the powers which it confers are urgently needed in the interests of native agriculture.

THE HON. F. A. BEMISTER: Your Excellency, I must congratulate Government on showing that they have not lost their sense of humour in introducing this Bill. The apologist of the Government in the first place for the Bill; the support on this side of its principles; and the damning of every clause inside the Bill, has been an education. Whenever members have spoken they always laid their own premise down—that if the Bill was going to do so and so they agreed with it. They went on to say, most of them, that they did not think the Bill was going to do that, but when it got into Select Committee it perhaps would be altered.

In my opinion, this is a definite anti-native pro-Indian Bill.

There is no suggestion, even with the hon. the Director of Agriculture speaking as he did, of improved production to help the native, but improved marketing would; though he said it would not we all know it would. We all know that a proper system of marketing would help the native, and we all know that the present campaign of intensive production—in which I am so glad to include the Administration, because I consider the Administration are the backbone of increased production in this country—also helps the native.

But, Sir, where can you suggest in this Bill that it is going to increase by one bag the production by the native? There is only one channel which has ever increased production by the native, and that has been the example of the British Island producer. I dislike the word European, because a lot of people can be included in it—(laughter)—but ever since the British Islanders came here, in the last ten or fifteen years native production both under the supervision of the British Islanders and without supervision in their own reserves has increased out of all proportion. But this is in spite of the assistance of the Government and not by reason of it!

What is the suggestion? We have heard this morning the hon. and reverend representative of native interests suggesting that a price must be fixed in these markets. I am not

saying anything about native markets, I was only in the business nine years, possibly those on the other side of the House may have had more individual experience. But how in the world can a district commissioner or a Local Native Council officer fix the price of simsim at Kitui as against the prices somewhere outside Nairobi? The thing is impossible, for the basis of all trade is competition.

VEN. ARCHDEACON THE HON. G. BURNS : On a point of explanation, I was referring to the purpose for which exclusive licences were issued.

THE HON. F. A. BEMISTER : I don't care whether 50,000 licences are issued. I am not talking of the price of goods. But it is quite impossible for anybody to fix the price of every produce or anything else at a given point in connection with their sale price at home. It is obvious if you issue exclusive licences the exclusive licensee is going to work exactly as your present exclusive licensee works, and how do they work?

I am going to instance cotton on the Coast. I know full well that the hon. the Director of Agriculture will tell me that I am quite wrong and know nothing about Uganda cotton at all. But to-day through the system of exclusive licences as practiced—it is not called that—in Uganda, the whole of the cotton industry is in the hands of the ginners, and the whole industry is practically governed by the Ginners Association. How do we do it at the Coast? We have two ginneries eighty-five miles apart. They have recently submitted figures to the Agricultural Department showing 16½ cents for ginning. Seventeen years ago we ginned in Uganda for 8 cents, and that is over a thousand miles from the shore. Directly you have these ideas of no competition a man being human works his own prices back to what we call his marrying or sale price on the London market, with a figure of so much for overheads, and so on, and works it back. But directly he gets an exclusive licence and cuts out competition, which is the backbone of good prices for the native, the native is injured right away. Therefore you stop any help for native production.

The hon. and learned Attorney General said this Bill had been considered by practically everybody. I do not know whether he said interested, but he said it had been considered by a lot of people. I would suggest to him and to you, Sir, an old English saying that "Too many cooks spoil the broth," and I will ask you this : can you tell me whether at any time *barazas* were held throughout the Colony and the natives asked their opinion and the provisions of the Bill put before them? Have you consulted the natives in this Colony? Not that it was put before them as the hon. and reverend member said that if such and such a thing happened, or that the Provincial

THURSDAY, 9th JULY, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, the 9th July, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 8th July, 1935, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table :—

BY THE HON. THE ATTORNEY GENERAL :

Report of the Select Committee of Legislative Council appointed to consider and report upon the provisions of a Bill to amend the Liquor Ordinance, 1934.

Report of the Select Committee of Legislative Council appointed to consider and report upon the provisions of a Bill to provide for the nomination and election of members to the Legislative Council of the Colony and Protectorate of Kenya.

NOTICES OF MOTIONS.

The following notices of motion were given :—

BY THE HON. THE ATTORNEY GENERAL :

“That the Report of the Select Committee appointed to consider and report on the provisions of the Liquor (Amendment) Bill be adopted.”

“That the Report of the Select Committee appointed to consider and report on the provisions of the Legislative Council Bill be adopted.”

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : Your Excellency, with reference to the motion standing in my name on the Order Paper for to-day, I notice that inadvertently it is not quite worded as I intended and I would like to ask this House permission that I may submit a slight amendment after the 11 o'clock adjournment.

HIS EXCELLENCY : I am sure the House will readily accord that permission.

ORAL ANSWERS TO QUESTIONS.

RAILWAY STAFF HOUSES AT MOMBASA.

No. 40.—THE HON. F. A. BEMISTER asked :

“1. Is it a fact that the Railway are about to erect or are contemplating erecting three new Staff Houses at Mombasa on land allocated to the Port?”

2. Is it a fact that the Railway already have houses at Kilindini and Mombasa let to private tenants and also several houses unoccupied?

3. If the answer is in the affirmative, is it in pursuance of a policy of the Railway to acquire for Railway purposes land alienated for Port use?”

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS :

1. Three new Junior Staff Houses are being built at Kilindini in replacement of condemned buildings on land used for housing both Railway and Port staff.

2. One Senior Officer's house is let at Kilindini to a private tenant. Housing at Mombasa cannot be used for housing running staff who must be near the station area at Kilindini; the question of what housing is vacant at Mombasa, therefore, does not affect the issue. There are no unoccupied quarters at Kilindini, other than condemned buildings.

3. The answer is in the negative.

KITALE BRANCH LINE.

No. 41.—LT.-COL. THE HON. J. G. KIRKWOOD asked :

“Will the Hon. the General Manager of the Kenya and Uganda Railways and Harbours state what was the financial result of the last six months' working of the Kitale Branch Line under the new formula?”

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS : Under the new formula Branch Line Accounts are prepared annually and the information asked for is, therefore, not available.

KITALE EUROPEAN SCHOOL—SICK ROOM.

No. 43.—LT.-COL. THE HON. J. G. KIRKWOOD asked :

“Will Government state what action is proposed to provide a Sick Room at the Kitale European School?”

THE HON. THE ACTING COLONIAL SECRETARY: Provision for this work will be included in the Schedule of Public Works Extraordinary for consideration in connection with the Estimates for 1936.

ASIAN STAFF, RAILWAY TRANSPORTATION DEPT.

No. 45.—THE HON. ISHER DASS asked :

“Will the Hon. the General Manager, Kenya and Uganda Railways and Harbours, be pleased to inform this House as to the number of Asians in the Transportation Department who are drawing Sh. 240 per month and who have not been given any promotion or increment for the last eight, six, four, and two years?”

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: The number of Asians employed in the Transportation Department of the Kenya and Uganda Railways and Harbours in receipt of a salary of Sh. 240 per month and who have not received increments for the several periods mentioned in this question, is as follows:—

<i>Period</i>	<i>No.</i>	<i>Period</i>	<i>No.</i>
8 years ...	6	4 years ...	51
6 ,, ...	4	2 ,, ...	84

THE HON. SHAMSUD-DEEN: Arising out of that answer can you get the information as to how this state of affairs compares with other branches of the service on the Railway?

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: Speaking generally, Sir, in answer to that supplementary question, I would say that the position on paper is worse than in any other department, for the reason that we have a much larger number of staff of this nature employed. Other departments have a much smaller number and therefore the proportion is smaller.

BILLS.

SECOND READING.

MARKETING OF NATIVE PRODUCE BILL.

(Messrs. Isher Dass, Mangat and Shamsud-Deen and Dr. de Sousa withdrew from the Council Chamber.)

Debate resumed.

MAJOR THE HON. SIR ROBERT SHAW: Your Excellency, honourable members will not be quite gratified at the thought of another member rising to take part in this debate, but I will only occupy a few moments.

I only want to call attention to two points. During the course of yesterday's debate, my hon. friend on my left (Archdeacon Burns) drew particular attention to the abuses which now exist in regard to marketing in regard to certain native crops, and, amongst others, he mentioned maize, potatoes and charcoal, although charcoal is not exactly a crop. I entirely agree with his remarks and if I understood him aright he was giving his support to the Bill among other things because he hoped that the Bill would enable some of these abuses to be either eliminated or controlled. If the hon. mover in replying to this debate can show how this Bill will enable these abuses to be controlled or eliminated, it will enable me to give a more enthusiastic support to the Bill than the formal support I propose to give it at present.

The other point I can best express by thanking you, Sir, for what I might almost say is unprecedented in this House, for allowing one or two Provincial Commissioners to give us the benefit of their knowledge and experience in the course of this debate.

HIS EXCELLENCY: If no other hon. member wishes to speak, I will call upon the hon. mover to reply.

THE HON. THE ATTORNEY GENERAL: Your Excellency, before I deal with the details of this Bill, in reply to the general criticisms made on the measure, I would like to make one or two remarks.

The first remark that I would like to make is with regard to the caustic comments with which this Bill was supported yesterday in principle by the hon. Member for Nairobi South, supported ably in spirited speeches after the adjournment by the hon. Members for Trans Nzoia and Nyanza. The attack, there, Sir, was upon Government and/or the Secretary of State for being weak. While I fully realize that as the Secretary of State for the Colonies has so much to do with the direction of affairs in Kenya, it is quite legitimate for attacks to be made on him in this House, it is the duty of those who represent him here to defend him if possible (laughter) and it does seem to me, Sir, that it is a pity hon. members should describe Government in the way they have, because of an action which can only be considered to be moderate. Let us consider for a moment the history of this Bill. The Bill was first published in July of last year and it was then published in the form in which you see in the first part of this printed document. We are well aware and it is common knowledge that the Indian population of this Colony looked upon it with suspicion and did in fact communicate

with the Government of India, and as a result of this communication the Bill certainly, we will admit, has been submitted to various boards and persons for their report, and we know perfectly well that Mr. Menon came here from India and submitted a report to the Government of India, and the Secretary of State is being blamed because as a result of permitting these reports to be made he has sanctioned two and two only minor amendments to the Bill as originally submitted to him in June of last year. I refer of course to the proviso that before an exclusive licence is granted there shall be a motion in this hon. House, and the announcement made by the Secretary of State that it would be subject to his approval and secondly in the Bill that the licensing authority should do that very important thing, namely, give reasons when they took away a man's licence. Those are the only two details which the Secretary of State has departed from having once nailed his flag to the mast and he is accused here of weakness and the Government is accused of weakness. The hon. member in describing Government referred to them as "spineless invertebrates" and gave us the impression that they would have done something so very different. Of course it is not often hon. members opposite have the opportunity of speaking personally to the Secretary of State. They had that opportunity last year and I only wonder if the hon. member first thought of those two words when he left that meeting. (Applause and laughter.)

Now, Sir, with regard to the general criticisms on the Bill, I refer, of course, to such criticisms as why we should do it in this country, other countries are not doing it. Is it not a fact that every country in the world, civilized as the European countries are, or less civilized as the African possessions are, is doing something of the same kind? In every country during the last few years there has been some new form of marketing introduced. In civilized countries, naturally, it is unnecessary to provide an Act for every form of improvement in marketing, because there the producers are able to think for themselves and they make use of such things as cooperation. But even in England we have such Bills as the Milk and Dairy Produce Act, which in a sense I suppose can be said to interfere with the vested interests of certain people, which interests do not hark back to 1890, but more probably to the dim ages of the past, and they have not hesitated to do it.

Now it is suggested that we should delay a little longer. That has been answered by the hon. members opposite. To think that an hon. member is so hard up for a criticism of this Bill as to say that Government having waited eighteen months and having consulted not only everybody here but

people almost all over the world, and then to be asked to wait still longer, then you are trying the patience of Government very high.

It is said that the result of this Bill will be the elimination of the small man, the small shopkeeper is referred to. As I said in my opening speech, Government does not foresee this and if I may give my experience in another country where somewhat similar conditions arose, I refer to the sugar trade in the West Indies, you will follow the trend of my thoughts in this direction. Sugar in the West Indies, as you know, used to be grown by innumerable small and delightful people known as planter gentlemen; they had small estates and small factories and they eked out a very pleasant existence. With modern commercial activities to face they found that they were quite unable to go on working and the result has been that those delightful people have practically sunk out of existence and their estates have been taken over by large companies. It is true that there are no longer owner managers, but in their place the large companies are able to employ exactly the same number of people practically, only they are now managers instead of owners. I can foresee what will happen in the future as regards this Bill. It will be this, that instead of having innumerable *dukas* all over the place, you will have two or three larger *dukas* or shops or whatever they will be called in markets under control who will employ these very same people to do the work they used to do as owners of these small shops that very seldom eke out more than a bare existence.

Now not only, Sir, has the need of this change been recognized in the Colonies of Africa, and when I say the Colonies of Africa, I refer particularly of course to Uganda and Tanganyika. Tanganyika from where this Bill was originally taken and that reminds me of a point I should have made a moment ago and that is with regard to the proviso to section 5 which was criticized so much yesterday and some hon. members seem to imagine the Secretary of State ordered it to be put in. Actually, as you know, this Bill was the result of a meeting between the Chief Native Commissioners of the three territories. The matter was discussed and a committee was then appointed and it was decided after going into all details that the most suitable Bill for this country was the Tanganyika Bill and it may interest hon. members to know that from its inception this Bill contained the proviso which was so criticized yesterday, and that proviso appears today in the Tanganyika Ordinance and apparently has had no ill effects so far.

But to revert to the point of other countries finding the necessity of similar legislation, it would be interesting for this House to know that so long ago as 1919 the Government of India (the country which now thinks it is such a bad thing in Kenya) was placed in the same difficulty and in the report of the Industrial Commission which sat in 1919 the following words occur:—

“The export trade from country districts generally suffers from the existence of an undue number of middlemen who intercept a large share of the profits. The reasons for this are various”

and then it goes on with them, which I will not trouble the House with, and they finish up with these words:—

“But where a better organization has been established the ryots thoroughly appreciate the benefit. A better market system, co-operative selling and education are the most promising remedies.”

And in 1928 the Royal Commission on Agriculture in India describing the Berar Law stated—and I take it that though I have not been able to look it up in the laws of India I am now going to read to you the legal result of the Commission in 1919. It reads as follows:—

“Under the provisions of the law, markets and bazaars may be notified and committees may be appointed to manage them. Rules may be made to regulate the constitution and powers of the managing committees, the levy, collection and disposal of fees, the conditions under which licences may be issued to brokers, weighmen and measurers, the places for weighment and measuring, the scales, weights and measures to be used and their inspection, verification and correction and so on. Unauthorized markets and bazaars may be prohibited.”

That is exactly what this Bill is seeking to do in Kenya to-day. It has been interesting to me throughout this debate that on one side I am told that this is an anti-Indian measure; on the other side I am told that it is pro-Indian; and I think we can congratulate ourselves that Government has at least balanced the scales so fairly that no side knows which is being favoured. (Laughter.)

The next point that was taken, Sir, was the usual objection—I think the hon. Mr. Shamsud-Deen made this criticism before he made his dramatic exit—he said he objected very much to my putting in that it should be a resolution of this Council instead of a Bill by which the granting of exclusive licences should be given. Does anybody

in this House think that there is a great difference between a motion of which we give fourteen days' notice, and a Bill of which we give a similar number of days' notice and on which there is only one debate which is on the second reading? Instead of my having to get up formally and move the first reading of a Bill to give an exclusive licence to somebody, then the debate on the second reading, following it up by moving the appointment of a Select Committee and eventually the third reading, we are going to have a full dress debate, resolving the granting of this particular licence. When I mentioned a moment ago licences, it will not be plural, the resolution will be the granting of a licence to trade in a particular product in a particular district.

The next point taken was that we should be restricting competition and it was taken as a point by the hon. Indian member who made it that this was a bad thing for the native and it was aimed directly at the Indian shopkeeper. It does seem to be peculiar that in all this debate no one appears to have thought of the native shopkeeper. In looking up the records of Fort Hall by chance the other day, I was astounded to find that in 1928 there were no less than two hundred native shopkeepers in Fort Hall alone. That will give you an idea of the number of native shopkeepers throughout the whole of the Colony and if it is supposed to do harm to shopkeepers generally, then all I can say is that Government are being extraordinarily stupid if they design a bill which is going to do harm to the natives whom they are supposed to be helping by this measure.

I now come to deal with the main criticism of this Bill by the gentleman who I am sure will forgive me if I call him "the boy who stood on the burning deck, whence all but he had fled". It would be indeed ungenerous of me if I did not congratulate him on the able and comprehensive manner in which he presented his case.

The first objection that was taken was that Government had not given sufficient time to consider it, that the case for the Indians had never been sufficiently put forward. Can you possibly imagine any case in which the Indian population through their members have had more opportunity of having their views put before Government and in the most forcible way? It is an open secret that not only have we had the various resolutions from the Indian Societies but we have even had the force of the Government of India brought in to assist, and yet we are told, although we had Mr. Menon sent from the Government of India to go into the case and to put up a case and we know that that case has been before

the Secretary of State, we are told that never has the Indian of this Colony had a proper opportunity of putting up his objections.

THE HON. J. B. PANDYA: I hope, Sir, that the hon. member does not say that I made that statement.

THE HON. THE ATTORNEY GENERAL: The statement was certainly inferred from the hon. member's speech when he said that there should be a further enquiry. He must admit he asked for a further enquiry and that was to go to Tanganyika and Uganda I think to enquire into what happened there.

THE HON. J. B. PANDYA: I am sorry for the misunderstanding. I did not say a further enquiry. I meant an enquiry before Mr. Menon came.

THE HON. THE ATTORNEY GENERAL: I then take it that it is a withdrawal that any further enquiry is necessary. I am very grateful to be relieved of that because it would have been a great waste of money in spite of all the hon. member has told us about the evils of this Bill. I took the trouble to look up some of the records from Tanganyika and just taking three products I will give you the 1933 figures which was just after a similar Bill came into force there, and the 1934 figures. The advance in cotton between 1933 and 1934 was a difference of £50,000; it went from £276,000 in 1933 to £326,000 in 1934. Ground nuts rose in that year (1933) to the highest they had even been, to 19,000 tons; and rice from 5,000 to 6,000 tons; so that at least we know that the exports of the country increased—I do not say as a result of it—it may be incidental—but it so happened that after this legislation was introduced there, that these three commodities jumped up at once and you will admit I am dealing with a very bad year.

The hon. member then went on to tell us that this Bill should not be introduced because of the hardship to these poor Indian shopkeepers, for whom he said Great Britain had conquered this country. I have no doubt Britain is extremely anxious to protect her Indian subjects, but I wonder if the hon. member will agree with me that they might have had some idea of taking possession of the source of the Nile and looking after their Colonies at the same time, and I do suggest that it was not entirely on account of the Indian penetration that Great Britain took the step it did.

It has been said that by the granting of exclusive licences in some way the Indians may be harmed. As I said in my opening speech and I repeat it here, we have already in this

country two examples of what amounts to exclusive licences ; I referred of course to cotton and cashew nuts, and in both instances what amounts to an exclusive licence exists to-day. Can any hon. Indian member honestly say that the Indian dealer has suffered in the very least, shopkeepers or others, as a result of the granting of those licences? (THE HON. F. A. BEMISTER : No, verily no.) Yet you stand up and suggest that the giving of the same powers in regard to other commodities will cause Indians to suffer in the future.

The trouble with the Bill from start to finish is that it has not been examined on its merits, that an idea has gone out that in some way it is a racial measure to squeeze out the unfortunate Indian and therefore it must be resisted at all costs, regardless of what it in fact says in the book of words !

If I may deal with the question raised by the hon. Member for Ukamba, who asked me this morning if I could give him some idea as to how in practice the bringing in of this Bill would relieve the abuses which we hope to remedy, I would say that as I see the picture, referring at the moment to ordinary licences, what would happen in the future is this. Markets are defined in the Bill, and into those markets only natives will be able to sell. I am visualising not from my imagination but a market that I know very well, namely, a native tobacco market in Nyasaland. At the entrance to the market will be an agricultural officer or someone trained by him, whose duty it will be to grade the particular product. He will tell the native what grade it is, and the native then goes into the market knowing the type of produce that he has and knowing, by reference to the various shops—and I do assure you that a native is not nearly as silly as some people seem to imagine, they are capable of getting the value of first or second grade as quickly as anybody else—of these grades he will get the highest price going in the market. We have therefore got the native into the shop with the produce of which he should know the approximate value and, having got him in, in order to see that he is going to be fairly treated, we are going to have overseers of the market, whose duty it will be to go round, preserve law and order, test the weights, seeing that people are not cheated when the weighing machines themselves may be correct, and generally supervising. I think the hon. member will agree that we have then gone some way to protect the native and, further—and I must bring it in at this point—regarding the matter of barter, there will be none in the markets. Money will have to be paid for the very simple reason that, although as the hon. Member Mr. Pandya said barter may go on all over the world—Germany may exchange a ton of coal for a ton of coffee with Brazil, that

may be a form of barter—he forgot to mention that both Germany and Brazil know exactly the value of a ton of coal and a ton of coffee, whereas the unfortunate native has no more idea of the value of a string of beads than I have myself. (Laughter.)

The next question we were asked was, had the natives been consulted about this Bill? It is quite true that the natives themselves have not been consulted about it any more than a doctor consults a native as to whether he would like to take a dose of quinine, whether it is good for malaria or not, but those who have to do with the natives, the Provincial Commissioners, have been the very people pressing for this Bill to be brought forward. I therefore think we can say that the measure owes its inception to the very fact that those who look after the natives are of the opinion that it is necessary for them.

With regard to this proviso concerning exclusive licences, it is quite true that it only applies to new industries and industries—I will not weary members by reading the whole of the section—which need some new methods of packing, etc. I was asked by the hon. Member for Nairobi South whether that would close the door to bringing in an Ordinance to deal comprehensively with, I think the commodity he mentioned was maize. The answer to that, of course, is in the negative. This Bill merely visualizes the controlling of products in the native reserves, and so soon as it becomes necessary to control the products of the whole country or the products grown over the whole country it will be necessary to bring in a new Bill, whatever it may be, the Maize or Wheat Ordinance or whatever particular commodity we are dealing with.

The hon. Member Mr. Pandya wanted to know why it was necessary for shopkeepers to specialise because lawyers did not do so, or words to that effect. He gave as an instance that it was possible for a lawyer and a solicitor to practice in this country in either capacity. That is quite true. This is a new country, and at the moment that it possible. But he will agree with me that in England to-day not only are solicitors and barristers separated but barristers themselves, by force of circumstances, are even more specialists and it would be as impossible to get a criminal or a common law man to go into the Chancery division of the court as it would be for a doctor to start and practice law here. There cannot be the slightest doubt about it, that in every country which has advanced, even if you refer to places like Canada where again the two professions are fused, in every firm there is

one particular man who does one sort of work and another who does another sort and as separate, in fact, as if they were known by different names.

In this connection I should like to remove a misunderstanding which I think has crept into the minds of the hon. member, because he suggests that we are only going to allow in these markets buying and not selling. I am told that at present, at any rate, that is not the intention of Government, that if a man is a shopowner in the market he can sell and at the same time is entitled to buy.

We then come to a small point raised by the hon. Member for Nairobi South, with reference to refunds, and he quoted from the Mining Ordinance as a parallel. Let me explain to you the Mining Ordinance and why that was put in. The parts of the Mining Ordinance which relate to compensation, as you know, were taken as near as possible from the Carter Commission Report which has received, as far as that part is concerned, the full approval of this House. If you will only visualize in practice what will happen on the granting of a lease in a native reserve to a mining company, you will see that the natives, call them right-holders, are paid out for having their land taken for twenty-one years, and they are cleared off and are accommodated elsewhere. At the end of five years the company decides that it is not able to go on and they surrender their lease. How in the name of fortune could Government recover the money already paid to the natives five years before for clearing out? That is not a matter of practical politics, so far as mining is concerned. Under the peculiar conditions that exist in the mining areas of Kenya it is quite impossible to give a mining company a refund of what they have paid to get the natives to leave their land in order that it may be mined. When you come to an Ordinance such as this, we again visualize in practice what will be done. Government is anxious to start a new industry in a certain area of the Colony. Some company or some man comes forward and applies to put up a factory or whatever may be necessary in order that the products of that area may be turned into something exportable. He is granted this exclusive licence for seven years, with the possibility and probability of another five years. At the end of a year he offends against one of the conditions of the licence, and he is ordered to close down, and Government, who presumably will have obtained from him some very large amount by way of licence or permit for the factory, say that, having considered all the circumstances of the case may—they are given power to do so, it is not “shall”—refund a proportionate amount of the original amount paid them. In that case, it is ordinary horse justice that such a thing should

be done, and it is rather interesting to know that in another Ordinance which the House will be asked to consider later on we are putting in an amendment to an almost like effect, to permit a refund, although I admit the point of misbehaviour does not occur.

The hon. Member for Nyanza accused me of being too apologetic. If he mistook my bedside manner for an apologetic manner, I will agree with him! (Laughter.) No sensible man ever makes an apology. But when a doctor comes into the room to attend to you and announces that you shall undergo a certain operation or take certain medicine, I have never noticed that he is very harsh or cruel about it. If I may say so, the hon. member has mistaken my ordinary official politeness for an apologetic manner. (Laughter.)

The hon. and venerable member Archdeacon Burns put to me three or four conundrums. The first concerned the suspicions that a fee would be charged the unfortunate native to sell produce in these markets. I can assure the hon. member that at the moment Government has not the slightest intention of charging any fee to the sellers, and only Sh. 2 a buyer of a particular produce a year. His next point was, he wanted to know whether Government had power to fix prices. Government will have that power, but whether it will be used or not I do not know, although I believe that even now under the Crop and Produce Ordinance this is being done with certain products. Regarding the classification of goods, I can say with safety that that is one of the principal things to be done at the market centres when they get properly organized.

We then had a characteristic speech by the hon. Member for Mombasa. He was very anxious to know how the Bill would increase production. Well, I cannot tell him any more than this, that whereas the Penal Code does not do away with murder yet we have reason to believe that it does reduce the incidence of murder considerably. Though we do not suggest that this Bill is some patent manure which will make things grow—(Laughter)—we are suggesting that it will encourage people to buy patent manure in order to make things grow!

The next point he made was that he was not in favour of exclusive licences. The hon. members on his right and on his left do not agree with him and think we should have power to give them even more freely, so that if the hon. member wishes an answer to that he can take them aside afterwards, when he will on doubt hear all about it!

He then told us that with regard to some company in his part of the world the cost of production of cotton is too high (I think he quoted 16 or 17 cents) and that when he was in business in Uganda he was able to do the same thing, whatever it was, for 8 cents. It would be interesting to know whether the hon. member was referring to 8 cents of a rupee or not? (THE HON. F. A. BEMISTER: No.) If not, I can only say it is a great pity for the cotton industry that he decided to forsake it! (Laughter.)

If I may sum up, Sir, there are really only three main objections to this Bill.

The first is that the Bill will slowly squeeze Indians out of the country. My answer to that can be given in one sentence: that if control will squeeze any person out of the country, then it is better for the country that he should be so squeezed.

The second objection is that the Bill will restrict free activities. Well, if the granting of a certificate of competency to a motor driver restricts the activities of motorists, then I say again that it is an extraordinary lucky thing that we have these certificates.

Lastly, we are told that no legislation is necessary until the volume of produce increases. The answer to that is, we are of opinion that the volume will not increase until we implement and assist with this Ordinance.

We are then told that this Ordinance does not go far enough. It may or it may not, but at any rate it is a start, and we must crawl before we can walk.

As a rule, at the end of my reply I am in the happy position of being able to tell members that in select committee we shall be able to meet them on a lot of points. After listening to this debate, unless there are one or two verbal amendments of which I am not aware, I do not think at present that I shall be able to meet them in any single particular. (Laughter.)

The question was put and carried by 32 votes to 2.

Ayes.—Messrs. Barton, Boulderson, Brassey-Edwards, Bruce, Archdeacon Burns, Major Cavendish-Bentinck, Messrs. Fazan, Fitzgerald, Harragin, Harvey, Hoey, Lt.-Col. Kirkwood, Messrs. Kirsopp, La Fontaine, Logan, Morris, Dr. Paterson, Mr. Pilling, Sir G. Rhodes, Major Riddell, Major Robertson-Eustace, Mr. Schwartz, Lord Francis Scott, Sir Robert Shaw, Mr. Sikes, Captain Tisdall, Messrs. Vidal, Walsh, Waters, Welby, Dr. Wilson and Mr. Wright.

Noes.—Mr. Bemister and Mr. Pandya.

APPOINTMENT OF SELECT COMMITTEE.

THE HON. THE ATTORNEY GENERAL moved that the Marketing of Native Produce Bill be referred to a Select Committee consisting of the following.—

The Hon. the Attorney General (*Chairman*).

The Hon. the Acting Chief Native Commissioner.

The Hon. the Director of Agriculture.

The Hon. Member for Nyanza.

The Hon. Member for Trans Nzoia.

The Hon. Member for Nairobi North.

The Hon. J. B. Pandya.

Dr. the Hon. C. J. Wilson.

THE HON. THE ACTING CHIEF NATIVE COMMISSIONER seconded.

The question was put and carried.

MOTION.

COMMISSION OF INQUIRY *re* CERTAIN CRIMINAL CHARGES.

THE HON. ISHER DASS : Your Excellency, I beg to move :

“In the opinion of this Council a Commission of Inquiry be appointed to hear evidence and to report on the circumstances leading to the preferring of a charge of conspiracy and arson which was disposed of in a trial by the Supreme Court of Kenya in Criminal Case No. 159 of 1934 and also on the circumstances leading to the institution by the Police of interference cases and other proceedings incidental to and arising from the aforesaid trial and some other criminal matters and particularly to report whether any blame can be attached to any particular Police Officer and/or to the Police Department or to any other Government Department generally.”

Sir, before I deal with this motion, at the outset I wish to protest most emphatically against the mischievous propaganda which is being circulated in town by interested parties to the effect that I have brought this motion as a wholesale condemnation of the Police Department. That is not so. In fact, I say here for the information of the House, that most of the police are doing their duty not only in an efficient manner but in a most straightforward and honest manner, and I have the greatest regard for them. This motion refers only to certain individuals in the department.

It has also been suggested by these interested parties that I have been prompted to take revenge on personal grounds on a particular police officer. That is not so, and here again

I must emphatically protest that if I cannot do good to anybody I shall not be mean enough to do harm to anybody. The motion is brought by me purely as a matter of principle.

Before giving notice of this motion, as a member of this House and as a responsible citizen, I thought the matter over, that by bringing the motion I was exposing myself to two very definite dangers. The first thing I was exposing myself to personally was the wrath of some of those whom I represent. Secondly, that by ridiculing certain officials of a certain department supposed to keep order, I was not doing a good thing. After careful consideration, and after consultation with my friends and the general public of Nairobi having called mass meetings, it was then decided that as a citizen I should discharge my duty by bringing this motion in this Council.

Sir, we have had from time to time personal assurances from Government that everything possible in their power is being done to redress our grievances. Such assurances may be acceptable to most people, but in certain cases and particularly in this it is not so. A lot of unpleasant things which may be said in this House to-day would not have been said if Government had acceded to the request of the Indian Association of Nairobi and the Indian community, and had appointed, departmentally or in any other way, a committee to inquire into the circumstances of this matter. But, in fact, what actually happened? Not only did Government flatly refuse to accede to our request conveyed to them in a resolution passed at a mass meeting, but they also informed the Association and the public that no useful purpose would be served by holding such an inquiry.

That is a very strange decision.

The first thing that I will refer to for the information of the House is that actually the case had not started when I approached the Criminal Investigation Department and placed certain facts before the superintendent as to the way in which the case was being faked up and that some irresponsible low type of police informers were asked to give evidence in it. The superintendent told me one thing, that if the case against an hon. member of this House who was involved was withdrawn, it would be suggested or taken for granted that some back door influence had been used with Government to keep that hon. member out of it. The superintendent also advised me that it would be better in the interests of those concerned in the case that they should have the opportunity in a court of law to vindicate their honour. If that formula is all right in the case of the public, Your Excellency, then I submit that it should have been considered by Government that the same

rule should apply to public servants. If the general public of a town unanimously passed a resolution and expressed its lack of confidence in certain officials, it should have been the duty of Government to hold an inquiry, so that those servants who derived their living from the public revenue should have a chance of vindicating their honour before such a committee of inquiry. In fact, I thought the officers concerned would be the first people to come forward and say: "Yes, we must submit to the court of inquiry and vindicate our honour". But all that has been done is that no notice was taken by Government.

There are a couple of principles involved here. By the refusal of Government to hold any public inquiry or to appoint a commission of inquiry, I am certain that the police, or certain officers of the police, will gain the impression that whatever they do or however they discharge their duties just for their own personal glorification, they will have the support of the head of the department and Government. As a citizen, I am not going to allow any man, any Government servant, as far as I can help it, to have that impression that he can use the public or the community just for his own personal glorification.

In support of that I will quote at a later stage some remarks which appeared in the *Kenya Police Review*.

There is another principle involved in this. That if the public loses confidence in certain officials or in certain departments, and it is absolutely necessary in order to restore the confidence, special measures must be taken, particularly in the case of the Police Department in whose hands the safety of the public lies. I, without fear of contradiction, Sir, can safely say that to-day the people of Nairobi (the Indian community I am referring to) have not the confidence in certain police officials in Nairobi town.

There is one thing more that probably I shall be asked: that before bringing this motion before the House, why did I not consult the head of the department, the Commissioner of Police? I wish to say that the present Commissioner of Police has nothing to do with it because he was out of the Colony. At that time, in November and December, 1934, the measures were taken to approach the Acting Commissioner and Acting Assistant Commissioner to inform them of the circumstances, but no satisfaction was given. At a later stage I will deal with this question also.

There is one more principle involved which absolutely compelled me to bring this motion; that is, that I will try and prove to the House and convince the hon. members that I hold one thing very dear, the principle that the safety of

the public, of property and life should be entrusted to only those people who bear the finest moral characters. When certain instances concerning the immoral life of some of the police officers and subordinates were brought to the notice of the Acting Commissioner and Acting Assistant Commissioner, no action was taken, and I shall later refer to the correspondence in this connection.

I will commence by referring to the arson case, to what actually happened, and as to how this arson case happened to be brought.

Last year, in the month of September, there was unfortunately a fire in River Road. What happened no one knows up to this time, but evidence was brought before the court to their satisfaction that it was a fire caused by a certain accident, of which nobody knew anything. I was not in town at the time, I was at Mombasa. When I came back, I was told that Mr. Mangat had been arrested on the 13th October with four or five others. I was simply surprised. On the Sunday morning I happened to meet Mr. Mangat, and he explained the matter to me. It was naturally essential to find out as to how the proceedings had been brought. I am saying now without the slightest fear of contradiction that one Indian subordinate police officer in the C.I.D. against whom certain complaints and reports had been made in Thika district and who as a consequence of those reports had been removed from Thika, was attached at that time to the C.I.D. Nairobi, in order to take revenge, what did he do? He somehow or other found in that area a few Sikhs and Mohammedans were living and one of the relations of Mr. Mangat was living, and the police officer found a fine opportunity to implicate the man against whom he had a grudge, to disgrace him and humiliate him and put him to unnecessary expense and reduce him to an absolute nonentity. That is why Mr. Mangat was implicated in this arson charge.

In order to implicate a person you have got to have some kind of evidence against him and evidence was found. How? I will tell you some of the evidence.

THE HON. F. A. BEMISTER : On a point of order, is it allowed to attack a Civil Servant who has no chance to defend himself in this House?

HIS EXCELLENCY : I gather that the hon. member is trying to explain the necessity for holding an inquiry. That necessity could only arise from some misconduct. At present, I do not think he has been out of order. But I think the Council might well adjourn now for the usual interval.

Council adjourned for the usual interval.

On resuming.

THE HON. ISHER DASS : Sir, I was referring to the case. Now the Criminal Investigation Department through their subordinate the Indian Sub-Inspector of Police had collected eight or ten irresponsible people from town, and most of them were police informers, to give evidence in this case. It appears in order to prove the status of those witnesses—I am reading from the judgment of the learned Chief Justice on page 2: "Both John and Jimmy are police informers and are of a 'low type'." I will go a little further and say that most of these witnesses, after the case was finished, were charged with the offence of perjury and convicted. Out of five convictions there were appeals and four appeals were dismissed and one appeal was allowed and that only on technical grounds because there was no one to represent the Crown. After they had done that the case went to the Magistrate's court and the question of bail arose. Now the whole proceedings were to be taken in the Resident Magistrate's court but at the request of one accused the Superintendent of the C.I.D. was approached by me and the feeling of the Indian community conveyed to him that instead of holding the proceedings in the open court it would be better if the application was heard in chambers. He promised that he would do his best and nothing was done. The bail question was settled in the open court. Bail having been granted, that was not enough for the satisfaction of those who had to satisfy their personal grudge. There was a nice story given out for the cancellation of bail. How did it happen? One morning one of the witnesses approached the Superintendent and told him that he was attacked in the morning when going to his school and therefore his life was in danger because he was stabbed. That created a sensation. In addition, another incident happened. The same witness in the company of another witness went one night to the Superintendent of the C.I.D.'s house and told him that he was being attacked and there was need of some action to be taken. These two instances were deliberately created in order to make the case look more sensational and so that bail should be cancelled and the responsible people put in gaol and made to rot there until the case was heard and a final decision arrived at.

With regard to the first incident that a witness was stabbed one morning at 9 o'clock, this never happened. This witness, who according to the judgment here and the statement of the police official is a man of low type and a police informer and of very low character, was never stabbed or attacked by anyone. The fact is, which I have pointed out to the police officials and others, that that morning in the

company of the school boys he abused some of them and in return he was kicked. That was the real incident and I offered to the police authorities to produce evidence and no action was taken. With regard to that incident and the night incident when his life was supposed to be in danger, it is surprising that these two witnesses took a taxi, instead of walking or going by bus, they went to the C.I.D. Superintendent's house in a taxi and I understand the Superintendent paid out 15/- out of certain funds. That is very strange that even the taxpayers' money can be paid to witnesses for hiring taxis and going to report to the head of a department at his house at night and I will point out here that once I happened to go on a Sunday morning in connection with some case and I was told that he (the Superintendent) had an office.

Now, Sir, time after time applications were made for bail so that the innocent people at least should have the opportunity of engaging Counsel, and arranging finances or money to be paid to Counsel, or arranging their own private affairs, but every time the application was made there was a very strong opposition from the police. The accused were eventually acquitted but they must have been at least three or four months in gaol.

During the case now I will relate how actually things happened. These are the statements given by the witnesses themselves and some of them, if I were to read them I think it would take a month of this House, but I will simply refer to three or four instances. I have referred to the payment of the money from the public revenue. Now, Sir, all these witnesses from time to time were taken by the Indian Sub-Inspector of the C.I.D. for a ride and for a drink and other things. After the witness had given his evidence he was taken out and asked if he had given good evidence. If he said no or whatever points had not been said there, the next witness was called and instructed that he should give his evidence in a certain manner. This is all in the record.

Now another thing with these witnesses, certain of them were approached to give evidence and refused because they did not know anything about the case—in fact they were not present that night at the scene of the fire—and they were threatened that if they were to say in court that they have seen Mr. Mangat there at the scene of the fire, they will be persecuted or sent out of the country, and not only that, some were not produced in the lower court but produced in the Supreme Court. When all this was going on, as I said, the C.I.D. were aware of these facts. It may be said that at least the C.I.D. Superintendent did not know about the Sub-Inspector's or about the subordinate officials' doings. They

cannot plead this ignorance. I refer to the two interviews on the 16th October. I wrote to the Superintendent on the 2nd November, 1934, and placed all the facts before him, in other words, that the whole thing was faked up, that the witnesses were being asked to give evidence for a consideration, that is, bribery, and the promise that they will be given jobs. The whole thing was explained to him. Having heard that, he promised definitely that if I were to produce Crown witnesses before him and if they were to say they were being asked to give evidence on the suggestion of bribery and promise of position, then he would see his way to . . .

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE : On a point of order, Sir, is it necessary to take up the time of this House listening to this stuff which really boiled down means the washing of dirty linen in public?

HIS EXCELLENCY : The hon. member to support his case is trying to substantiate his contention that a necessity for the enquiry exists. He cannot do that without producing facts of this kind to this House.

THE HON. ISHER DASS : Having heard my statement he made a definite appointment for the 17th October at 2.15 p.m. to bring those witnesses to his house, insisting at that time, that I should take the witnesses there. He was not there but I can say that in the meantime all those witnesses had been called by the Superintendent of the C.I.D. and taken before the magistrate to record their statements so that they may not change it. Up to this time without any fear of contradiction I can say that I have never approached a single witness. I have never asked a single witness to come to my house. Those witnesses for fear that if they gave false statements and promised they will be cross-examined and the truth were to be found out had come to my house. They came voluntarily and in fact I did not know where their houses were. In giving his statement before the Supreme Court the Superintendent admitted that he made an appointment with me and that he did not keep it because he changed his mind. That is not the way of a responsible police officer to behave when anybody is placing facts before him. He has to keep the appointment and if he does not want to, then the least courtesy that could be expected from any public servant was that—I am on the telephone—I could have been informed that he had changed his mind and did not see his way to keep the appointment. That shows how much the unfortunate Superintendent having once listened to the advice of his subordinates and having brought himself to that position, found it very difficult for him to go back, and the only thing left was to keep on with this case.

to know exactly what Exhibit C was, because previously I have mentioned this that witnesses having signed their statements showing the intention of getting people into trouble have gone to the court and denied their signatures on documents and that was the document Exhibit C.

I have already referred to the case and I have pointed out the facts and quoted certain paragraphs from the judgment and statements given by witnesses before the magistrate and the Supreme Court. I will now refer to certain information in connection with this case which I brought to the notice of the Acting Commissioner of Police and the Acting Assistant Commissioner in those days, in order to show that what I say to-day I brought to the notice of the authorities long ago, that the people who were actually conducting this case and particularly the Indian Sub-Inspector of the C.I.D., had faked up the whole thing, and also that it was a personal affair. He asked me to make a statement to him, which I did. I brought certain instances to the notice of the Acting Commissioner and Commissioner and I made that statement in writing. I pointed out to him certain evidence given by the Commissioner of Police before the Bushe enquiry. That particular thing appears on page 86 of the Report of the Commission of Inquiry into the administration of justice. That circular reads that : "Every complaint against the Police must be filed separately and the papers of such complaint must read like a book. Each file should be a sub-head of the main file. In every case possible the officer in charge of a district will hold a personal enquiry into these cases and at such an enquiry the complainant should be given an opportunity of being present and should be notified accordingly." I pointed out to him that as I was the complainant I wished that I should be informed of the date of the inquiry so as to be present. In spite of that I was never informed what happened until one day in January when, as I was giving evidence before the Supreme Court, I was questioned in fact by the Crown Counsel, as to whether I would be glad to know that the complaints I had made against the Police were found to be absolutely untrue and they were exonerated from blame. That was the first time I knew that in fact an enquiry had been held, in spite of all I had said before, and in spite of this circular, I was never informed until I was asked suddenly that day if I would be glad if they were exonerated. I said I could not say because the enquiry has not been conducted in a proper manner.

I at once wrote to the Commissioner of Police asking him : "With reference to my complaint lodged against Sub-Inspector Partap Singh of the C.I.D., I learn that you or the authorities concerned have conducted the enquiry and have

exonerated the said police official from all blame. I shall be glad to know if my information is correct." That was written on the 4th January, 1935. There was no reply to my letter. On the 14th, ten days after, I sent a reminder: "With reference to my letter marked confidential dated 4th instant on the subject of complaint against Sub-Inspector of Police Partap Singh, C.I.D., please expedite the reply to my letter referred to above. I shall be obliged if you will treat this letter as urgent." On the same day by coincidence I got a reply from the Acting Commissioner of Police:—

"Sir.—With reference to your letter dated 4th January, 1935, I have the honour to inform you that the allegations made by you against 1st Grade Assistant Sub-Inspector Partab Singh of this Force which were recorded in Police Headquarters office by the Acting Assistant Commissioner of Police on the 21st and 24th November and the 6th December, 1934, have been the subject of careful enquiry. I am unable to find, however, that the Assistant Sub-Inspector in question has, in the matters detailed by you, committed misconduct in the execution of his duty as a police officer.

Your general allegation of impropriety in their official conduct against all Police Sub-Inspectors stationed in Nairobi, not being circumstantially supported by you, has not, of course, been the subject of enquiry."

Now, Your Excellency, the enquiry had been conducted and the instructions contained in the official circular have never been complied with. The result had never been communicated to me and yet here I get a reply that everything possible has been done and the accused have been found blameless. Is this the way an enquiry should be conducted? And is this the way our grievances are met? Not only that but in addition the definite charge was brought against me on the other hand, just to ridicule me in the eyes of the public, that I had brought allegations against all the Sub-Inspectors in Nairobi.

It is a thing which I have never done in my life, and I still maintain to-day that it was purely a piece of mischievous suggestion which was contained in that letter.

Hon. members will be surprised. The complaints were that in an area near Pangani are certain Indian quarters part of which is occupied by bachelors. In these bachelor quarters one morning, on the 21st of December, African women were found to be drinking . . .

HIS EXCELLENCY: Order, order! Has this anything whatever to do with the motion?

THE HON. ISHER DASS : Yes, Your Excellency, in this respect, because I have already mentioned complaints against police officials had been made to the higher authorities which were never inquired into or taken notice of or, if taken notice of, the inquiry was not conducted in a proper manner or in accordance with the instructions contained in the circular. On the other hand, the complaint is that people who were supposed to be looking after the safety of the public were found in a certain place in the company of immoral native women drinking whiskey. The sub-inspector was among them; in fact, the Superintendent of the C.I.D. was present on the scene when the sub-inspector came out of these quarters . . .

THE HON. THE ATTORNEY GENERAL : I am sorry to interrupt again, but is the hon. member in order in bringing in these side issues when, according to the motion, we are asked to appoint "A commission of inquiry to hear evidence and to report on the circumstances leading to the preferring of a charge of conspiracy and arson"? What on earth has a sub-inspector drinking at Pangani to do with the case?

HIS EXCELLENCY : That is the reason why I asked the hon. member if it had anything to do with the motion. I did not see the connection and still do not, unless he is trying to prove that important witnesses in the police prosecution were entirely unworthy and not credible.

THE HON. ISHER DASS : I have stated already, that whatever complaint was made in connection with this arson case about police officials or witnesses, no notice has been taken, and the matter has not been properly dealt with. I am trying to convince hon. members that the people who were actually conducting the case were conducting it for purely personal motives of revenge, and I am trying to prove that they are men of immoral character . . .

THE HON. THE ATTORNEY GENERAL : Your Excellency, on a point of order, on the wording of the motion I submit that the hon. member is entirely out of order, that: "A commission of inquiry be appointed to hear evidence and to report on the circumstances leading to the preferring of a charge of conspiracy and arson."

HIS EXCELLENCY : I entirely agree with the hon. and learned Attorney General, and must again ask the hon. member to keep strictly to the point, the circumstances leading to the preferring of the charge.

THE HON. ISHER DASS : I will not go into the details, but I want to say two or three things before I close my speech.

I referred in the beginning to the fact that this case was actually brought for two reasons : for personal glorification and in order to get certain promotions in the department by showing the zealously of those particular officials. In order to substantiate that, I have already given facts and figures. One of the police officers in his own statement has said that he used to take witnesses and stand them to a drink out of his own pocket.

Now I will refer to a certain report to justify that this case was done for glorification. In the January issue of the *Kenya Police Review* on page 3 appeared the following :—

“H.M. the King has been graciously pleased to award the King's Police Medal to Mr. Neil Stewart, M.M., in recognition of his valuable services as Superintendent in charge of the C.I. Dept., the Kenya Police.

Mr. Stewart has had charge of some of the most serious cases which have occurred in the Colony, viz., the Ross case, the Mombasa mail bag robbery, the counterfeit coining case, the Hoyer case, the Tarlton murder case, the Semini murder case, the Selwyn case, and the Nairobi arson case.”

In the month of January, while the case was still before the court and had not been finished, the paper comes out to say that the superintendent has been awarded these honours because he happened to be in charge of the arson case.

HIS EXCELLENCY : Order, order ! The award of honours cannot have anything to do with the circumstances leading up to the preferring of a charge of arson.

THE HON. ISHER DASS : My point is merely that this should not have appeared in the paper in order to show the glorification of anybody who was in charge of a case without that case having been proved. It should not have been mentioned at all.

HIS EXCELLENCY : Order, order ! Whether or not that appeared in the *Review* has nothing to do with the circumstances leading up to the charge. I must ask the hon. member to keep to the point.

THE HON. ISHER DASS : The last point is, as I have already stated, the principle involved, that the heads of the Police Department, having taken no notice of the complaints brought to them in connection with the arson case, and especially the facts brought to the C.I.D., it is my opinion, and it is generally felt, that the subordinates were being

encouraged in this way, and it is a fact also that things are going on in the town to-day which are not desirable. That is what I was referring to.

Another principle involved is that if a police officer has deliberately tried to take revenge by bringing such a charge, he should be made to go before a committee of inquiry. I will simply say that, as the Superintendent of the C.I.D. himself suggested, if any man in order to vindicate his honour must submit to a court, therefore in view of the statements made in the judgment of the Chief Justice in the Supreme Court that there was a suggestion of malice against the accused by someone, and in view of the statements that they had been telling lies, in view of the fact that all the witnesses were of low character and police informers and on promises of bribery were asked to give evidence, in view of the fact that after the arson case was finished certain witnesses were convicted of perjury, I see no reason why Government should not appoint a committee of inquiry to inquire into the circumstances of the whole matter, as well as to see if blame can be attached to anyone. I say that the same rule which applies to an accused should be applied to people who for a living receive wages from the taxpayers' money, because if the confidence of the taxpayers is lost, as it has been lost—a fact which was conveyed to Government by means of a resolution passed unanimously at mass meetings in Nairobi—then Government should accede to this request and appoint such a commission to inquire into the whole affair, for these several reasons. It would be a lesson to officials in the future in that it would stop them bringing charges as a revenge against citizens; and also the appointment of a commission of inquiry would restore confidence in the minds of the general public, which is absolutely essential as far as the safety of society is concerned.

THE HON. SHAMSUD-DEEN : In the first instance, Your Excellency . . .

HIS EXCELLENCY : Is the hon. member seconding?

THE HON. SHAMSUD-DEEN : I am seconding the motion, and I wish to say in the first instance that I thought the hon. mover was ill-advised in bringing to this House a matter finally adjudicated on by the highest court in this Colony. I thought it was more or less an individual affair which ought not to be brought into this honourable House. That, evidently, is also the opinion of the hon. member for the Coast when he said that Indians were washing their dirty linen in this House and that the House could not be expected to listen to this sort of thing.

But the motion has been pending for such a long time that I have had an opportunity to go seriously into the matter, and I finally decided against my first decision, to have nothing to do with the case, to second the motion.

I kept myself severely aloof from the whole case, in spite of various attempts made by various parties to bring me in as a witness or otherwise, but here is a case in which, as far as the wording of this motion is concerned, the judgment of the learned Chief Justice in itself is a very strong argument, I think, to substantiate that there was something very seriously wrong somewhere. I did think it was an individual matter, but one cannot take too much precaution against the proper conduct of a department like the Police Department who are the protectors, as the hon. mover said, of people's property and lives and their honour. If there be the slightest suspicion that an officer of that department begins to abuse that privileged position and instead of protecting he begins to attack those whom he is supposed to protect, then I think it is high time for everybody to take a serious view of it.

In the case of the police, of course, they are in a privileged position, that they can bring prosecutions against people who cannot hit back. If a similar abortive prosecution were brought by one private individual against another, I have not the least doubt that he would have his remedies according to law and would get redress, but in the case of the police they are immune; they are privileged. One cannot attack them.

Here is a case, Your Excellency, of a respectable citizen having been actually locked up for two months and twenty days, having eighty anxious days and nights as to the fate which was hanging over him all the time until the case was decided. He was confronted with all this trouble on the evidence of five people who have been convicted of perjury in the court of justice. The police are, I think, in the position of an architect or an engineer who puts up a structure which tumbles down owing to the poor material of which he constructed it, and when questioned by a certain number of people afterwards says: "I am not responsible for that". Surely responsibility must be attached somewhere. Even to an ordinary private individual, to be kept in prison for eighty days, and carted about the whole town in the Black Maria, the prisoners' car, in itself would be very grave injustice, but in this case the position goes much further.

Here is a man whom the Indian community elected as one of their representatives. Leaving alone his personal capacities, injury and harm was done to the whole of the Indian community, and I say that although he has been exonerated in a court of law the rumour—and not a rumour

but a definite publication of the news of the trial—has been spread far and wide. Even when I was in India recently everyone looked askance at me and in their minds said: "Here is a man from Kenya, and in the Council he comes from is a crowd who set fire to people's houses." (Laughter.) It is not merely the case of an individual, but the whole community, and a grave principle is involved in it. It is true that that man has been acquitted in a court of law, but this matter will be talked about during his lifetime, and it will be a great slur not only on his children but his grandchildren, and his relatives in India, for some unkind people will entertain the suspicion that there was something in it although it was legally proved that the case against him had depended mainly on the evidence of those witnesses actually committed for perjury.

I submit that we cannot attach too much importance to the police witnesses and their behaviour, and, as far as the circumstances are concerned, if an inquiry were held I think it would be established beyond all possible doubt that the mainspring of the whole case was a person conducting it who two or three years ago made a grave accusation against Mr. Mangat and Mr. Isher Dass and who thought this was a very good chance of having a go at both of these people to take his revenge. That in itself could be proved if an inquiry were held.

I do not like to reiterate things which the hon. member Mr. Isher Dass has said, but if the police have nothing to hide and are afraid of nothing, no harm can be done by an inquiry into the whole matter, and if the officials are absolutely above board they could be exonerated at a public inquiry. All this has been said to-day. An inquiry is the best way in which it can be proved. As far as the police are concerned, I must say that I do not want the good name of the police spoiled in the same way as the Indian police has the reputation of being the worst in the world. I think the police force here consists of a very praiseworthy staff, but unfortunately some of the less scrupulous element has crept in, and I think it would be a very good thing for all future inquiries if the people who abuse their power made to learn that they are liable to have their conduct inquired into and punished if they are found to have abused such power.

I do not think I am out of order if I mention one little instance of how over zealous officers go out of their way and do such a lot of harm and injury to private individuals without the latter having any possibility of any kind of redress against them. Only last week a case came to my notice where a police officer went out of his way to report a certain individual

to the General Manager of the Railway, bringing certain allegations against him. That man never had an opportunity of answering the case or cross-examining the witnesses, but the police report is taken as being true and the man is dismissed on the spot without being given a chance to say whether the police report is false or true. I am simply trying to elaborate how dangerous weapons are placed in the hands of the police. In this case—it has nothing to do with any criminal investigation—a permanent way inspector at Broderick Falls had his wife sent to Eldoret . . .

HIS EXCELLENCY : I do not think this has anything to do with this case, has it?

THE HON. SHAMSUD-DEEN : I was trying to show how some police go out of their way and poke their noses into matters which do not concern them at all and which, in this instance, has cost the man his career, without being given the opportunity to defend himself.

I do not wish to take up the time of the House any longer. I do think this is a very serious matter where not only the person accused of a heinous crime has been really disgraced for practically the whole of his life—I need not go into that—but even these unfortunate dupes brought as witnesses and subsequently convicted of perjury would never have gone to prison if the case had been properly investigated, and had that been done this motion would never have come before this House.

THE HON. N. S. MANGAT : Your Excellency, I should like to begin by assuring this House that in supporting the motion my object is not to procure any reinstatement or exoneration. I have had enough of that and enough notoriety. The motive for which I stand is because I feel that to conceal facts, if you are sure you hold them, is to take a liberty with truth.

It has been stated by my two hon. friends that the Indian Association made a demand for an inquiry and that it was treated with flippancy. Knowing the public importance of the consequences of the resolution, I will say that Government have in this matter really displayed an arrogance of disregard which is truly staggering.

The facts on which I base my arguments are the outstanding features of the case. I am not complaining of the law, but in the words of Macaulay I am complaining of the violation of the law, and I shall be supported by facts as they exist on the files. I do not even propose to impute motives to any officer; all I have to do is to place facts before the House and leave members to draw their own inference.

The case started on the 13th October, 1934. Private inquiries were made, and it was discovered that the evidence had been fabricated. Immediately after, the police were approached, and the hon. member Mr. Isher Dass and certain other gentlemen were prepared to produce evidence to the effect that all these witnesses had been bribed, and it was promised that an inquiry would be made into it. Later that was dropped, nothing was done, and the case went on. Not only that, but there was a signal circumstance in the case which is, that on the night preceding the opening of the case two of the Crown witnesses went so far as to go to the house of the Crown Counsel who was to prosecute and related a story so sophisticated and extravagant that even a child could have seen through it. On that story the bail of the accused was cancelled and never restored, and so insistent was the learned Crown Counsel that when one accused made the suggestion that he was prepared to give bail in £5,000 cash the magistrate, evidently affected by the representations made by the Crown Counsel, said : "Not even a million pounds".

That will show the intensity of the feeling of all those who were conducting the case, and that is to say the least not a proper manner. Incidentally, it is interesting to note that one of the witnesses who related that extravagant story has been convicted, on that very story, of perjury, the story which was related with so much gusto by the learned Crown Counsel and accepted with so much equanimity by the Resident Magistrate.

The matter did not rest there. Immediately afterwards four people who were considered to be defence witnesses were arrested without warrants under section 108 of the Penal Code. Section 108 (f) of that Code says :—

"Any person who . . . (f) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence . . . is guilty of an offence and is liable to imprisonment for three months."

This section, if read with section 97 of the Criminal Procedure Code, will tell you that in offences which are punishable with three months, the accused need not be present to answer these charges ; as long as he is represented by an advocate he can stay away. But in this case it was treated so seriously that not only were the accused arrested but they were kept in custody a whole week before being allowed bail. If you believe that this was an ordinary case of interfering with justice, certainly it is most extraordinary that their bail should have been opposed so vehemently as to cause them to spend a whole

week in custody, whereas if they had been tried and convicted probably they would not have got more than a week's imprisonment as punishment.

After that, when it was discovered there were certain other people coming as defence witnesses, two more were arrested, making six, and later on two out of those six were rearrested and committed to custody; after that, three more were arrested, that is nine altogether for the defence, their bail forfeited and put into custody.

Your Excellency, every accused person certainly believes that, no matter what inconveniences ensue, ultimately he will get justice. I had not committed a crime, but the enormity of atrocity perpetrated on these innocent people certainly made me come to the verge of committing the biggest sin a man of my profession could commit, of losing faith in justice. The happiness which I felt at their release was more than the happiness I felt on the ultimate conclusion of the case itself, because I knew there was someone in the Colony who exercised the law in a reasonable and judicial manner.

During the period that these excesses were being committed, an Indian area of the town was under a sort of martial law, and every Indian in imminent danger of summary arrest. In those places, most hon. members are not acquainted with these quarters, where these Indians live, most of them were afraid of losing their liberty and honour. A number of the prosecution witnesses, six or seven of them, not one of whom had a job, were going around the streets with unbelievable impudence, revelling in the luxury of the power at their command and were filled with a sense of their own importance like Aesop's fly, who sat on the axle-tree of the chariot wheel and said: "What a dust do I raise." The police were supporting them wholeheartedly. Five of those witnesses were convicted, and four are still serving sentences, on the very statements that they made against the accused. It reminds me of certain remarks in the "Papers regarding the death of Mr. T. L. Powys" made by the hon. and learned Attorney General, where, on page 29, he says:—

"I would observe that the practice and traditions of the English criminal law impose certain restrictions upon the conduct of prosecutions. It has long been a legitimate source of pride as well as a safeguard of individual liberty that the Crown should conduct such matters with scrupulous fairness as well as with firmness; that it should 'prosecute but not persecute'."

I will just give a short history of those nine people. They were arrested under section 108, and had to come to court daily for nearly a week for their trial, but were never tried nor a single word of evidence recorded against them.

LT.-COL. THE HON. J. G. KIRKWOOD: On a point of order, do I understand that the hon. member proposes turning the House into the committee he wants appointed and we are to hear all this evidence?

HIS EXCELLENCY: I understand that the hon. member is now coming to the second part of the motion and is dealing with such other proceedings incidental to and arising from the aforesaid trial, and that he is out to prove these circumstances were of such a kind as to render the inquiry necessary. I do not think he is out of order.

THE HON. N. S. MANGAT: And also of the circumstances leading to the institution by the police of these interference cases.

Eventually they were withdrawn, and later, when the perjury cases were brought against the prosecution witnesses, another charge similar to the charge from which they had been discharged was again brought against these nine people. That was by way of retaliation because of the perjury cases brought against the prosecution witnesses. The substituted charge also was never prosecuted; from March to April there were several adjournments and the charge was again withdrawn. This little pleasantry on the part of the police cost these nine persons Sh. 5,000 expenditure.

If in the opinion of the police or the Crown officers there was a necessity to substitute charges, why not prosecute the men? Why were the nine discharged and again recharged? It is most essential that the inquiry should be held as to the purpose of the police getting these witnesses arrested and never bringing them to trial and without recording any evidence against them they were discharged after being put to so much inconvenience and expense.

Now the second point which demands enquiry, Sir, is that after this very tiresome and expensive trial, the prosecutions stood like the adventurer who after years of strife finds nothing broader than his own shoes. It was a definite finding that there was malice on the part of someone. On whose part could that be? Evidently on the part of someone who was in close touch with the prosecution because the finding was the result of certain information given to the Crown Counsel which information was found and admitted by the prosecution to be false. This fact alone entitles me to ask for and justifies Your Excellency to grant an inquiry.

But the third stage in this case is most important. I do not consider it should take an improper length of time. The third stage is the perjury case. In spite of the chaste indifference displayed by the law officers of the Crown and in spite

of the indirect help rendered by the police to the accused, five convictions were obtained and out of the five appeals only one was allowed and that was because there was nobody present to represent the Crown. As the hon. the Attorney General will agree, private prosecutors are not allowed by the Court to appear and the Attorney General refused permission. I can say with exactitude that it is a record that in any criminal prosecution so many witnesses have been convicted of perjury, and I would ask the hon. Attorney General, firstly, whether those nine prosecutions which were brought by the police were really prosecutions or persecutions? In my submission it was nothing less than persecution. Secondly, Sir, whether a finding of malice in a judgment does not justify investigation as to where the source of malice exists? Thirdly, does it not justify an inquiry to see as to who put those people up to give this evidence which was found to be false? If those people came of their own accord, what made them do so, if they did come forward to give false evidence? These three features are very prominent and it is only fair that the hon. mover should insist on an inquiry, and such features justify Your Excellency in granting that inquiry. I applaud a man who does his duty without fear and favour, but it also should be considered that that should not act for the promotion of fabricated charges, but for the advancement of justice.

I am also aware that the officers of the police have a certain discretion but it has been laid down and enunciated so long ago as in the days of Lord Bacon that that discretion has to be exercised judicially, reasonably and with due safeguard. Certain allegations have been made against the police and it may be said that the mere making of a statement is not necessarily proof of that statement, but apart from anything that may be disclosed in that enquiry, I have placed before you the facts as they exist and I ask you whether they do not justify an inquiry. The Police Department has been hanging too long like a picture on the wall. Let us take that picture down and have a look at its back, and it seems to me that it must be very dusty and full of spiders' webs and flies as well. We must clean it and make it stand as a monument of public safety, and not as a haven for conspirators, fabricators and unscrupulous lovers of promotion.

The Indian community has in unmistakable terms expressed its no confidence in the Police Department. It does not concern me at all whether an inquiry is granted or not, but from the public point of view it is essential that inquiries should be made as to how this came about and considering all these factors together one cannot help thinking that there is something rotten in the State of Denmark. You can throw this motion out, but in that case these allegations will stand as a perpetual stigma on the guardians of the public

peace, and I will only conclude with the words of Robert Burns, who in the humour of his apostrophe to "poor Nickie Ben" says: "Oh, wad ye take a thought and mend"!

THE HON. J. B. PANDYA : Your Excellency, I rise to move an amendment. In fact I think the amendment which I am moving should be another motion, but I have taken the liberty to move it as an amendment in order not to take the time of the House. I am only speaking on the amendment because I do not happen to know much about the principal motion.

THE HON. ISHER DASS : Who is seconding the amendment?

HIS EXCELLENCY : The proposer of the amendment has not yet finished his speech.

THE HON. J. B. PANDYA : I do not think the hon. member knows the rules of the House. He ought to allow the amendment to be moved before it is seconded. I should have been justified in asking him the same question.

DR. THE HON. A. C. L. DE SOUSA : On a point of explanation, under the rules of this House, Sir, should not Mr. Pandya inform the member, who is seconding, otherwise he may be talking for some time without the House being able to debate or vote on his amendment.

HIS EXCELLENCY : That is no point of explanation or order. I must ask the hon. Mr. Pandya to proceed.

THE HON. J. B. PANDYA : Your Excellency, I am not going to take up much of the time of the House. The amendment which I am moving is this :—

That the motion be amended by the addition of the following words :—

"And that the inquiry should include the circumstances leading to the preferring of a criminal charge against Dr. A. U. Sheth and others at Mombasa and to report thereon."

The principle involved in this amendment, Sir, is of public importance. I may say that I have taken no interest whatsoever in regard to this case in any way, but the public view is this, that if an influential and responsible Indian could be involved lightheartedly, so lightheartedly, in such serious criminal charges, affecting not only his reputation but his means of earning a living, then the ordinary man in the street could be much more easily involved in this kind of serious charge.

One of the well-known principles of British law is that the liberty of a citizen should be very jealously safeguarded and we are entitled to share in the benefit of this law. In regard to this particular point which I am bringing before the House that the people should be safeguarded and they should not be persecuted, we complain against this particularly because the authorities responsible for the initiation and prosecution of this particular case do not seem to have taken due precaution. I am not imputing motives to any particular officer; it is only a question of pure and simple public importance as to whether the police should undertake a prosecution without due precaution.

Coming, Sir, to the details of this case, there was a prosecution alleging an illegal operation on a European girl by Dr. Sheth, a well-known practitioner and professional man and a respectable public man. Not only, Sir, was he charged, but his wife, Mrs. Sheth, who is a qualified nurse, was also included in the charge as an accomplice. There was no evidence whatsoever adduced against Mrs. Sheth in this case. In regard to this, in every race the sanctity of women is considered to be very great and I do not wish to minimise that sanctity and the traditions of womanhood in other races, but I should like to emphasize that amongst Indians this point is particularly always considered with a great deal of sanctity. It does affect the woman's social status when they are accused of such charges and it is a very serious thing.

My submission is that the police should have taken a little more precaution in order to prove to themselves or to find out the facts in regard to this case. It appears, from what has come out in evidence that the police had undertaken this case on very uncertain and flimsy grounds at Mombasa and although the point has been made by the hon. Mr. Shamsud-Deen, I should like to emphasize it that there is no doubt whatsoever that the police as guardians of the law have got to be very careful before they turn that machine into a persecution or against the citizens for whose guardianship they are kept, so that they do not, willingly or unwillingly, become the victims of intrigue and the machinations of interested people who might, as often happens, have a grudge to satisfy.

As remarked by Mr. Justice Horne in his summing-up, the whole of the Crown case depended entirely on the evidence given by a Dr. Rana who, as was said by the police inspector in his evidence, gave a statement to the police before the case was taken up. He was the first man to give any information or to make a statement. Now, Sir, this, as it came out in evidence, was against medical etiquette which Dr. Rana was bound to observe and which for unknown reasons he did not, and this should have been known to the Police, but

apart from that, it was emphasized in this case because Dr. Figuerado was approached to give evidence and she refused on the ground that she would only do that if asked by a court of law. This factor in itself, and in view of this particular thing which is considered to be against medical etiquette, the police ought to have considered whether such information which came to them was really information on which they could rely. They should have considered it something strange and out of the normal, so that had they made more searching inquiries they would easily have seen the hollowness of the charge. I am giving a certain importance to this evidence because the learned judge in summing up made this quite clear. He said that the Crown case rested on the evidence of Dr. Rana alone and further he observed that pregnancy had not at all been proved, and had Dr. Rana observed his duty of professional secrecy with regard to his patient we would not have heard about this case at all. He went on further and said the prosecution had not proved anything in this respect except the opinion expressed in Dr. Rana's evidence which was not reliable.

On this particular evidence the whole case depended and with a little more care by the police it would not have been necessary for a professional man and his wife and a European girl to go through this machinery of law which was from the evidence itself absolutely and entirely unnecessary.

Personally, Sir, I consider it a gross dereliction of the duties of the police. They are there to protect the citizen and it was their duty to find out whether there was any substance in the charge made. It is not only the evidence of Dr. Rana which was considered to be unreliable, but the learned judge goes further and says that "there was an entire absence of reliable medical opinion. Dr. Neil's evidence was based on what the two so-called nurses Khatija and Lavina described as an operation. It has been proved that these nurses were learners and did not know what was the operation for and the names of the instruments used."

The point is this, that—I do not know if it is a fact—but the Hon. Director of Medical Services might have been consulted—and as a medical expert he did not advise that there was any illegal operation. At the trial the judge said there was no evidence whatsoever against the accused. From that point of view, Sir, an inquiry would be justified.

The point has already been made but I should like to emphasize again that in this instance the accused have no recourse to law. They cannot possibly bring an action for damages and the police are protected. The only thing we can ask for is an inquiry into the circumstances and that the

department should deal with the officers concerned who are responsible for bringing such cases. I think it is more than justified from this point of view that the Government in the interests of the department itself and to prove to the public that everything in the department is above board, the least they can do is to appoint a commission of inquiry in this case.

I have no desire to be unfair to the police in this particular instance while I must admit that their conduct in my opinion deserves the greatest censure in regard to bringing these charges, but I am bound to observe that their subsequent conduct in conducting the case was exemplary and that the officer who was sent from Nairobi to conduct the case dealt with it very fairly and the hon. the Solicitor General who conducted the case in the Supreme Court dealt with it with fairness and there is no complaint with regard to that at all. I mention this in order to point out that I do not wish to make any specific charge against the Police Department as a whole or against any particular police officer deliberately doing this thing, but I am only bringing this question to notice in order that there might be an inquiry with a view to stopping the chance of such things happening in the future.

Whilst dealing with this case I think it will be fair for me to take this opportunity of observing that we are exceptionally fortunate in having our Judiciary composed of men of great credit to East Africa and in these cases they have observed scrupulously the proverbially fair standards of British justice, and although the trial imposed a great strain on the accused, their relatives and friends, all of them were creditably acquitted. I mention this and I hope in this particular instance there will be no consideration of prestige as far as Government is concerned because what we are after is that the Police must understand that in these instances it is their duty to realize and to go with a little more care and precaution into cases of this kind.

THE HON. F. A. BEMISTER: Your Excellency, I beg to second the amendment with the distinct understanding that it is only the amendment and no connection with the original motion.

HIS EXCELLENCY: The question is that the motion proposed by the Hon. Isher Dass be amended to include the addition of the words proposed by the hon. Mr. Pandya.

Council adjourned till 10 a.m. on Wednesday, 10th July, 1935.

WEDNESDAY, 10th JULY, 1935

Council assembled at the Memorial Hall, Nairobi at 10 a.m. on Wednesday, the 10th July, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, ESQ., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 9th July, 1935, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table :—

BY THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT :

Report of the Select Committee appointed to consider and report upon the Bill to amend the Local Government (Municipalities) Ordinance, 1928.

Report of the Select Committee appointed to consider and report upon a Bill to amend the Harbours Regulation Ordinance, 1928.

NOTICES OF MOTIONS.

The following notices of motion were given :—

BY THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT :

That the Report of the Select Committee appointed to consider and report on the provisions of the Local Government (Municipalities) (Amendment) Bill be adopted.

That the Report of the Select Committee appointed to consider and report on the provisions of the Harbours Regulation (Amendment) Bill be adopted.

ORAL ANSWERS TO QUESTIONS.

RESIDENT NATIVE LABOURERS ORDINANCE.

No. 33.—THE HON. CONWAY HARVEY asked :

“Will the hon. the Attorney General state the position in regard to the proposed new Resident Native Labourers Ordinance?”

THE HON. THE ATTORNEY GENERAL : The draft Bill is at present under consideration by Government.

SHIMO LA TEWA SCHOOL, VISITORS TO.

No. 36.—THE HON. F. A. BEMISTER asked :

“Is it a fact that any friend or relative wishing to visit a student or a teacher at the Shimo la Tewa School on Sundays must first obtain written permission from the Principal of that school?”

If the answer be in the affirmative, will Government place a notice board at the entrance to that effect?

THE HON. THE DIRECTOR OF EDUCATION : The reply to the first part of the question is in the negative. The visits of friends and relations at reasonable hours are encouraged, but recently certain unauthorized visits to dormitories at prohibited hours made it necessary to forbid visitors access to the dormitories, unless they are accompanied by the Principal or a European assistant.

The second part of the question does not, therefore, arise.

MOTION.

RE COMMISSION OF INQUIRY INTO CERTAIN CRIMINAL CASES.

THE HON. ISHER DASS having moved :

“In the opinion of this Council a Commission of Inquiry be appointed to hear evidence and to report on the circumstances leading to the preferring of a charge of conspiracy and arson which was disposed of in a trial by the Supreme Court of Kenya in Criminal Case No. 159 of 1934 and also on the circumstances leading to the institution by the police of interference cases and other proceedings incidental to and arising from the aforesaid trial and some other criminal matters and particularly to report whether any blame can be attached to any particular police officer and/or to the Police Department or to any other Government Department generally.”

THE HON. SHAMSUD-DEEN having seconded.

THE HON. J. B. PANDYA having moved that the motion be amended by the addition of the following words :

“And that the inquiry should include the circumstances leading to the preferring of a criminal charge against Dr. A. U. Sheth and others at Mombasa and to report thereon.”

THE HON. F. A. BEMISTER having seconded.

The debate having been adjourned.

The debate continued.

DR. THE HON. A. C. L. DE SOUSA : Your Excellency, I rise to oppose this amendment. In doing so I should like very much to make it clear to the representatives of the Press, and the Press generally in the Colony, that what I say is not against an inquiry into this case but that it is very much against the methods which have been adopted by the hon. mover in tagging this amendment to the tail end of the motion.

I mention the Press because in recent times the reports of what hon. members say here are being published in certain sections of the Indian Press without fairness, reports in which they sing all the hosannas and hallelujahs in favour of their little tin-gods and leave the public in ignorance of what has really been transpiring in this Council. I think the whole Press of this country in regard to this Council should see that all reports are made fairly.

I oppose the amendment not because I am not in sympathy with the case of Dr. Sheth, but because I say this case and the one represented by the motion are not on all fours. This case of Dr. Sheth has not been the subject of public discussion in the Indian community of Mombasa. When I say that, I mean there have been no mass meetings held in Mombasa to express an opinion on the case. As far as my knowledge goes, the Indian Association of Mombasa has not made any request to Government for a public inquiry, neither has the public of Mombasa, nor, as far as my information goes, has the headquarters of the Congress which are now located in Mombasa and of which the hon. mover is the so-called President sent Government a request on behalf of the Indian community of the Colony to institute such an inquiry.

With all that, I am in sympathy with the case of Dr. Sheth if it is properly investigated, and if the hon. mover of the amendment at any stage in this session of Council proposes to bring in a motion I shall not be going against my own feelings to second it.

THE HON. J. B. PANDYA : When I moved my amendment I made it clear that it was to save the time of the House and that they were really two motions.

DR. THE HON. A. C. L. DE SOUSA : In this connection I should like to inform Your Excellency that quite recently, in this very House but not in session, the hon. mover of the amendment expressed to the Indian members that the police were very anxious to withdraw the Sheth case at a certain stage before it came into open court, and he was very anxious that that should be brought out. For what reason I am not able to say; may be because the name of Dr. Rana should have the greatest possible advertisement as he did yesterday morning . . .

THE HON. J. B. PANDYA : I made no such statement, I have been misquoted.

THE HON. ISHER DASS : It was made.

LT.-COL. THE HON. LORD FRANCIS SCOTT : On a point of order, has anything to be quoted which has been said in private conversation? It has nothing to do with this matter at all.

HIS EXCELLENCY : I did not hear exactly what the hon. member Dr. de Sousa did say.

DR. THE HON. A. C. L. DE SOUSA : What I said I will say again : in this House when the Council was not in session . . .

LT.-COL. THE HON. LORD FRANCIS SCOTT : On a point of order again, Sir, the member is out of order in quoting a statement made when the House was not in session.

HIS EXCELLENCY : I did not hear what the hon. member said.

DR. THE HON. A. C. L. DE SOUSA : Perhaps the Noble Lord has not understood me. I am not debarred in putting in debate any information which is given me in this House or anywhere in the world, no matter from what source the information comes. I put that before you for the information of the Noble Lord, that in the House I am privileged to quote any information that I get here, whether in or out of session or from any part of the world. I hope you will give a ruling on that, Sir.

HIS EXCELLENCY : I can only give a ruling that the debate must be conducted in accordance with the Standing Rules and Orders of the House.

DR. THE HON. A. C. L. DE SOUSA : I submit, Sir, that I am then within the Standing Rules and Orders. The hon. Member Mr. Pandya has denied making that statement. I accept it, in spite of my knowledge. But the fact is that rumours have been circulating in Mombasa and elsewhere that the police were anxious to withdraw the case but under certain instructions the matter was pressed.

But that is beside the point, and I do not propose to talk any more on this particular subject except to pay tribute to the very gallant co-operation of the hon. Member for Mombasa in seconding the amendment when, unfortunately, there was no Indian member to support it.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I rise to oppose this amendment for entirely different reasons to the last speaker.

If I had any sympathy with either the original motion or the amendment, I should certainly have it for the amendment, as it does stick to the institution of an inquiry into something of a public nature and not to institute an inquiry into some private feud. However, as the hon. Member Mr. Pandya has already answered his own question by the fair way in which he put his case, there is very little for me to say.

He has asked for an inquiry. Surely the word "inquiry" implies that you wish to find something out? But is there anything we are not aware of with regard to this case? As the hon. member told you, it was brought on the strength of a statement, subsequently converted into sworn testimony in court, by one Dr. Rana, a respectable Indian medical man practising in Mombasa. That statement was given to the police—I do not know whether of his own accord or whether the police asked for it. But this House is not to be drawn into a question of medical etiquette and I am not to be drawn into giving an opinion on it. However, that evidence having been given and being supported by two nurses—the hon. member said they were not fully qualified, so that I will say two women—present at the alleged operation, it was certainly sufficient to call on the operator and his assistants to account for their actions in court.

That the police were justified in their original action is proved by the fact that the accused, having gone before the magistrate, it was found there was a *prima facie* case to answer; that the case having come to me and I having read depositions, also came to the same conclusion. It went before the learned judge when, although he was repeatedly asked by the defence to throw the case out he refused to do so until he put the case to the jury after the defence had been heard. Everyone will agree that his summing up was quite fairly quoted by the hon. mover of the amendment, in which the learned judge said to this effect: "Before you can convict in this case (speaking to the jury) you must accept *in toto* the evidence of Dr. Rana."

It is entirely within the province of a jury to say whether they shall or shall not accept the evidence of any one particular witness. It is not the task of the police, my task, nor the task of the judge, to say who shall be believed or who shall not in a jury case. In this particular case the jury, after consideration, brought in a verdict of not guilty, and as far as Government is concerned there we think the matter should stay.

The amendment was put and negatived.

The debate was resumed on the original motion.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE : Your Excellency, I have listened with some impatience to the tirade delivered by the hon. Member Mr. Isher Dass on this motion, and the conclusion I have come to is that this is purely a case of vendetta against the Indian sub-inspector of the police by his own countrymen. It is a charge that could have been investigated departmentally, as I believe it was, and I have the authority of the Commissioner of Police to say that it was. And had the case been proved against this sub-inspector and he had been discharged from the police, there was no reason why a civil action could not have been brought against him.

The Commissioner of Police also informed me that he has received many anonymous letters regarding this sub-inspector, of which naturally he can take no notice, but in others he can, and he can find no case of complaint against this man.

Personally, from my own experience in the police we have had some of the very best officers from India ; they have been exceptional men, and I hope they will continue to be so.

The European elected members on this side of the House do not consider that this is a matter in which they can take much part, and they consider it is a matter to be dealt with purely between the Indian elected members and the Government.

We have frequently heard complaints from Indians regarding the lack of employment and the promotion of Indians in the Police Force. I think that perhaps the thanks of the public are due to the Indian members for having brought up this particular matter, as if the charges alleged against this sub-inspector were true it goes to prove very much the inadvisability of employing Indians in the police. Both Indians and Europeans also must be men of absolutely good character capable of maintaining the dignity of the Force.

THE HON. THE ATTORNEY GENERAL : Your Excellency, when the hon. mover opened his speech yesterday, I had hoped that he would have confined himself to the attack which we all know he meant to make on an unfortunate Indian sub-inspector by the name of Partab Singh. But, carried away no doubt by his own eloquence, he found before he had finished that he had attacked almost everybody, though he started to tell us that he was making no attack at all on the police generally. Starting at the top, he made an attack on the Acting Commissioner of Police, and I will deal with that attack first.

He complained that although he had submitted to the Commissioner various complaints against this sub-inspector, who was one of the witnesses for the prosecution in the arson case while the hon. mover was a witness for the defence, they had been disregarded. It was while the case was in progress that these charges were laid against the sub-inspector, not on the personal knowledge of the hon. member but information gleaned from the tittle-tattle which he had managed to acquire, he alone knows where, with regard to the bachelor house in Pangani, etc., and which had no bearing whatever on the case then being tried.

The hon. member then sought to convince this House that the reason why he was not allowed to be present at the investigation which he declares he had a right to do, and he quoted from the Bushe Report, was that for some reason either the superintendent or the policeman in question was afraid of him. The reason why he was not allowed to be there is very simple : because he had no right whatever to be there ! (Laughter.) It was perfectly true what he read from the Report, and a simple example will explain to you what I mean. If you have been personally injured by a policeman—blackmail or whatever it may be—and you lay your complaint before the Commissioner, the rule of the Force is that you shall be entitled to be present. But when you are acting as, we will call it for want of a better name, a police informer, and collecting the tittle-tattle of what other people tell you, it does not justify you as an advocate for the prosecution in any way whatsoever to be present, and that is the reason why the hon. member was not permitted to be present in order to prosecute this policeman.

Not satisfied with attacking the Acting Commissioner, the hon. member next attacked, as you know, the superintendent in charge of the C.I.D. This is not the first time that an attack has been made by the same hon. member, and it is interesting to note that a somewhat similar attack was made before the Chief Justice during the trial of the arson case.

I will not weary you by reading the evidence given by the hon. member, but as the superintendent in question is unable to be here and defend himself I will just read to you the reply which was made by him when he was recalled by the court to answer certain of the hon. member's allegations. I am going to read from the report which appeared in *The East African Standard* :

“Superintendent Neil Stewart, recalled, described as absolutely untrue the statement made by Mr. Isher Dass regarding witness's alleged question as to whether he

withdrew the case against Mangat in connection with the fire, Isher Dass would be prepared to give evidence against Mangat in the Thika motor case.

At the interview, witness explained, Mr. Isher Dass argued that Mangat was a very simple and innocent man and that he was merely a tool of the elder Daroga. Witness had replied that he was sure that Mangat was a much cleverer man than N. M. Daroga and could not and would not be fooled by him.

Witness had asked Mr. Isher Dass about the Thika motor case and he had replied that he did not think Mangat was innocent in that affair, but that it had nothing to do with the arson case and was purely a personal *shauri*. Witness had remarked that if Mangat was not innocent in the Thika affair he could not be an honest or simple man."

Then what followed? The hon. member had been called as a witness for the defence by a distinguished and learned advocate. After the recall of Mr. Stewart, that advocate, Mr. Daly, got up and said as follows, again quoting from *The East African Standard* :

"Mr. Daly emphasized that there was no suggestion on the part of the defence that Mr. Neil Stewart had in any way acted improperly and that the defence dissociated itself from any allegations made in this connection by Mr. Isher Dass."

There you have not the answer of Government, nor the answer of the court, but there you have the answer from the advocate who called Mr. Isher Dass in order to support his case. As soon as the learned advocate had heard him and heard Mr. Stewart, he threw him quickly overboard lest it might damage his case.

I think I can safely leave in the hands of this House any further allegations you may have heard yesterday regarding Mr. Stewart.

There was a further complaint made by the hon. member with regard to certain rudeness in that a letter of his was not answered quickly enough; that I submit has nothing to do with the motion before the House.

He made allegations that the police had had as witnesses two men by the name of John and Jimmy; actually Jimmy happened to be No. 5 accused. He said they were police informers, and yet the police put him in the dock next to the other four accused. (Laughter.) He further complained that for some reason the police did not arrange that application for

bail should be made in chambers. That, I may say, has nothing whatever to do with the police; it is entirely a matter for the court, and it is not desirable that these hole and corner proceedings should take place in chambers. The court quite rightly ruled otherwise. He also said this case had been brought on the strength of the evidence of irresponsible witnesses, I think he called them. Well, I can only say that of all the witnesses, there were something like twenty-eight, there was only one who had a previous conviction to the knowledge of the police, and that was for drunkenness. I do not think it can be alleged that we were bringing gaolbirds in order to bolster up the case.

With regard to the main accusation which we are being asked to meet, namely that against Partab Singh, did any hon. member hear what he was supposed to have done in this matter? We were told that Partab Singh had bribed witnesses or got at witnesses in order to advance his case because of something that had happened at Thika or some other place years ago. Not one tittle of evidence was even suggested that could be brought to support this allegation, and I may mention that Partab Singh went into the box as one of the witnesses in this case. It was one of the main planks of the defence that this case had been bolstered up in the way suggested by Partab Singh, and after a lengthy cross-examination he emerged without a stain on his character, with no suggestion ever made in the case against him on that score.

With regard to the question of malice, it was sought yesterday by the hon. member to import into this case the judgment of the learned Chief Justice, that the latter in fact found malice to have been proved. I have taken the trouble to look up this judgment, and it is interesting to note that when the learned Chief Justice was dealing with two aspects of the case—one was with regard to the suggestion that one of the defendants had an overdraft at the bank, the second was the suggestion concerning a boy named Abdul Ali regarding documents found to have been forged in certain particulars. Referring to those two instances, the learned Chief Justice used these words, and they are the only words I can find suggesting malice, in the middle of his judgment of twelve pages: "There is a suggestion of malice . . ."

If the suggestion came from Ali, if the malice can be alleged in him, I can assure the House that he is at this moment serving time in prison for perjury, so that the House need not be worried any further as to his fate.

Those, as far as I can remember, are all the points made by the hon. Member Mr. Isher Dass.

The hon. Member Mr. Shamsud-Deen, I think you will agree, was not warmly in favour of this motion. He admitted

that his first thoughts had been that the motion should not have been brought. I think, with respect, that his first thoughts were the best—(laughter)—particularly when he told you the reason why he changed his mind: because he thought it was unfortunate private persons were not able to bring actions against police officers. We have been told by the hon. Member for the Coast that you can bring an action against any police officer when you can prove malice against him, and why this House should be worried into considering this motion I cannot imagine, when the hon. Member Mr. Shamsud-Deen knows perfectly well that if his allegations are correct provided he gives a month's notice he is entitled to bring an action for damages. There must be some very good reason why we as a Council should be asked to appoint a committee of inquiry to go into the case when the hon. seconder knows perfectly well that if he wished he could have the case investigated by the ordinary powers of the law. I hope that the committee is not being appointed to try and find the evidence that the hon. member is looking for in vain.

I now come to the speech of the hon. Member Mr. Mangat, in which he sought in one part to call my department, one of my Crown Counsel, to task, for the attitude he took in court. I should like to tell this House at once that any action taken by Crown Counsel was done with my complete approval and as a result of my directions, and when he opposed bail you will see that he had extremely good reasons for so doing.

I was asked by the hon. member to answer three questions. The first was with regard to what he called, I think, the persecution of the nine witnesses for the defence in that they were arrested, and did not get bail for some time, for interference with Crown witnesses. The history of that is very interesting.

When the arson case was first in progress the Crown witnesses on repeated occasions came to the police and complained that they were being interfered with. On one occasion the police were directed not only to take action against the offenders before the magistrate but to give police protection to the unfortunate witnesses, with the result that at one time no less than fourteen policemen paraded around Nairobi protecting the Crown witnesses from persecution. The cases were brought before the court, and on my instructions, as the arson case was in progress, the police stayed their hand until the end of the arson case, as it might have been thought to prejudice that case, and it would have been a most improper thing, in my opinion, for the interference cases to have gone on at that stage.

The next incident that happened was that the magistrate indicated that as there were nine separate cases of interference, would it not be possible to put forward some comprehensive

charge, and it is quite true that another charge was substituted. A great point was made of that as though we were concocting some new charge against them. Actually the first charge was an individual charge of interfering with individual witnesses, and when the case came on I directed, in order to save the time of the court in having to investigate nine separate charges, that another charge should be laid, namely, conspiracy to defeat justice and interfering with witnesses, which permitted all the charges to be then taken together. That is the first allegation against the police that they withdrew one charge and substituted another. I can tell you that it was all done at the same moment, the individual charges withdrawn and the new charge substituted.

As we all know, the result of the arson charge was an acquittal, and there immediately followed four or five perjury cases which were brought by the defence in the arson case against the Crown witnesses. As those witnesses were in several cases the very persons who alleged they were being interfered with, I naturally again directed that if possible the interference case should not be proceeded with until the result of the perjury cases was known. You heard yesterday that five people were convicted, four of whom are at the present time in gaol, one having got off on appeal. As soon as I was informed that a conviction had been obtained in this case, in view of the fact that the learned Chief Justice had not been able to convict on the evidence of those witnesses in the arson case and in view of the fact that four of them had been convicted actually for perjury by the magistrate, I directed that the case which was then pending against the nine accused for interference and which depended to such an extent on those same witnesses, should be withdrawn. I think this House will agree with me that I was right. It may interest hon. members to know that we were justified in imagining, as it was suggested, that those witnesses were being interfered with, for it was borne out by a most interesting statement which the police received somewhere about the 5th of February of this year from a distinguished and honourable Indian gentleman. I do not intend to weary the House with the whole statement, although I am perfectly prepared to read it if I am pressed, but I will just quote you extracts of what this Indian gentleman wrote to the police. I am purposely avoiding names.

“He asked me to try and get Abdul Ali to change the statement he had given to the police.”

This is someone speaking to the honourable gentleman who gave this statement.

“He said that they (i.e. himself and a number of others) had tried their best and had failed . . . He said

THE HON. THE ATTORNEY GENERAL : If I am being challenged, Sir, if there is any idea in anyone's mind that the letter was not written and that it is not genuine, I would be only too pleased to read it, but as far as the name is concerned I am not anxious to bring any further names into this matter. That is why I omitted the name of the writer and of the person to whom he was talking.

THE HON. J. B. PANDYA : I challenge that because I am not satisfied.

HIS EXCELLENCY : Order, order !

THE HON. THE ATTORNEY GENERAL : If challenged, I will read it.

This letter was written by the hon. Member Mr. Shamsud-Deen—(laughter)—the seconder of the motion. As I said, in fairness to him I should read the whole letter, because it reflects no discredit whatsoever on him.

It reads as follows :— . . .

THE HON. SHAMSUD-DEEN : May I ask the hon and learned member to begin with the date? because the letter was written long after the conclusion of the arson case and I was requested by the Police Department to give evidence.

THE HON. THE ATTORNEY GENERAL : Certainly, I said I would read the whole letter, and it starts with the date :

Nairobi, February 5th, 1935.

I Shamsudden son of Mohamed Ismail state as follows—

I left for Lologorien Goldfields in the Southern Masai Reserve on Saturday the 13th October, 1934, in company with Hiranand Gidoomal of Japan Bazaar and Puranchand of Nauharria Ram & Co. We left early in the morning and returned to Nairobi after midnight on Tuesday morning.

Early in the morning on Tuesday, the 16th October, I had a visit from Mr. Mangat who told me that he had been arrested on the previous Saturday and released on bail. He said I was very badly wanted by him while I was away as he wanted me to plead for him before the Attorney General with a view to the case being withdrawn by the Crown on the grounds that Mr. Mangat's prosecution on a case that was none to strong would involve a great scandal and infamy for the Indian community as a whole and even when Mangat was acquitted about which

would be quite safe. I told Kehar Singh that I could not possibly be expected to ask any one to commit perjury in Court no matter how much I wanted to help Mangat but I would try to find out the truth of the matter. Kehar Singh told me that if I could do nothing else I should ask Abdul Ali's father that he should ask his son not to maintain the usual hostile attitude when in Box under cross-examination as any willingness to help Mangat under cross-examination would help a great deal and that Abdul Ali could help Mangat a lot if he broke down in cross-examination. I again told Kehar Singh that I did not want to be involved in such a matter and I told him that I had refused the request of Isher Dass when he asked me to go and see Captain Niel Stewart and I begged him to leave me alone. He implored me however and said that I must try to save Mangat and that I was at full liberty to promise any sum of money to Abdul Ali or his father and that such a sum would be paid over and kept as a deposit with anyone Abdul Ali's father desired. I could not shake Kehar Singh off. It was getting late and I had to attend the Council. I got rid of Kehar Singh by telling him that I would see what I would do.

There was no one else present on this occasion.

A day or two later, I think when Mangat was sent to jail custody Kehar Singh again came to my house in the morning and asked if I had done anything. I told him that I had been busy and could not see anybody. While we were talking, Hakim Nizam Din also came to my house and then Mr. Pritam also arrived. Kehar Singh appealed to all three of us to help Mangat by getting Abdul Ali to change his statement. I told Kehar Singh that I was helpless in the matter and that I could not possibly approach either Abdul Ali or his father as I did not mix with those people freely. Kehar Singh said I could achieve the same object by asking a man like Nizam Din who met and mixed with men like Abdul Ali's father every day.

I told him to speak to Nizam Din who was there at the time. I was in and out of the sitting room while these people were talking.

I was getting ready to go to the Council and these people hardly gave me time to dress. We eventually all left together in a car which I think belonged to Pritam and we all went to the Council Hall direct from my house. I think it was Saturday the 19th October but I would not be quite certain.

SHAMSUD-DEEN."

THE HON. SHAMSUD-DEEN : Your Excellency, after that letter having been read, I think I am entitled to give an explanation of the circumstances in which I made that statement.

HIS EXCELLENCY : I am afraid I cannot allow an explanation of that now, but you can make a point of explanation of anything you said in your own speech.

THE HON. SHAMSUD-DEEN : I am making a point of explanation to the extent that the statement has been read to the House and the House left under the impression that I made it voluntarily. It is I think a gross misrepresentation to suggest that I should have made that statement deliberately. May I say that under Standing Rule No. 50, I think I have the right to be heard in explanation, Sir.

HIS EXCELLENCY : Rule No. 50 reads :—

“By the indulgence of the Council a member may explain matters of a personal nature although there be no proposition before the Council, but such matters may not be debated and the member must confine himself strictly to an explanation of his own conduct.”

I view of that I will allow the hon. member to make a brief explanation.

THE HON. SHAMSUD-DEEN : Thank you very much, Sir. It is because it will have a wrong impression on the mind of the House that here I am seconding a motion and yet here again I am trying to implicate the very man on whose behalf the motion is made.

The history of the whole thing is that I wanted to be left severely alone from the investigation but the fact is that the police would not leave me alone and I am making this statement definitely and deliberately to be challenged by the highest authority and if necessary I will swear to it. After the arson case and before that I was pestered by the police, not one time, but about a dozen times. I was going to Mombasa and they came to the railway station and asked me to postpone my journey and to see Mr. Neil Stewart. I declined but said on my return I would go to his office. I was met by Neil Stewart and said I would not make any secret about it. There he told me his information was that I was in possession of a cheque issued by someone which cheque was to be handed over to this witness Abdul Ali if he changed his statement and that if I could hand over that cheque to the police the aspect of the whole case would be changed. After about twelve times I told him I have no such cheque

in my possession but I will tell you all I know about this matter and I am not going to make a verbal statement, I will write it down and send it to you, I did this and that was after the arson trial. Even taking that letter at its fact value, there is not the slightest suggestion that I or anybody suggested that violence would be used against witnesses. But this statement was written long after the conclusion of the arson case and only because I was continually pressed by the police to state what I knew of the incidents connected with it.

THE HON. THE ATTORNEY GENERAL : I now pass from the point with regard to the interference with the nine witnesses and I suggest that on those grounds there can be no possible reason for any further inquiry into the matter.

The next point which I am asked to answer is with regard to the perjury cases, the four witnesses for the Crown who were unfortunately convicted of perjury and I am the first to admit that they have been convicted of perjury. Anybody with any experience in these matters and who has been interested in a case in which very nearly forty Indian witnesses have given evidence, would be surprised if we chose to pursue them for perjury if not more than four could in fact be convicted, but it is interesting to note that their convictions relate to what, so far as the case was concerned though very vital possibly in cross-examination as proving their honesty or not, so far as our case was concerned they were not convicted of perjury with regard to that, and it would be interesting to the House if I were to read to them the last paragraph of the judgment of the Court of Appeal when they heard the first batch of appeals that came up. It should be stated that I had refused to prosecute them for perjury but they had been prosecuted privately. The last paragraph reads as follows :—

“We desire to add an observation with regard to the procedure adopted in this case and in that which forms the subject of Criminal Appeal No. 12/1935. In both proceedings were instituted and carried on by a private prosecutor. Section 86 of the Criminal Procedure Code contemplates the institution of criminal proceedings by a private prosecutor with the leave of the Court. In these cases it does not appear that this leave was ever formally asked for, but, as the Resident Magistrate heard the cases without objection, it must be implied that leave was given. In our judgment a court should be very chary of giving leave where the charge is one of perjury, for two reasons, on the one hand the offence so deeply affects the interest of the Government in the due administration of justice that the prosecution should be conducted by the Government rather than by the party aggrieved, and, on

the other hand, it is undesirable that witnesses should feel that they run the risk of prosecution at the suit of the person against whom they have given evidence if, in the result, the court has not been convinced by it: in this connection it is to be observed that in England prosecutions for perjury fall within the provisions of the Vexatious Indictments Act, 1899,"

which for the information of hon. members I may say directs that the leave of the Attorney General has got to be obtained. That point, Sir, and the next point which was made by the hon. member, namely, the point with regard to the finding of malice, I think I can link together. I have already read to you what the learned Chief Justice had to say with regard to malice. I will repeat that if the hon. member or any of the accused persons can prove malice against any person in connection with this prosecution, they are perfectly entitled to seek the aid of the court where they will get redress. It is certainly no part of the duty of this House to appoint some superior court of appeal to go into the question (they could award no damages in any event) when we already provide the means, namely, the Supreme Court, in which any private person can obtain redress.

I do not think I can mention anything else of use to the House except to point out that the Chief Justice who tried this case, lasting twenty-eight days, who saw all the witnesses, did not think it even necessary to forward a copy of the case to the Crown Prosecutor, indicating thereby that he did not think that any further action should be taken against anybody in the case.

THE HON. ISHER DASS : Sir, replying to the debate on my motion, I will deal with the objections and points that have been raised by different hon. members in their speeches. To begin with the hon. Member for the Coast remarked that my bringing this motion was simply the washing of dirty linen against one of my countrymen. I was really surprised to hear such a statement by an hon. member of this House that I should defend a person at all costs simply because he belongs to my community, although he has committed an offence. If that is his meaning that a member of one's community should at all costs be defended then he is welcome to have it.

Another point was raised that I was wasting the time of the House (hear, hear). Sir, sitting in this House we have heard speeches on everything from the members of this House on this side with the greatest patience for hours and hours on things which absolutely did not concern us, and then, after

all, the members of my race are just as much entitled to express their views and opinions as the members of another race. I think they should not have shown so much impatience.

Now, Sir, I will now come to the Hon. Mr. Pandya. . .

THE HON. J. B. PANDYA : Your Excellency, I have not spoken on this motion at all. I spoke to the amendment and if the hon. member is allowed to say anything about me, I should be allowed to speak.

LT.-COL. THE HON. LORD FRANCIS SCOTT : On a point of order, Sir, the amendment has been dealt with and finished.

HIS EXCELLENCY : The Hon. Mr. Pandya is perfectly right. He had not entered into the debate. The hon. Mr. Isher Dass must confine his remarks and reply to the points raised in the course of this debate.

THE HON. ISHER DASS : I was referring to the remarks of Mr. Pandya in relation to some observations which concern me personally. Therefore I was referring simply to the fact that he was too fond of being personal and I do not want to follow him.

HIS EXCELLENCY : Order, order. By the Rules of this House the hon. member's remarks must be confined to the points raised in the course of this debate.

THE HON. J. B. PANDYA : I would like the hon. member to withdraw that statement. I have never been personal.

THE HON. ISHER DASS : Now, Sir, I will deal with the hon. Attorney General who in the course of his reply has raised different points. The first point raised by him is that I went to the extent of even accusing the Acting Assistant Commissioner of Police on certain matters. He had also inferred in his reply that I was not a complainant, that I heard tittle tattle from the town and conveyed it in the capacity of an informer. I am really surprised at such a thing. The hon. the Attorney General is not in possession of the facts. I reported the incident that a certain police official was in undesirable company and that I was willing to take the official and show this. I did go there. I think the Superintendent, C.I.D., was there also and yet I am told to-day here that it was tittle tattle and not rendered in the capacity of a complainant.

The second point the hon. the Attorney General raised is the allegation that this is not the first time I have attacked the Superintendent of the C.I.D., but in fact the second time.

I wish here to inform the hon. the Attorney General that he does not know probably that before this case I was the first man who had offered all sorts of assistance to the C.I.D. and the police when any serious crimes were committed in the country. I have accompanied them to Thika and different places. But it does not mean that because you have admiration for a man, if he does anything wrong you should not criticize him. I wish to contradict that this is my second time to attack him. It is not so. He was called back in the Supreme Court to give evidence. What made him forget in the first place what he had to say in the second? If he said everything, why recall him and give him a chance to contradict my statement? Nothing could have stopped him. He has confessed that he did not keep the appointment. It does not concern me directly and what evidence I have given in the court I will maintain to-day here.

Now, Sir, the Attorney General wanted to make a mountain out of a mole hill in that I used the word "simple" at some time in my conversation. After all, this word can be attributed to anybody. I have had a long-standing respect for Mr. Mangat. I have never used the word and I think the hon. Attorney General in saying that is trying to minimize the importance of the whole thing.

THE HON. THE ATTORNEY GENERAL: On a point of explanation, Sir, I was reading from an account in the newspaper. It was not my word but a word taken down in the court by the shorthand writer.

THE HON. ISHER DASS: The newspapers are not an authority. Now, Sir, the Attorney General told you that Mr. Daly, the counsel for the defence, disassociated himself from my evidence. Well it is not my business to bother what the counsel for the defence said. What concerns me is that while I am on oath and giving evidence, I must tell the truth and if anybody stands and disassociates himself because it does not meet with his approval, it does not affect me.

Now, Sir, the next point raised, was with regard to the witnesses being twenty-eight and only five being prosecuted and convicted. I think he knew perfectly well when making this statement that all twenty-eight witnesses were not witnesses in one sense; some of them were technical witnesses, some Government witnesses who have certain knowledge about fires and who actually did their duty in extinguishing the fire and they had to give evidence exactly what they did in discharge of their duties. So all of them could not be prosecuted. I think the Attorney General was actually meaning the whole twenty-eight should be prosecuted, and that everybody should be prosecuted who does their duty.

The sixth point was that in order to defend the sub-inspector of police he said the Hon. Shamsud-Deen's first thought was good. Why not take it further and accept that his second thought is better than the first because that has been decided upon after careful consideration of the first. But, Sir, that is not the question. The question is that he very emphatically told this House that everything said in the court of law to oppose the bail was with his approval. We know perfectly well, no one can deny that. But, Sir, as I said the facts have been brought to the notice of the police that these arguments advanced for the cancellation of bail were not the truth. No shadow of truth. They were created and manufactured by the officials concerned, particularly the sub-inspector of police, in order to approach the Attorney General to press for the cancellation of the bail. That is my view that a sensation was created deliberately so that the bail should be opposed. And even if the five people were to be liberated later on they were allowed to suffer for no crime at all and remained in gaol for eighty days.

In his speech the Attorney General defined those witnesses who gave evidence on behalf of the prosecution as unfortunate and said that they were protected by fourteen policemen. If their lives were in danger and they were protected by the police, what stops them to be harmed now? Are they being harmed? Have they ever made a complaint to the police now that they have been waylaid or assaulted? No. Probably the hon. the Attorney General does not know anything. They were simply witnesses brought in on promise of position and they were giving false evidence and asked to make this sensation and in order to strengthen the case; that is why they were given police protection. It was only a made up show and malice upon the part of someone.

Now, Sir, the Attorney General raised a point with regard to a certain statement made by an hon. member of this House which the hon. member, with your permission, had an opportunity to explain. That shows itself, Sir, how the police have persecuted people, even respectable people, to come and give evidence, to produce cheques which they do not know anything about. That is my point, that the police went out of their way to persecute people to give evidence and I know the day when the hon. gentleman was approached and asked and he absolutely point blank refused and in spite of his refusal he was still persecuted. And this is a very prominent member of the Indian community! What would happen in the case of ordinary poor people with no influence and no backing? If those people had been persecuted to give false evidence, Sir, could it be said that those people could be protected from the police?

There is one thing very strange. The Attorney General read a statement and did everything possible to convince this House and yet he did not tell us that Mr. Kehar Singh whose name has been mentioned so often has never been prosecuted for interference. Nine other people have been prosecuted and the cases against them withdrawn and yet Mr. Kehar Singh has never been asked to give a statement. The Attorney General did not say anything about him. He must be a very influential man in the town. There is something fishy so far as the police are concerned in this case.

The learned Attorney General—this is the last but one point—said something about malice on the part of someone. He could not deny it. It is suggested in the judgment of the Chief Justice. He asked what this House has to do, to appoint a committee to inquire, when the court of law is open? I am asking him : Did we come here voluntarily to move this motion and trouble the members of this House and waste their time by asking, or did you force us to do it? The Government forced our hands to do it, and we do not take any pleasure in moving this motion. This is the last course open to members here. That is exactly the point that I wish respectfully to place before the members of this House. We passed a resolution in a mass meeting respectfully asking Government, the Acting Governor and the Colonial Secretary to hold an inquiry and when the resolution was not acceded to or noticed, we were compelled to state our case here.

Then the Attorney General also suggested that the courts of law are open for anyone so far as malice is concerned. I must congratulate him that he confesses there is malice.

THE HON. THE ATTORNEY GENERAL : On a point of order, Sir, I never made any such submission. I said if there was malice a court of law would listen to him.

THE HON. ISHER DASS : If there is malice on someone's part then I think before the Attorney General should be approached for permission to prosecute Government servants or the police, is it not better in the interests of the public and the Government themselves, that the Government should be asked to hold an inquiry rather than to go to a court of law and put the Government to expense and waste the time of the court. I think this is the more honourable course. If the opinion of the Attorney General is that in future no complaint be made to the Government on any matter and that simply the courts of law should be approached, then I am really grateful to him that we know the truth now.

I have tried to answer all the points raised during the debate. Before I conclude I will simply say one word about what the Attorney General did not tell us anything so far.

These false statements and lies made in the court—it is not right to defend them—how they were brought I have said in my opening speech. How the witnesses were made promises of position and money to give evidence. I think in certain cases everything has been proved to your satisfaction and I think that the most ordinary request which a community having expressed by means of a resolution, should be acceded to by the Government and the motion be accepted, otherwise if it is rejected, as far as I am concerned personally, I can assure the C.I.D. and other officials that I am competent to look after myself, but the innocent members of the community will be exposed to the wrath of the police. The police will just have further encouragement from your Government and go exactly against the public policy and always under the impression that whenever they do anything the Government will be prepared to defend them. This is a simple request for an inquiry. If the accused have been asked to go to the court to vindicate their honour in a court of law, I think the Government should accept this motion and make the officials responsible for this persecution also submit to an inquiry.

HIS EXCELLENCY : The question is that the motion proposed by the hon. Isher Dass be accepted.

I think the noes have it.

THE HON. ISHER DASS : Divide.

The division was commenced.

THE HON. ISHER DASS : Your Excellency, I wish to withdraw the suggestion of a division.

HIS EXCELLENCY : With the leave the House, the request for a division is withdrawn.

Council adjourned for the usual interval.

On resuming.

MOTION.

COLONIAL CIVIL SERVICE : KENYA CANDIDATES.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Your Excellency, I beg to move the motion standing in my name, but before doing so I should like to point that there is a typing error in the Order of the Day and certain words have been left out—the words “in preference to other candidates” which appeared on the Order of yesterday.

The motion reads as follows :—

“That in the opinion of this Council all vacant posts in the Administrative and other Services of the Colony should be filled by the sons or daughters of residents in

Kenya, whether official or unofficial, provided they are considered suitable candidates, in preference to other candidates however high their attainments may be, who have no connection with the Colony and Protectorate."

In moving this motion, Sir, I want to say that I consider this question of very real importance to this Colony at the present time and in the future also.

I am not asking a favour—I am claiming a right. Further, I should like to explain that I am not referring to the Local Civil Service which has now been established and which is certainly going to serve a very useful purpose on the same lines as the motion which I am now moving. I understand from official sources that of 529 locally engaged officers in the country between 50 and 60 per cent have been educated in the schools of the Colony. That is, I think, a very satisfactory state of affairs.

In moving this motion, I believe I am correct in saying that I have the sympathy anyhow of the principle underlying it of the Government of Kenya, but I am afraid that we shall find a great deal of opposition from the Colonial Office. As far as I can make out, the attitude of the Colonial Office is that in their unified Service there shall be no recognition taken of the fact that any of the candidates have been brought up in and belong to any particular colony to which they wish to get appointments in the Service. In fact, I believe they go so far that if there is a suitable candidate from this Colony they would much rather send him off to the Malay States, the West Indies, or anywhere else rather than bring him back to the country which is his home. That is the attitude which I feel we must oppose very strongly, and I hope very much that Government will support us in that opposition.

At the Colonial Office in charge of this branch of activities are two gentlemen who I think everybody will agree with me are extremely charming and capable officers; I am referring to Sir George Tomlinson and Major Furse. I know they are very anxious to do anything they can and to meet any point of view that may be put up, but there is as a fact the attitude which I put forward, that they do not like posting the sons of people in a colony such as this back to that colony.

You may remember that only last year, when we were considering the Estimates, there was a question of eleven or twelve cadets coming out to the Civil Service, and we all knew of certainly three or four young men who belonged to this Colony who were in every way—as far as education, upbringing, character, everything else—who were perfectly suitable people to be officers in our Administration. We were told

that they could not get any of these eleven or twelve appointments, because the officers who had been chosen were of such exceptional ability that our local candidates could not compete with them. That is the point of view which in our opinion we have got to fight against.

Nothing I say will, I hope, be construed as being an attack or reflection on any of the administrative officers who have come to this Colony in recent years. The few I have met in different parts of the country struck me as being absolutely the right type of young officer, and I should not like anything said against them. It is not that. I am standing up for the rights of our own people, and I think the main points where we are perhaps at a difference with the Colonial Office is that they look on the people of Kenya as being just the same as any of those colonies scattered over the Empire where there is no real established white population. Many of you will have read recently that extremely ably written and most interesting book called "White Man's Country," and you may remember a little story told there of the delegates who went home in 1923 and invaded the India Office. Lord Peel, then Secretary for India, said "The only thing to do with you people is to buy you out and out." The reply from Tommy Wood, whom you all know, was to this effect: "You cannot do that, Lord Peel, it is our home." And that is the point which I think the Colonial Office have not yet quite realized—that this country is our home! Many of us came out here perhaps after middle age, or getting on in years, and have adopted this country as our home, and it is far more the case with the young generation which is growing up than even with people of my age who came out at a different time of life. We still have our ties with the old country and other parts of the world, but to the young generation Kenya is their absolute home. If they go to England or anywhere else it is like paying a visit to a strange country.

That is the attitude which has struck me very much during the last few months when coming in contact with a great many of the young boys and girls who were either born here or came here as small children. Now that they have grown up and have got to the age of about twenty years, their attitude is that this is very much their home. If only the Colonial Office realizes it, in Kenya we are much more on the lines of Southern Rhodesia and some of the dominions than we are on the lines of some of those countries in which hon. members on the other side of the House have served in, where the population is composed of practically all natives and have not got this growing-up population of our own race. In Southern Rhodesia, we were interested to hear the other day from its Prime Minister, the Civil Service there is entirely

local and engaged from their own people; it has worked extremely well and satisfactorily. I do hope that that same principle will be adopted here.

Don't think I am advocating that anybody, merely because they were born or brought up in Kenya, has therefore the right to go into the Administration or anything else unless they are suitable, have proper qualifications and character and are of the right stamp. I think we all know of many young lads who have grown up here who have those qualifications, and of course they have the very greatly added quality of having been brought up as children in company with the natives. They thus know the character of the natives far better than the people who have come later on in life; those young people know the language, and I think we all know that natives talk much more freely to young children and people than they do perhaps to the older people more in a position of authority. Those young people start with that great advantage and understanding which to my mind is of far greater value than the highest degree you can take in a university. Several of the people I am referring to have in fact got good university degrees, one of the qualifications apparently considered necessary. Quite frankly, I have never been able to understand why a high university degree should be a necessary qualification for an administrative officer or anybody else. I do not want to say anything against people who have good degrees, because it means they have worked hard and so on; but frankly, if they had to have some qualification I would much rather have someone who had had a few years training in the Navy or Army than someone who had spent four years at Oxford or Cambridge. My own idea is that if they have had the university training and qualifications so much the better. If they have not but are suitable in every other way they can do the year's special course.

There is one other thing in connection with that that I should like to suggest. When our scholarship scheme gets established, the scholarships should carry with them a form of cadetship which would directly qualify the successful candidates for a post in the Service out here, provided of course they behave properly and are up to the standard.

To put it into practical form, the idea at the back of my mind is something of this sort.

There should be a Local Board of Selection here. Whenever there is any vacancy, whether in the Administration or any other branch of the Service, local candidates should be able to put in an application to the Board, which would vet them and see whether they are suitable or not and make recommendations accordingly. For instance, supposing there were

eleven vacancies in the Administrative Service for cadets, and local boys came up, possibly there would be only six who would fulfil the necessary requirements. But they should get six of the posts, and the other five should be filled through the ordinary channel of candidates for the Colonial Civil Service from England.

I do feel, apart from the individual claims of our boys and girls, that we do want nowadays to foster what I call the Kenya spirit as much as we possibly can, as opposed to a spirit of merely looking on Kenya as somewhere where people can come and spend a few years in between a certain amount of leave and with their real ties not in Kenya but overseas somewhere, and the more we get the best type of our local people into the Civil Service, all branches of it, the better will that feeling become. Therefore I urge very strongly that it is our duty to find as many jobs for suitable candidates of Kenya, either born or brought up here, boys and girls, as we can, in preference to any outside people. If I may give a simile: it is the policy of Government not to import raw material which can be produced locally, so we should do the same thing with the human position of our Local Civil Service.

Finally, I sincerely trust that Government will accept this motion, or at any rate support the principle which underlies it, and will press it as strongly as possible at the Colonial Office so that the object may be attained.

I should like to say, Sir, that we claim it as the birthright of our children. (Applause.)

MAJOR THE HON. SIR ROBERT SHAW: Your Excellency, I beg to second the motion.

It gives me very much pleasure to have an opportunity of saying a few words in support of this motion. I feel certain that any member of this side of the House would have the same feelings of pleasure in doing so, and would do it with the same confidence that I have that I am speaking for every single one of my constituents.

The Noble Lord has covered the ground, I think, very thoroughly, and it is not necessary for me to add very much or to occupy the time of the House at great length. At the same time, I would like to take this opportunity to endeavour to bring one or two of his points into possibly more prominence.

One can sometimes get at one's meaning by the use of that time-honoured method *reductio ad absurdum*. If I may, I will adopt that method, by suggesting the idea that possibly the Government of one of our great dominions should suddenly announce one day that it had decided that in future all entrants

to the Civil Service should be recruited in Great Britain. One wonders how long such a Government would last! Possibly five months.

Of course, the proposal is entirely absurd, as I meant it to be. I put it that way because one has to remember that every one of those great dominions must, in the course of their past history, have gone through these periods through which Kenya has passed and is passing. There must have been a time when all the officers of Government and the Services were drawn from the homeland because there was no local supply. Then there must have come a period when the local supply began to come forward; long since they have passed that period when the local supply more than meets the need. Kenya in its short history has passed through one of those phases and has commenced the second. There was a time when there was no local supply, but now, as the Noble Lord pointed out, that supply is beginning to come forward.

It is surely remarkable how in the last few years our young people have begun to flock back to this Colony without any idea except to get back to their home. They have been through a few purgatorial years at school in England, unable to understand in their young minds why they were sent from home to a place six or seven thousand miles away, of which they had heard their parents talk, merely in order to go to school. They are now back with no idea except to settle in their home. When one thinks of it and looks back on our brief history, the much hackneyed expression "According to plan" comes into one's mind. Whether that is a good expression or not to use I do not know, but at least what is happening is according to tradition, and one of the finest traditions of our Colonial Empire.

It is a magnificent vindication of this Colony, a splendid vindication of the Imperial policy of thirty years ago, which encouraged white settlement here. Already one generation has hardly passed, a period broken in two by the catastrophe of the Great War, and already our own young people, born and bred and largely educated in this country, are coming forward as candidates for our Civil Service. I go into this question perhaps at some length for a definite reason.

We are perhaps one of the most conservative nations on earth, and of all our national institutions probably the epitome of time-encrusted conservatism is our dear old friend the Colonial Office. I am not exaggerating when I say that these phases I have described have come to many of us here as something in the nature of a shock and surprise. It seems only the other day that many of us were flocking into this country as unregenerated—dare I say?—happy bachelors, to see what we could get out of Kenya. What happened? In

a decade or two Kenya turned the tables on us, for while we came here to exploit her she has laid her hold on us and bound us to her service. If that is true in the first generation who have made our new homes here, how much more true is it of our children who have not other home? If that comes, as I say, almost with shock and surprise to us, we can hardly be surprised if it has not yet penetrated the hoary conservative consciousness of the Colonial Office.

Sir, I think it is our duty to bring it home to that consciousness, and with all due respect I would suggest it will be the duty of our Government on our behalf to assist us to do so.

That being so, and if I have painted the picture fairly—and I think I have—I do not think anyone will consider me unreasonable or unreasonably antagonistic if I support the suggestion of the Noble Lord that the time has now come when proper machinery should be set up in this country for examining candidates who come forward from this country for the Colonial Service. I will correct that statement, Colonial Service; the Noble Lord has already mentioned it. We are still under the aegis of that hoary institution to which he referred, and therefore any candidates we have must apply there if they desire to enter this Service. They are told they can certainly enter as candidates for the Colonial Service, but there is probably more than one hint that if they are accepted it will not be to Kenya that they are sent. The whole point of it is this: our children are not candidates for the Colonial Service, they are candidates for the Civil Service of their own country. That makes all the difference in the world, Sir.

That is really our whole point, and I do think there should be a Board of Selectors or Recruiting Board set up in this country. It would not be difficult to establish or difficult to visualize the kind of Board we want. I suggest something like this. Possibly the hon. the Colonial Secretary, a Provincial Commissioner, the hon. the Director of Education, one or two unofficial members, with power to co-opt any high technical officers required in respect of a candidate for a special branch. They would be governed by certain definite rules and regulations as regards diplomas, honours, degrees, whatever the things are—I am afraid that I have never earned anything of the sort so that I am somewhat sketchy about this part! But what I mean is the Board would be governed by rules laying down a very high standard which candidates coming forward would have to satisfy before being passed by the Board. But once passed, then I consider such candidates born and bred in Kenya, citizens of Kenya, children of Kenya citizens, should quite definitely have the first refusal of any vacancies in the Service for which they have qualified.

As the Noble Lord has said, we regard this not as a request but as claiming a right. I think that all our history shows that once the conditions which I have described have arisen in any of our overseas Empire possessions, then the principle has only got to be recognized in order to be accepted. The claim is one put forward by many of us like myself who, however undistinguished their careers may have been or are likely to be, can still say that they have taken a hand in bringing this great work about. It is a matter of no small pride to us to see already in this Colony our own young blooded stock coming forward and running true to form. What we claim, Sir, is that we must be allowed to enter them here in their own country.

THE HON. SHAMSUD-DEEN : Your Excellency, I originally meant to second this motion, but unfortunately I could not catch Your Excellency's eye when I stood up.

After hearing the hon. mover and seconder one cannot have any doubt left in one's mind as to the real intention of this motion which of course is making provision for the sons and daughters of the European residents of the Colony. Unfortunately we are always accused of indulging in racial controversies, an accusation which perhaps cannot be laid at the door of the European members for the simple reason that when they are talking in this House they simply do not think of any other human beings who are resident in this Colony. That was perfectly clear from the speeches of the hon. mover and seconder. But I propose and I am speaking for myself now, I do not know what my colleagues think, but I personally think that I must completely disregard that racial aspect in this resolution which has been mentioned by the hon. mover.

LT.-COL. THE HON. LORD FRANCIS SCOTT : On a point of order, I never mentioned any racial aspect at all.

HIS EXCELLENCY : As I understood the hon. member, I thought he was referring to the speech made by the Noble Lord in introducing his motion.

THE HON. SHAMSUD-DEEN : The hon. mover made it quite clear that he meant that all future civil service vacancies should be filled by the sons and daughters of Europeans. If that is not so I will withdraw it.

On the face of it this resolution enunciates an ideal principle that has been brought before this House this morning and I am rather surprised when I hear that it is said in certain quarters that the sons of the residents of the Colony cannot stand the same test of examination as other candidates who are sent out to his Colony. I am proud to say, Your Excellency, that as far as the Indian community who are resident

here are concerned, they are already far ahead of other communities in this Colony. If one wants to see the results of the London Matriculation Examination of the Secondary Indian School in this Colony, one would be convinced that it only requires a matter of another four years study with a little encouragement in the way of scholarships from the Government, and the attainments of students who have passed their London Matriculation Examination locally would be worthy enough for any post in the Colony. As a matter of fact there is more than one Indian youth born and brought up in this Colony who are graduates of London University. They are here. Quite a number of barristers have passed their examination with credit, also doctors, and I think we have already got the material for filling the vacancies for the Local Civil Service. As the resolution stands at present, in my opinion it should be put into operation. Whether it would mean posts entirely reserved for the sons and daughters of Europeans that has to be seen, but I do hope that if the resolution is passed it will be read as it stands to-day and will be put into operation as it reads.

I am told that the severest and hardest examination is that of the Indian Civil Service but I can also say that it is on record that Indian students have stood the test of that examination with all other British cadets and in most of the cases they have passed the examination with great credit. I will even go to the extent of saying that if the Government is opposed to a local Board, I do not mind if the candidates are asked to pass the competitive examination in London, provided the principle enunciated in this resolution is observed that preference is always given to the sons and daughters of the residents of this Colony over others for filling posts in this Colony. After all the many thousands of pounds paid to the Civil Service are provided by the local taxpayers and I think that we cannot be called unreasonable if we simply say that the one who pays the piper has the right to call the tune.

DR. THE HON. A. C. L. DE SOUSA : Your Excellency, I thought the last speaker, or it seemed so to me, supported this resolution. Yet the hon. mover was not able to give the hon. Shamsud-Deen an undertaking that his resolution included the children of all residents in the Colony. I hope he will be able to do that, Sir, when he replies.

I do not think any member representing here from time to time natives, Arabs and Indians can honestly support the motion. The principle, Sir, is quite all right. We could agree with the principle but its application in practice would I am afraid be quite a different one and I will give my reasons.

We have very recently approved of a scheme for an Asian Local Civil Service. We have again approved a scheme for the European Local Civil Service. It means that provision is already made for the engagement in those services of local-born children. I take it, Sir, that the attempts which have been made to force Government to hold competitive examinations is in the case of those candidates who are aspiring for the higher posts and it seems only reasonable, Sir, this country being a Colony and not a Dominion, that Government must have some sort of choice in the selection of the very high officials. I say that because we are not all a European community here. Every section of us claims a share in the affairs of this Colony and the promise that this Colony gives in the form of high posts. We must consider any such proposal from the point of view of every resident, be he white or black or any other colour. You know that the relationships between certain sections of the community, especially the non-European with the European, are not as happy as we all like them to be. Consider, Sir, the atmosphere in which certain high grade officials would be working when they have to meet the demands of the sons of a certain section of the community that in season and out of season oppose every case that is put up by the non-European population. I think the Imperial Government must have power in the Colony to appoint such officials as have no personal interests, no family ties and will not be prejudiced in this atmosphere to govern the Colony in the best interests of all the races.

In the event of an assurance from the hon. mover of this motion that it includes every section of the community, I think it is only right to give it formal support, but if that is not forthcoming, we all, including the members representing the natives, ought to vote against it.

THE HON. J. B. PANDYA: Your Excellency, I fail to understand the logical necessity of this motion in this House as it is formed to-day. I should have certainly thought it very necessary if it was desirable that a motion should come which should say that there should be a Kenya Civil Service and it should be filled in a certain style. Here we are, Sir, a Colony governed by the Secretary of State for the Colonies, and it is proposed that in the higher Civil Service the local residents should have preference. Naturally it will have to be filled for the Colonial Empire as a whole and I cannot imagine or understand how it would be practicable for the Colonial Office or the Government to-day to give an assurance that the people who are applying for the Service in this country will be kept in this country alone. If that is the assurance that is wanted, then we come to the first point we have raised, that is the Kenya Civil Service.

I cannot understand the difficulties or surprise or doubts of the hon. Indian members on this issue. They say they wanted an assurance that the Indians also should be included in this. As it reads there is no distinction, but if we cannot even get equality and officers' grades in the Local Civil Service, what a hope to obtain equality and higher appointments in the higher Colonial Civil Service. If I were in the place of the Noble Lord I should have immediately given that assurance, which means nothing in practice, that any of the Indians in this country would have an opportunity of going to London and becoming qualified for the Colonial Service. There is no comparison between the Indian and Colonial Service. The Indian Civil Service means it is a Civil Service for India alone and we have been told many times that the Colonial Empire is governed under the trusteeship law in which we do not share. But for that purpose I do not mean to oppose the aspirations of the unofficial members on this side who are quite justified and when it comes to the formation of the Kenya Civil Service my view point that it should be open to every race would also be justified. It appears to me, Sir, that the whole thing is putting the cart before the horse. We have not yet been anything more than a Colony and how can we at this stage demand a service in which we should have every say. It is just like somebody imagining that he is going to win a Derby lottery and deciding before hand how he is going to use it. But we have not won the Derby lottery yet and the moment we do I think everything will automatically follow.

I do not wish to be misunderstood and take the attitude which the hon. elected members took on another occasion. I am not going to say anything against it. I am going to maintain the broadest viewpoint in the interests of the Colony as a whole but I simply wish to point out the difficulties in this matter, and in my opinion the question does not arise at the present moment.

VEN. ARCHDEACON THE HON. G. BURNS : Your Excellency, I intend to vote for this motion because the wording of it is very careful and therefore gives to every people living in this Colony, the residents of this Colony, the opportunity, which I unquestionably think they should have, of filling posts in the Colonial Service as they fit themselves ready for it. I do so, also, Sir, not speaking only for the European or Asian members of the community, but I am looking forward to the day when the Africans who to-day are being educated and are being trained in this Colony will have their full share in posts for which they are suited and to which they can be trained when the day comes. One cannot close one's eyes to the fact that to carry this thing to its really useful conclusion, further steps must be taken in this Colony for the training and

education of our young men and women born here and therefore if this is going to be useful to the Colony and those who are born in this Colony, and the children of the residents, are to fill the places which I and everyone certainly hope they will fill within the next ten years or so, that the Government should begin now to make preparation for the effective training of such young people to take the posts that offer themselves in this Colony.

When you come to a country like Australia which I know fairly well, to-day there hardly exists one official as every single person in the Australian Administration is a resident of Australia. It used not to be so. There was a time when the Bishop of Calcutta was the Bishop of the whole of Australia and I hope that this motion will be accepted, Sir, and the Government will act upon it and make preparations to train not only any one section of the community but every section of the community, so that they can fill the posts to which they should aspire and which they are prepared for by training, tradition or anything you like, so that in this country we shall have, as already stated, a Kenya Civil Service.

THE HON. THE ACTING COLONIAL SECRETARY : Your Excellency, Government regards this motion with the greatest sympathy (hear, hear) and has in fact endeavoured to give effect to the intention or the spirit underlying the motion. The Noble Lord in his address gave recognition to the Government of Kenya in that this Colony has instituted a Local Civil Service. I am correct, Sir, in saying that Kenya alone of all the Crown Colonies is the first and has pioneered the institution of a Local Civil Service.

Now, Sir, the position with regard to the Local Civil Service is not entirely satisfactory, I am sorry to say. I may say, Sir, that in spite of recent successes during the past three years in the Cambridge Examination, amounting to 104 in the Cambridge Junior, 62 in the Cambridge School Certificate and one in the Higher Certificate, Government is finding it increasingly difficult in obtaining the right type of candidate for the Local Civil Service. There are unfortunately, Sir, disquieting symptoms that the Local Civil Service terms do not offer sufficient attraction of Kenya youths at the present time. Inquiries were recently made of the Masters of the Secondary Schools in the Colony as to the number of boys who would be likely to apply for appointment to the Local Service during the next two years, and, Sir, the reply we got was that not more than twelve boys intended at the present time to apply for admission into the Local Civil Service. This of course is a very much smaller number than will be required by casualties during that period. The reason we understand is that commercial and professional employers offer more

attractive terms than are obtained in the Local Civil Service. But the fact does remain, Sir, that at the present time the institution of the Local Civil Service is not giving effect to the intention of Government that there should be a greater number of local youths employed in Government service.

I fully realize that this motion is intended to apply mainly to the higher posts or what we now term the overseas posts. The hon. Member for Ukamba has, I think, put his finger on the point when he says that this Colony is in a transition stage. The present position is that overseas posts or the great majority are included in what are regarded as unified Colonial Services, such as the Colonial Administrative Service, the Colonial Medical Service, the Colonial Legal Service, the Colonial Agricultural Service and the Colonial Forestry Service, and may be some others I do not know of. The position is that if Kenya insisted of local youths being given appointments in Kenya, they could not necessarily, unless they have the proper qualifications, be members of the unified services under which they are liable to be transferred to other parts of the Colony, and it would mean that if local youths were to be admitted into the unified services solely on the grounds of their residential qualifications, that Kenya would find itself in the position of having to recruit the balance of candidates from outside the unified services. What I want to say is this that at the present time there are only a very limited number of youths in Kenya who are qualified, who have the necessary qualifications to enter into the unified services, so that Kenya cannot insist that residential qualifications in Kenya alone shall grant admission into those unified services. It would not be in the best interest of this administration that Kenya should break away from the unified services. If it did, apart from the few candidates who have the necessary qualifications locally, it would be necessary to recruit the balance of officers from outside the service, and that would mean that they would be recruited from amongst that number of candidates whose qualifications were not regarded as sufficiently high to admit them into the unified services.

I may say that this Government has in the past and will endeavour to support the candidature of any candidate from Kenya who is regarded as having the necessary qualifications for entry into the unified services. We have supported candidates in the past and they have obtained admission and Government will continue to do so. I admit quite frankly that the position will change in a number of years, when the number of local candidates who possess the necessary qualifications for entry into the unified services and therefore for entry into the Kenya service will increase rapidly with the extension of secondary educational facilities. Increased facilities are being given year after year and it must naturally

follow that the number of candidates suitable for admission to the higher posts in this Colony will increase. When that stage arrives, it may be possible for Kenya then to establish its Kenya Civil Service and the procedure which the hon. Member for Ukamba mentioned might be adopted, but in the meantime, I submit, it would not be in the best interests of this Colony to break away from the present system. The most that can be done at present is for this Government to bring to the notice of the Secretary of State the views that have been expressed in this House and to say that we do support the view that as many candidates of Colonial upbringing should be given admission into the Colonial Service as possible.

As I say, Sir, in conclusion, this motion has the very real sympathy of the House and the views of the elected members expressed in this House will be brought to the notice of the Secretary of State, but for the reasons that I have already given it is not possible for Government to support the motion.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I should like to say that when I framed this motion and moved it, I had no idea that the racial question would be dragged in. I think it is very unfortunate that the hon. Indian members should have brought it in, because I am afraid I must reply to them.

This motion was to deal, as the hon. the Colonial Secretary said just now, with the posts other than those included in the Local Civil Service and chiefly of course in the Administration. So far as the Indians are concerned, the idea at the back of my mind, I admit that I was thinking chiefly of Europeans, but as far as the Indians are concerned I consider the same principle should apply: that any posts for which Indians are eligible should be given to Indians born and brought up in this country in preference to Indians brought from overseas, from India. But when it comes to the Indian claim that they should be put on all fours with Europeans for the higher posts of the Administration of this Colony, I most diametrically disagree.

I should like to point out that this country was taken over with the agreement of the natives by the British and by the British Government and not by the Indians and Indian Government, and we would be destroying our trust as British people if we handed over the administration to any other race except ourselves.

It was also suggested by one of the hon. Indian members that there should be competitive examinations and a Board of Examiners on those lines. That is a point of view to which

I am absolutely opposed, to competitive examinations in classical studies and so on for they are to my mind the very worst possible way of getting the most suitable candidates. In that point of view I know I have the support of the Commission which inquired into the Colonial Civil Service a year or two ago and recommended against it. About thirty years ago, when I first went to India, I remember hearing some of the senior Indian Civil Servants deploring that the standard of the Indian Civil Service was not as good as the old one, owing to what they called the successful competition-wallah. It is the last thing I hope will take place here, that candidates are chosen entirely on their ability to pass examinations better than other people.

When it comes to Government's reply by the hon. the Colonial Secretary, he said the candidates for the Local Civil Service are somewhat disappointing because there have not been sufficient numbers. I am sorry to hear it, and it does seem to show that the terms are not sufficiently attractive. At the same time, I think Government ought to be a little patient, and they will find as time goes on and the circumstances are better understood that more candidates will be forthcoming.

I did not quite follow his argument about the unified Colonial Service. If the motion I have proposed is adopted, my idea is that the local Kenya youths should be given preference for service in this Colony if they are up to a given standard. I think it is agreed to-day that the standard of candidates for the Colonial Service is probably higher than it has ever been in the past, chiefly because the Indian Service, which used to attract perhaps the pick of such people, is no longer so attractive owing to the Indianization of the Service. Therefore many candidates who in the old days would have gone to India as their fathers and grandfathers did now apply for the Colonial Service. At the same time, I submit we have got people in this country of the very type we want. I do not wish to mention names, but I could tell you of half a dozen, one or two the sons of old officials who served here for many years, brought up as boys in this country and anxious to come back and serve here but who are unable to get appointments. There are two or three in the country to-day, young men who fulfil the qualifications, who have taken good degrees at their universities, have passed in law, and so on, and are unable to get appointments in the Service.

THE HON. THE ACTING COLONIAL SECRETARY : On a point of explanation, Your Excellency, it is possible that I did not make myself clear. There is a Board of Commissioners who sit in London who are informed that there are so many wanted for the unified Service. They select the candidates

and the appointments are made by the Colonial Office to the unified Service among the various Colonies. It would mean a departure from that system if Kenya residential qualifications were to be regarded as preferential to other qualifications.

LT.-COL. THE HON. LORD FRANCIS SCOTT : I quite understand that, and it is a system we want to get away from, because I think the unified Service is greatly overdone to the detriment of a Colony like this. I should like to suggest something further regarding the unified Service if we really want to make use of it to benefit the whole Empire. In my opinion it is absolutely absurd, out of date, and inefficient, that any officer should be employed at the Colonial Office who has not had a considerable amount of service in one of the colonies or in some part of the British Empire. Then if you went there you would find somebody who understood what you were talking about. There is an old saying that charity begins at home, and I suggest that reform should commence at the Colonial Office.

My idea is that these young people should get into the Administration and then rise in the Service on proving themselves first class men. I see no reason why eventually they should not go as district commissioners or colonial secretaries to other colonies. On the other hand, I do feel very very strongly that in a colony such as this, where we have our own population, our own people should have preference if they are suitable, and I go further and say that our own people are the most suitable to control the native peoples of this country because they know them better. I do claim this as a right.

I feel that the idea which underlies this unified Service and the system at the Colonial Office, that the colonies are looked on as somewhere where they can send the surplus population to get selected jobs, is a thing of the past with regard to a country which, as the hon. Member Mr. Pandya said, has not self-government but which is growing on the same lines as other parts of the Empire which have achieved self-government. I do not wish to bring in the question of political advance and so on, for there are difficulties, but there are no difficulties as to why we cannot run the Kenya Civil Service by our own people.

The question was put and lost by 24 votes to 13.

Ayes : Mr. Bemister, Archdeacon Burns, Major Cavendish-Bentinck, Messrs. Harvey and Hoey, Lt.-Col. Kirkwood, Major Riddell, Major Robertson-Eustace, Capt. Schwartz, Lord Francis Scott, Sir Robert Shaw, Dr. Wilson and Mr. Wright.

Noes : Messrs. Barton, Boulderson, Brassey-Edwards, Bruce, Fazan, Fitzgerald, Harragin, Isher Dass, Kirsopp, La Fontaine, Logan, Mangat, Morris, Pandya, Paterson, Pilling, Sir G. Rhodes, Mr. Sikes, Dr. de Souza, Capt. Tisdall, Messrs. Vidal, Walsh, Waters, Welby.

MOTION.

PENSION—MR. F. B. BALLANDEN.

THE HON. THE TREASURER : Your Excellency, I beg to move :

“This Council approves the payment of an un-reduced pension of £597/1/10 a year to Mr. F. B. Ballenden, who is retiring from the service of this Colony with effect from the 1st of August, 1935, inclusive, in lieu of a reduced pension of £447/16/5 a year and a gratuity of £1,492/14/2.”

This motion follows the line of three other motions which have already been passed by this House, and which referred to officers who originally opted to receive a gratuity and a reduced pension and then wished to revoke that option and receive the full pension. It is considered to be in the interests of Government that they should be allowed to do so. So far as this particular officer is concerned, Mr. Ballenden entered the Civil Service as a junior staff surveyor in August, 1912, and is due to retire on the 1st of August of the present year after having held the post of district surveyor.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

MOTION.

SCHEDULES OF ADDITIONAL PROVISION, STANDING FINANCE COMMITTEE, REPORT ON.

THE HON. THE ACTING COLONIAL SECRETARY : Your Excellency, I beg to move :

“That the Report of the Standing Finance Committee on Schedules of Additional Provision Nos. 4 and 5 of 1934 and No. 1 of 1935, be adopted.”

It is unnecessary for me to say very much on this Report. There is, however, one matter to which I wish to draw attention, and that is in regard to the Schedule of Additional Provision No. 1 of 1935.

As you will see from the Report, the Committee has decided to recommend that the two Special Warrants in regard to the Kakamega and Lolgorien Roads, £29,000, and the

Lumbwa-Kericho Road, £10,000, should not be approved. The position, as I stated earlier in the session, is that owing to the decision of the Central Roads and Traffic Board to carry out an investigation to ascertain the needs of the mining areas, it is very unlikely that anything approaching the sum which is covered by those special warrants will be expended this year. Therefore, it seemed to the committee desirable not to approve the amounts, but that the matter should wait until later in the year when the actual expenditure would be definitely known and when a special warrant could be submitted for the actual amount necessary.

There is one other point. When the Standing Finance Committee was sitting, the opportunity was taken to consider a proposal for the construction of the Athi River Bridge between Machakos and Kitui. The estimated cost of the bridge is £2,500. The Machakos Local Native Council had volunteered to make a contribution of £1,200 towards the cost, such is the importance they attach to the proposal. The committee has recommended that the balance of £1,300 should be contributed by Government from the sum of £7,000 forming part of the Imperial Government grant of £50,000, which has been earmarked to meet the cost of the Kenya Land Commission.

THE HON. THE TREASURER seconded.

THE HON. CONWAY HARVEY: Your Excellency, I should be failing in my duty to my constituents if I omitted to voice a very definite protest against any further delay in the expenditure of whatever sum of money may be necessary to bring the Lumbwa-Kericho Road to a reasonable standard.

I should like to hear in due course from the hon. mover whether I am right in believing that a majority of members of the Central Roads and Traffic Board have been led astray by a most offensive herring—(laughter)—the suggestion being that a brand new road should be built, in substitution of the existing road which has served for thirty years, through the Mau Forest. Could any suggestion be more ridiculous? I do object very strongly to the expenditure of public funds in investigating a wildcat scheme of that character. In view of the enormous amount of revenue which the Colony derives from the various interests served by the road in question, the Lumbwa-Kericho Road, a reasonable expenditure of public funds is long overdue, and I sincerely trust that every effort will be made to expedite the further investigations which are said to be necessary and that some work at least will be done on this road without any avoidable delay.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, with reference to the remarks of the last speaker, I should like to point out that he himself is a member of the committee appointed by the Central Roads and Traffic Board to report—(Mr. Harvey: Not on that road.)—Yes, certainly, and we were waiting until we got the report before us so that no unnecessary expenditure was incurred.

With regard to the last part of the statement by the hon. the Colonial Secretary, I should like to say that, speaking for the Elected European Members, we support the construction of this bridge over the Athi River joining up Machakos and Kitui districts, as we consider it is work of public importance. We quite realize that the people to be chiefly benefited are the natives in that area, but at the same time we consider the bridge will form an important part of the whole road construction of this country. Under the circumstances, we do not think it right that the Local Native Council should be called on to contribute £1,200 towards it, and would like to recommend that the whole of the £2,500 come out of this sum of £7,000 which has been earmarked for reimbursement to Government. The result of that recommendation would mean that there would be a smaller amount for reimbursement.

I move that the motion be amended by the addition of the following words:

“subject to the deletion of the words ‘balance of the cost, namely, £1,300’ in the eighth and ninth lines of paragraph 3 and the substitution of the words ‘total cost, namely, £2,500’.”

HIS EXCELLENCY: I think I can accept that as being in order.

CAPT. THE HON. H. E. SCHWARTZE seconded.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK: Your Excellency, I want to express my support of the amendment in very strong terms. I am not sure that we have not of recent years at times probably not been as careful as we should have been in seeing to what purpose money out of Local Native Council funds has been spent, and it would be quite wrong to allow the Machakos Local Native Council to contribute £1,200 on a bridge which I really consider is required for the main road.

THE HON. THE ACTING COLONIAL SECRETARY: I am authorized to say that Government accepts with very great pleasure the amendment and welcomes the kindly interest

which is shown by the elected members in the welfare of the natives, as is indicated by that amendment. I am sure that the hon. the Chief Native Commissioner and the natives will very much appreciate it.

THE HON. THE ACTING CHIEF NATIVE COMMISSIONER : Your Excellency, on behalf of Machakos Local Native Council may I express my pleasure and appreciation of the very public spirited attitude on the part of members on the other side of the House towards this resolution.

The amendment was put and carried.

THE HON. F. A. BEMISTER : Your Excellency, may I ask the hon. the Colonial Secretary to explain his words when he said that the Standing Finance Committee had decided to sanction a certain amount for this year, and then when it was found what the roads were going to cost they would advance the rest? Is there any guarantee that the work will not cost more than the figure, or are we putting a blind cheque in front of somebody? They will spend what they like and we will find the money afterwards? I think the figure is £29,000, which I have originally opposed, for roads in the gold mining area. Is there any guarantee that the total amount is fixed? That is what I want to know.

THE HON. THE DIRECTOR OF PUBLIC WORKS : Your Excellency, I am not sure whether I am right in believing the hon. member is referring to the Athi River Bridge—(Mr. Bemister : No, this is finished.) The sums allowed for the gold mining area roads will not be exceeded without authority.

THE HON. THE ACTING COLONIAL SECRETARY : Your Excellency, in regard to the Lumbwa-Kericho Road, the hon. Member for Nyanza referred to a red herring I think it was. (A member : An offensive herring.) (Laughter.) Well, I may say that a herring was introduced into the discussions at the Central Roads and Traffic Board, but it was so offensive that much time was not given to its consideration!

The position is that the surveys have not yet been completed, and, in accordance with the usual practice, when the plans are ready they will be subject to review by the Central Roads and Traffic Board. It is not the herring which has prevented the Board from proceeding with the scheme.

In regard to the point raised by the hon. Member for Mombasa, I should like to make it clear that there is no likelihood whatever of £29,000 being expended this year. As I have already said, a sub-committee of the Board has made a very exhaustive inquiry into the position of the mining areas.

That sub-committee has not yet reported, and when it does report it will mean that the whole question of what expenditure should be incurred on roads in the mining areas will be thrown into the melting pot. I said a few days ago that the loan from the Colonial Development Fund was for a specific purpose. Last year, after what Government imagined was a very full and exhaustive inquiry, certain recommendations were made by the Central Roads and Traffic Board that certain stretches of road should be proceeded with. Those recommendations were considered by the Governor in Council, and an application made to the Secretary of State for a loan from the Colonial Development Fund for these specific roads.

It is quite obvious that if money lent for a specific purpose is not going to be used for that purpose but is required for some other purpose, we must go back to the authority which made the loan and ask whether there is any objection to the money being utilized for a different purpose than that for which it was originally decided on. That is the position. There will be a certain amount of expenditure on surveys, and it is possible that the Lumbwa-Kericho Road may be begun this year, also entailing a certain amount of expenditure.

If in regard to the mining roads the Colonial Development Fund authorities say the loan may not be used for any other purpose, it is probable that the cost of the surveys already undertaken will have to be paid for from revenue, but I hope that position will not arise.

I cannot say what amount will be spent this year, but it will not be in excess of £6,000 or £7,000; the hon. the Director of Public Works will correct me if I am wrong. But this estimate of expenditure from these votes for this year includes both the Lumbwa-Kericho Road and mining road surveys.

THE HON. THE DIRECTOR OF PUBLIC WORKS : On a point of explanation, Sir, that estimate also includes the road from Lolgorien to Mohoru Bay which is being proceeded with. We cannot say yet exactly what the actual expenditure on the Lumbwa-Kericho Road is likely to be this year; we must wait for the survey for that.

THE HON. THE ACTING COLONIAL SECRETARY : The hon. Member for Mombasa was not concerned with the Lumbwa-Kericho Road, only the mining area roads. I think the information furnished by the hon. the Director of Public Works answers his question.

The question that the motion as amended be approved was put and carried.

THURSDAY, 11th JULY, 1935

The Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, the 11th July, 1935, HIS EXCELLENCY THE ACTING GOVERNOR. (ARMIGEL DE VINS WADE, ESQ., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 10th July, 1935, were confirmed.

ORAL ANSWERS TO QUESTIONS.

NAIROBI MUNICIPALITY—ARTISAN EMPLOYEES.

No. 24.—THE HON. F. A. BEMISTER asked :

“What is the number of European, Indian, and African artisans employed by the Nairobi Municipality? What is their rate of pay?”

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: The number of artisans employed by the Municipal Council of Nairobi is 34, consisting of 26 Indians, 7 Seychellois, and 1 African.

The rates of pay vary from Sh. 3 per day to Sh. 500 per month.

There is one African employed at Sh. 3 per day. There are five Indians employed at Sh. 4 per day; one at Sh. 6 per day; two at Sh. 7 per day; two at Sh. 8 per day; and

3 at Sh. 120 per month	2 at Sh. 280 per month
3 at Sh. 200 per month	1 at Sh. 320 per month
2 at Sh. 210 per month	1 at Sh. 340 per month
2 at Sh. 220 per month	1 at Sh. 410 per month
1 at Sh. 240 per month	

The rates of pay to Seychellois in the employ of the Council are :—

1 at Sh. 5 per day	1 at Sh. 120 per month
1 at Sh. 6 per day	1 at Sh. 325 per month
1 at Sh. 8 per day	1 at Sh. 500 per month
1 at Sh. 10 per day	(Overseer)

VEN. ARCHDEACON THE HON. G. BURNS : Arising out of that answer, may one ask how it is that out of all the Africans who have been trained in the Native Industrial Training Depot and other places, there is only one African artisan employed in the Municipality of Niarobi?

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT : I am unable to give an answer as to what the reason is. All the appointments are in the hands of the Municipal Council itself, but I think it would be right and proper to bring in to their attention, the fact that they employ only one African, and that it was urged that more African artisans should be employed.

TRAINING AND EMPLOYMENT OF NATIVE ARTISANS.

No. 25.—MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE asked :

“(a) What is the number of natives trained at the Native Industrial Training Depot, Kabete, during the last five years? What percentage have obtained employment as masons, carpenters, blacksmiths, etc.?”

(b) How many of these were transferred to the Native Industrial Training Depot, Kabete, from (a) Machakos and (b) Waa Industrial Schools, and what is the number of natives who have been trained at these schools?”

THE HON. THE DIRECTOR OF EDUCATION :

(a) The number of apprentices who have completed their training at and have left the Native Industrial Training Depot during the last five years is :—

Carpenters	...	...	...	...	426
Masons	...	...	...	...	363
Smiths	...	...	...	...	69
Painters	...	...	...	...	35
Tailors	...	...	...	...	13
				<i>Total</i> ...	906

So far as can be ascertained, the percentage in employment is :—

Carpenters	...	...	...	75 per cent
Masons	...	...	...	more than 50 per cent
Smiths	...	...	...	100 per cent
Painters	...	...	...	100 per cent
Tailors	...	...	...	50 per cent

(It is impracticable to give exact figures, as very few skilled artisans, in any country, obtain permanent posts: they follow the work from place to place, and suffer intervals of unemployment. The best source of information is the reports of apprentices on annual leave in their reserves: they are instructed to make inquiries, and their reports are carefully checked.)

(b) The number of indentured boys transferred from the Government African School, Machakos, during the last five years under the five-year scheme (three at school and two at Native Industrial Training Depot) is:—

Carpenters	...	...	...	...	34
Masons	...	...	...	...	34
<i>Total</i> ...					68

and from the Government African School, Waa:—

Carpenters	...	...	...	...	20
Masons	...	...	...	...	32
<i>Total</i> ...					52

In addition, there were others, in the five-year period, who volunteered to proceed to the Native Industrial Training Depot, although not bound by agreement to do so: thirty-seven from Machakos and 44 from Waa.

The numbers of natives trained at the Machakos and Waa Schools are:—

Machakos (for the past five years):—

Carpenters	...	...	...	...	25
Bricklayers	...	...	...	...	19
Tailors	...	...	...	...	9
Teachers	...	...	...	...	35*
Wireless Signallers for the K.A.R....					14
Passed on to Veterinary Training ...					17
Passed on to Agricultural Training ...					4
Passed on to Medical Training ...					1
<i>Total</i> ...					124

*11 of whom proceeded to the Alliance High School.

Waa (from opening of school until end of 1934):—

Completed apprenticeship at Waa ...	11
Completed General Education ...	254
<i>Total</i> ...	
	265

GEOLOGICAL SURVEY OF THE COLONY.

No. 42.—LT.-COL. THE HON. J. G. KIRKWOOD asked :

"I. What is the Government policy with regard to completing the geological survey of the Colony?

II. Will Government consider appointing an Assistant Geologist at an early date?"

CAPT. THE HON. E. G. TISDALL (Acting Commissioner of Mines) :

I. Government has taken steps towards the further selection of geological staff with a view to continuing the examination of the geological resources of the Colony.

It is hoped shortly to publish the result of a geological survey of part of the Kakamega goldfield area.

II. The post of Assistant Geologist in the Mines Department has been filled since the 9th of February, 1934, but it has been necessary to utilize the services of the officer concerned this year as Geologist and Mining Engineer. The Secretary of State for the Colonies was asked early this year to select a Geologist in place of a Technical Adviser as provided for in the current Estimates. No selection has yet been made and it is hoped shortly to make a temporary appointment locally.

PENAL CODE—AMENDMENT REGARDING ONUS OF PROOF IN
MURDER CASES.

No. 46.—CAPT. THE HON. H. E. SCHWARTZE asked :

"1. Has the attention of Government been drawn to the case of *Woolmington v. The Director of Public Prosecutions* recently decided in the House of Lords?

2. If so, is it not a fact that the said judgment completely alters what has for centuries been the generally accepted law of England with regard to the onus of proof in murder cases?

3. It is not a fact that the law in Kenya as provided in section 190 of the Penal Code no longer follows the law applicable in England?

4. If so, will Government give immediate consideration to the necessity of amending the Penal Code so as to bring the law in Kenya into conformity with that now obtaining in England?"

THE HON. THE ATTORNEY GENERAL :

1. The answer is in the affirmative.
2. The answer is in the affirmative.
3. The answer is in the affirmative.

4. The question of amending the Penal Code in the light of the decision of the House of Lords in *Woolmington v. The Director of Public Prosecutions* will receive consideration.

CAPT. THE HON. H. E. SCHWARTZE: Arising out of that answer, may I take it that it will receive early consideration?

THE HON. THE ATTORNEY GENERAL: The answer is in the affirmative. What the result of the consideration will be I cannot say.

MOTIONS.

RAILWAY POLICY.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK: Your Excellency, I beg to move the motion standing in my name which appears on the Order Paper for to-day:—

“That this Council opposes a Railway policy as outlined in Chapter 11 of the General Manager’s Report for 1934 in that such policy is at variance with the recommendations of the Hammond Report and the principles laid down in section 13 of the Kenya and Uganda Railway Ordinance, 1927, and also runs counter to the terms of the Resolution passed in this House and subsequently approved at a meeting of the Inter-Colonial Railway Council held on 18th February, 1921, to the effect that the general railway policy should be one directed to promote cheap transport and transport facilities for agricultural and industrial development.”

Your Excellency, my object in moving this motion, and I may say our object as I believe I am voicing the opinions of all European Elected Members, is to impress on all Honourable Members of this House the fact that publication of the Report of the General Manager on the Administration of the Railways and Harbours for the year 1934, more especially the publication of Chapter 11 of that Report, has evoked a feeling of profound apprehension throughout the country. Before, however, enlarging on the grounds on which such misgivings are founded, I should like to preface my remarks by making it quite clear to the Honourable the General Manager and to the Railway Administration generally, that Honourable Members on this side of the House thoroughly appreciate the tremendous difficulties with which the Railway has been faced during recent years and are anxious to pay a tribute to the manner in which the Railway Administration in conjunction with the Inter-Colonial Railway Council, appreciating the true position, took the bold and energetic measures which it did to put its house in order, which measures have led to the satisfactory results disclosed in the 1934 Report.

In 1933 the Railway was faced with heavy deficits and we realize that during 1934 despite decreases in imports and exports and reduced train mileages, the Railway, partly owing to reductions in overhead operating costs and partly by increases in rates introduced previously, managed not only to wipe off a large deficit but to show very substantial profits.

We do contend, however, that now this satisfactory position has been reached, it is the duty of the Railway to realize its responsibilities as an integral part of the Colony and to afford all possible relief to hard-pressed producers and commercial firms compatible with the maintenance but, taking existing conditions into account, not compatible with any unreasonable betterment of its now comparatively secure financial position. We feel that an unduly affluent Railway operating in an impoverished country would be, even were its existence of necessity short lived, a grotesque anomaly.

To us a danger seems to lie in the circumstance that the Railway seems to be increasingly tending to become a watertight compartment instead of remaining as it should the backbone or foundation on which the Colony's prosperity must depend. If this danger is a real danger then we ought to point out that a position has been reached which ought never to have been allowed and which it was never intended should become possible.

If we glance back a few years we remember that the Kenya and Uganda Railways was originally a Department of the Government of Kenya, at a time when Kenya was in receipt of a Grant-in-aid from the Imperial Government, a position to which we hope this Colony will never revert. In those days any profits made by the Kenya and Uganda Railways were taken into account in the General Revenue of Kenya, such profits reducing the Grant-in-aid contribution made by the Imperial Government.

Later the Colony accepted the responsibility for its own financial burdens, and so this system could no longer continue and dual control of the Railway was therefore introduced. It was, however, never intended that the Railway should be run as a separate entity which disregarded lines of policy laid down by the territories which it served and entirely ignored its real function which should be to assist in general development. On the contrary it was always accepted that the ultimate prosperity of the Railway itself must depend on the prosperity, expansion and development of these young Colonies (hear, hear). It was the acceptance of this viewpoint which led Lt.-Col. Hammond in 1921 to make the recommendations he did in Chapter 12 of his Report, certain paragraphs in which, while we agree, give an argument

precisely opposite to the argument produced by the General Manager in his 1934 Report. It was with the very object of preventing the Railway from developing into an entirely separate entity that a definite policy for running the Railway under the then new Railway Council was laid down in a Resolution passed in this House either at the end of 1920 or the beginning of 1921, and afterwards confirmed by the Inter-Colonial Railway Council on 18th February, 1921. The resolution is quoted in full on page 7 of the Gibb Report and is as follows:—

“That in the opinion of this Honourable Council it is advisable that the general Railway, Harbour and Tariff Policy to be carried out by the Railway Board should be laid down for the guidance of that Board, and that the Policy should be one directed towards the promotion, by means of cheap transport and transport facilities, of agricultural and industrial development.”

Furthermore, I would suggest that section 13 of the Kenya and Uganda Railway Ordinance, 1927, was drafted with the very object of defeating any ambiguity which might at a later stage be alleged as to the phraseology of the Kenya and Uganda Transport Order-in-Council on this question. In other words, whilst it is and always has been perfectly evident that Railway rates and Railway Policy can be regarded from two points of view, namely, from the purely Railway point of view and from the wider viewpoint of Colonial Development, it has always consistently been accepted that in this Colony the latter viewpoint should prevail. If any further evidence is required in support of this contention I would refer to Sir Edward Grigg's validictory address to the Inter-Colonial Railway Council, given just before he left the Colony in September 1930 in which he said: “The Railway Administration could not be considered ‘a business undertaking’ in the ordinary sense of the word; its real object was to serve the territories of Kenya and Uganda as one of the great activities of the State. The Railway must proceed on sound economic lines but its real function was to assist development generally.”

Now, Sir, our fears to-day are founded on the fact that it seems that an attempt is being made at the present time to undermine the policy which we have always understood was being followed hitherto in that it would appear that the Hon. the General Manager in Chapter 11 of his Report for last year and more especially in paragraphs 179 and 186 quite openly expresses his intention of departing from such a policy, and departing therefrom, moreover, at a time when the Colony most urgently requires the sympathetic co-operation of the Railway owing to the appalling difficulties which

the primary producer has to face, difficulties far more insuperable than he has been called upon to face at any previous period in our history. Can it therefore be wondered at that the country has been thoroughly alarmed?

I am, of course, aware that the policy of the Railway is controlled by the Inter-Colonial Railway Advisory Council, but as this Council issues no Report the public have little or no knowledge of what that policy may be or of what transpires during its deliberations. I am referring to this matter again later. The only report available to the public is that submitted by the Hon. the General Manager. We therefore read his report with great interest and not unnaturally consider we have the right to criticize it.

Now I feel sure that the Hon. Member will forgive me if I suggest that the whole tenor of his very able Report for the year 1934 is somewhat provocative in character and might justifiably be said perhaps to leave one with the impression that he would not be adverse to usurping what are in fact the functions of the Railway Council. In his Report the Hon. Member is very out-spoken, so much so that one cannot avoid gathering that he does not see eye to eye with the Railway Council in many matters of policy. I am saying this in no spirit of adverse criticism, but as the Hon. the General Manager has taken that line and has been very out-spoken I am sure that he will forgive me if I am slightly out-spoken too.

As I have suggested that the Hon. the General Manager has couched his Report on somewhat provocative terms, I should perhaps substantiate this allegation and I would therefore quote certain examples; as one example I would allude to paragraph 47 on page 23 in which the Hon. the General Manager criticizes the commercial point of view regarding distribution rates. Now, the abolishing of distribution rates in 1932 occasioned a storm of protest, in view of which the Railway Council re-introduced these rates last year. The Hon. Member evidently, from this paragraph, does not consider the Railway Council's decision a wise one. Nor apparently has he a very high opinion of the sagacity of the commercial community.

As a further example I would refer Hon. Members to paragraph 179, from which it is obvious that the Hon. Member does not accept the policy presumably laid down by the Railway Council, to the effect that bulk crops for export must, as is done in all agricultural countries, be carried at very low rates, nor does he like the maximum or the flat rates which are at present in existence. Furthermore, country produce rates are sharply criticized. I admit that in the

same paragraph it is stated as being unlikely that any suggestion will be put forward to increase rates on low valued crops for export. These, however, have been increased recently in order to meet what it was hoped would only be a temporary emergency, so this gracious concession merely infers that the pre-emergency rates are not going to be restored!

I could quote many extracts to prove my contention but I do not propose to waste time of this House further. As a last instance, however, I would refer to the Hon. Member's remarks referring to the Reserve Fund which appear in italics on pages 77 and 78. Could anything be more dictatorial than these remarks? I believe that on occasions, though not in his Annual Report, the Hon. the General Manager has even gone so far as to suggest that the Railway might have to dictate to the farmer as to what crops may be considered economical or otherwise.

The foregoing short allusions to certain features of the Hon. Member's Report may serve to demonstrate to this Council the type of remarks which has occasioned the feelings of apprehension to which I referred at the beginning of my speech. We are beginning to fear not only that Railway policy is going to be changed fundamentally but that the Hon. the General Manager may succeed in so over-riding the Railway Council, that we shall find that every problem is regarded from a purely Railway point of view and that the view-point of Colonial development has been entirely lost.

Your Excellency, I do not propose in the course of these remarks to enter into any detailed arguments in regard to specific rates, as such experience as I have of dealing with this subject has convinced me that it is one which cannot be dealt with cursorily in a debate in this House. The complications and repercussions which have to be considered in dealing with any particular rate are not, as a rule, appreciated by the layman. Speaking in general terms, however, I would like to say this. When it became obvious in 1931 that there would have to be rate increases in order to obviate financial disaster the unofficial community, and I believe the Unofficial Members of Railway Council, recommended that the position be met by a temporary surcharge instead of by definite rate increases. The advantages claimed for the surcharge were briefly, that such a system would afford temporary relief without radically changing the rating system, that alterations or fluctuations in percentages of surcharges could easily be made as required during abnormal times, and that as soon as the position improved these surcharges could be withdrawn. Those proposals were not accepted, definite and apparently permanent increases were imposed on certain rates, and if

and when alleviations are given we may wake up to find that it will have been done in other directions and that our whole rating system which we have fought for in the past will have been quietly changed. This may be advisable or not—personally I think to do it that way is extremely dangerous.

That, Sir, is all I propose to say with regard to rates.

I must now make a few remarks on the Hon. the General Manager's future major financial proposals. On page 4 of his Report will be found a statement showing the balances of the various Funds as on December 31st, 1934. These total £2,195,081. These Funds consist of the Renewals Fund, the Betterment Fund, Loan Fund and Miscellaneous Capital Credits. The contributions to the Renewals Fund on account of depreciation have been made at an average rate of 2½ per cent on all wasting assets, and at varying rates on other assets. This Fund stands at £1,780,434. The Betterment Fund now stands at £46,855, but I should like to stress that in days gone by this Betterment Fund reached very considerable proportions and I believe that at least £1,580,000, if not £2,230,000, has been taken out of this fund up to the end of 1934 and devoted to capital expenditure on the plea that this policy avoided the floating of further loans. I am not quite clear as to whether this sum has been capitalized or not. The point, however, is immaterial. It is now suggested that the position was mishandled in the past owing to no Reserve Fund having been built up and that the Administration cannot feel reasonably safe or ready to meet the next depression unless such a Fund amounting to no less than £1,000,000 sterling is immediately built up and built up, moreover, before we emerge from the present depression! This new Reserve Fund is "to be built up before anything else is attempted" and "nothing is to be allowed to interfere with this policy"! In other words, instead of endeavouring to assist the present Railway users to survive the worst economic hurricane in the world's history, it is proposed to mulct them still further or at any rate to provide no alleviation pending the moment when the Hon. the General Manager considers that a sufficient Reserve has been extracted, a process which, according to the hon. member himself will, it is anticipated, take a period of years to accomplish.

I would, therefore, ask the Hon. the General Manager whether he considers it is equitable that this pioneer generation should be called upon not only to defray the cost of the whole Railway, including capital improvements carried out out of Revenue, but to hand down to the future generation, whom we sincerely hope will have far fewer difficulties to face, a huge Reserve Fund in addition.

I venture to submit that it was the very fear that such a policy might be introduced which led to the drafting of section 13 of the Railway Ordinance, 1927, which makes an inefficient attempt to lay down the maximum amounts which are supposed to be extorted from the public.

Before terminating, I should like to ask hon. members just to glance at the present position of the Railway, and to compare it with that of other railways in order that they may see whether any real case can be made out for building up this Reserve Fund under to-day's circumstances. I would ask what is the value of railway securities throughout the world, and what profits have railways made during the past few years? I think the answer is that such values and such profits have been very low indeed. On the other hand, let us assume that the sum of approximately £14,000,000 of borrowed money that the Kenya and Uganda Railway has is shareholders' capital. Under present conditions the Railway would be paying interest of 5 per cent on that; they would also be paying into a sinking fund at the rate of 1 per cent, a total of 6 per cent. The Kenya and Uganda Railway is also contributing to the depreciation or Renewals Fund at the rate of approximately $2\frac{1}{2}$ per cent, which increases the total to $8\frac{1}{2}$ per cent. Over and above that, the profit for 1934 amounts to £344,000 or about another $2\frac{1}{2}$ per cent on the capital of £14,000,000, so that taking into consideration the Depreciation and Sinking Fund, it might be said that on their capital Kenya and Uganda Railways and Harbours obtained a gross return for 1934 of 11 per cent. I do not believe that any railway in the world can show figures approaching these for their 1934 work, and yet disregarding the appalling difficulties that the Railway user has to face in this Colony to-day, the Railway are dissatisfied and want to start building up a Reserve Fund, over and above depreciation and renewals.

Your Excellency, I again wish to make it quite clear that I am not making any personal attack on the Hon. the General Manager. His point of view is that which one would expect from a competent technical and extremely enthusiastic head of a department who is anxious to secure to the maximum the affluence and well-being of his own work. I have merely endeavoured as shortly as possible to put forward a few reasons as to why the country is apprehensive. Perhaps an additional reason is that we are very much in the dark, beyond a cursory allusion in Your Excellency's speech, as to what are the true intentions of the Hon. the General Manager and as to what transpired at the last Railway Council. I should like to add that the country as a whole feels that there is too much secrecy with regard to the proceedings of the Railway Council, a body whose decisions vitally affect

the well-being of the whole community. Whilst realizing that it would not be possible to publish the full proceedings of meetings of the Railway Council, it might nevertheless be possible, if not advisable, were a short statement published after each meeting.

If my remarks succeed in extracting from the Hon. the General Manager something a little bit less in the nature of the acidulated iceberg which the hon. member himself euphemistically described in his Report as "cold comfort", I submit I shall not have entirely wasted the time of this House.

LT.-COL. THE HON. J. G. KIRKWOOD : Your Excellency, I beg to second the motion before the House. In doing so, I do not intend to take up unduly the time of the Council. I quite appreciate that the Hon. the General Manager will take some time in replying, and I realize also that we are working under pressure to get the business of the House finished to-day as we are very much behindhand.

First of all, I should like to congratulate the hon. member for Nairobi North on his very able and illuminating speech; it leaves very little for me to say. But I should like to put in a plea for the agriculturists of the Colony. As we are all aware, in these last six years we have had different varieties of destruction—by locusts, by drought—and we have had the economic blizzard which means that as far as several cereal crops are concerned they have been produced over a period of years at a loss, and that there is no question that the agriculturists to-day are in a very unsound financial position. It is really staggering to me that any of them have existed through these last six years, for the Colony unquestionably, from the agricultural point of view and the agriculturists' point of view, is in a very serious condition.

A good deal of it, not all, is due to the Railway rates which, during the last two years, have been definitely increased. The local produce rate, which operated somewhat in favour of the local produce in Kenya, has now been obliterated. Every hon. member can take his mind back to the time when the very serious road competition interfered with the financial returns of the Railway, and this side of the House wholeheartedly supported the suppression of that competition; as we considered it was in the interests of the Railway, of which we are in effect shareholders, and its large interests were protected and by the suppression of the road transport, which was a very real competitor. I remember that the hon. the General Manager said that if the road competition were removed it would make a definite saving for the Railway of £70,000 or £75,000 a year, and I was

under the impression when I voted, as I did, for the removal of that competition that it would mean extra profits to the Railway and a decrease in Railway rates, not an increase.

Be that as it may, that is what has happened, we have had an increase, and the Railway has increased its rates and got a direct rake-off through eliminating this competition.

I also disagree with the policy—I do not know if the Railway can be blamed, I do not blame the hon. the General Manager—of building up these huge reserves in a time of stress and stress such as we are going through to-day. I think something should be done by all concerned—the General Manager, the Railway Council, the High Commissioner of Transport, and the Secretary of State—that there should be a strong recommendation to them for an alteration in the policy of building up these huge reserves in the Railway budget when the Colony's surplus balances are depleted.

It is from that point of view that I have always maintained the Railway is another taxing department of Government; apart from the Administrative taxes, I look on the unduly increased Railway rates as also a means of taxation.

We are responsible for this railway line, the Colony: should the Railway default, the Colony would be held responsible for it, but there is a difference in making a proposition pay and in making huge profits out of the people who cannot afford to build up those profits. We have the complication of the Railway serving two territories, and I believe, from what I can gather, that there is quite amiable work on the Railway Council between the Kenya and Uganda members. I am passing no restriction on them whatever, but it is old history that Kenya has been very badly dealt with.

It is difficult to obtain figures, as I have found on different occasions when I have asked questions; only two days ago, when I asked for the financial implication of the last six months' working of the Kitale branch line I was given what I consider a most unsatisfactory answer. I maintain that if I were allowed access to the Railway office and called on one or two gentlemen to give me that answer, they could supply it in half an hour. On previous occasions when I have asked for the profit and loss over a period of the same line, I have been told that there was no known system of accountancy in the Railway Department whereby that reply could be given. That again I consider a most unsatisfactory reply, as the Railway budget does show whether it is making a profit or a loss, and Mr. Roger Gibb was also able to give an estimate that under a different formula the Kitale branch line would show a profit of £5,000 in a certain year. I just mention that to substantiate my statement

that it is not always satisfactory information one gets from the hon. the General Manager, and I hope he will endeavour in future to meet inquiries from this side of the House on matters that we are seriously and honestly interested in knowing just how things go on.

I suggest that this matter of building up huge reserves at the present time should be seriously considered, and I am perfectly certain the Secretary of State would sanction the reducing of these reserve funds and allowing something to be passed on to posterity. We are all aware that to-day money is cheaper than it has been for the last twenty years, since 1914, and there is every sign that the money market will remain like that for a period of years. I consider it is the duty of those responsible for the finances of the Colony and the Railway to find ways and means of doing something to help the users of the Railway in these very difficult and almost impossible times that we are going through.

I will not detain the House any longer, Sir, for I have no doubt other members wish to speak, and I prefaced my remarks by saying that no doubt the hon. the General Manager would like to reply at some length. I will leave the matter there, and hope the suggestions I have thrown out will have some consideration by Government as well as the Railway Council.

THE HON. J. B. PANDYA : Your Excellency, I rise to oppose this motion. It is not possible for me to speak with that insight into the figures in regard to this motion that European members have done, because unfortunately in the Railway Advisory Council there happens to be no Indian member who could give such information or have such insight into these questions.

But I cannot understand the opposition of the European elected members to the policy which has been enunciated by the hon. the General Manager, in his Report for 1934. Paragraph 179, to which objection is taken, reads :—

“It may be stated as an axiom that the aims and object of a Rates Policy, as exemplified in the Tariff Book, is to distribute the cost of the transport machine as equitably and fairly as possible over all its users.”

I defy anyone, I challenge anybody, to say why there is anything wrong in the policy which has been enunciated by the hon. the General Manager. Is it not desirable that the transport machine should be used “equitably and fairly” for all Railway users? Why should there be preferential treatment for a certain class of industry or for certain people in

regard to that machine? The country as a whole is responsible for this Railway machine. That country comprises not necessarily the agricultural people or the agricultural industry but also those who do not participate in that industry.

I am not opposed to a reasonable support being given to the agricultural industry, it is natural, everybody agrees to that principle which exists in every country. That policy is in practice here to a very large extent, for we find that the rates on agricultural produce are very much lower than you can find in any other agricultural country. I have only had experience of India, and although I am not in a position to quote figures, from general information I am sure that there the rates are higher than you can find in this country in regard to maize.

There is also another point, that the Railway for very good reasons has been accepted as a separate entity in this country. It was done by the hon. the European elected members themselves a few years ago. The Railway to-day is a joint concern, and one cannot possibly insist on having the interests of a portion of the railway users to be guaranteed or furthered because it is necessary that the interest of all the users of the railway should be taken into consideration, namely, of Uganda and partly Tanganyika. If you take the policy which has been enunciated to-day, that the Railway is entirely for the benefit of the agricultural and industrial community—which is what I understand the motion means—if you take that to its logical conclusion you will find there will be no railway left in this country, that the Uganda producers would demand very low rates for their cotton and cotton seed which they are exporting and that the Tanganyika people would do the same. What would be the result? That the import rates would be so high that the cost of living to the poor people would go up. There must be a balancing factor in regard to railway rates, and the hon. the General Manager, I am sure, has acted in the interests of all users of all kinds.

He has got to see at the same time how it would affect the poor man, and I am sure if there is any surplus that should go towards the reduction of railway rates it should go not to the export rates, which are very low to-day, but to the import rates, which cost the importers and the consumers a very large amount of money and which increase the cost of living.

It was said that the Report of the hon. the General Manager for 1934 was provocative. I think it should be understood that if you want to entrust such a big machine as the Railway transport machine, which is to be run in the

interests of the country, to one man, who has charge of it, he must be expected to be honest, he must be expected to rise to the occasion of stating without fear his views. And I am very glad to find in the hon. the General Manager that we have such a man who has risen to the occasion and has said very frankly what he feels about these matters. You may not agree with it, but there is no reason why, when the truth is disclosed, that his Report should be called provocative. Truth is always provocative to those who do not wish to hear the truth.

I entirely agree with one point which the hon. mover has made, in regard to the opposition to the principle of building up very large reserves for the Railway. I entirely agree with him that we are to-day paying 11 per cent dividend on the Railway finances, and I should like to say this: that to-day the biggest commercial concerns are not in a position to pay such a dividend. The Railway users must get the benefit of the surplus, and I should like to suggest for the consideration of the hon. the General Manager that it would be wise in this country to follow the policy of accumulating moderate reserves but at the same time giving the benefit of the surplus to the reduction in railway rates. The commercial community at Mombasa think that any surplus over revenue should be divided in the form of 60 per cent against reduction in Railway rates and 40 per cent or something like that to reserves. That is a concrete policy to follow in regard to these surpluses. The people must get the benefit of them, and I do not think there is any necessity for accumulating very large reserves.

I should pay a compliment to the hon. the General Manager for running this transport machine so efficiently, but at the same time, although this is not the proper occasion, I want to appeal to him to be generous towards his employees. He has shown a large profit no doubt, but he is not so generous to the Asian employees working under him. I want to say that the first to have a claim on the surpluses are the employees who are suffering from various disabilities in regard to remuneration, leave, and other matters.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE: Your Excellency, there is only one question that I should like to ask. What benefit accrued to the country, not the Railway, by the country giving up £75,000 to £80,000 when it agreed to the elimination of road competition in the shape of Customs duty on the sale of petrol, spare parts and other things?

Council adjourned for the usual interval.

On resuming :

THE HON. N. S. MANGAT: Your Excellency, I also stand to oppose this motion. During every budget session the members of the House generally are prepared to hear invective from the unofficial members about the Railway policy, but it seems to me that in time it will come once a week instead of once a year!

After reading the policy of the economical reconstruction as enunciated by the hon. the General Manager, one must accept that there must be equitable distribution of rates; and after all the Railway in this Colony is equivalent to the Government itself; 75 per cent or 80 per cent of the loans of the Colony have been contracted on the Railway and the sinking fund and interest has to be met. If, as it is quite possible, there is another depression, I cannot contemplate what would happen to the Railway if there is no reserve fund.

The hon. Member for Trans Nzoia has said that he supported the Ordinance to prohibit motor transport by road because he thought that £80,000 or so—although I think it was about £30,000—in his opinion would go first to the Railway and then to the farming community. Now I cannot think that a member should support a resolution thinking that a particular section of the community to which he incidentally belongs would benefit at the cost of those people who were employed in that motor transport. If at all there is going to be any utilisation of the surplus it must be made towards a fund in some sort of compensation of indirectly through allowing competition of the road transport to those people who suffer from this hardship. It amuses me that whenever there is a conflict of opinion as to the reduction in rates, the appeal is always made on behalf of the exporter sending produce down to the Coast and never on behalf of the importer. The European members always say they contribute more because they drink more whisky and it has been suggested that they pay more education cess than the other immigrant communities. If that is their contention, I cannot see any reason why they come every day asking for the reduction of rates. Whenever there is an appeal to the Railway for a reduction in rates, only one side is supported. One can imagine that if there is a reduction in the rates on the goods going downwards, as to who would pay the difference. It would certainly be the consumer who is already paying high on the imports and that would be the natives whose so-called trustees we claim to be.

This motion raises a question which has been thrashed out so often and there is nothing of course new in that. The Kenya and Uganda Railway Ordinance itself contemplates

that before anything is given out to any community or to the public the Railway must see whether it is in order and it also contemplates that after taking out the sinking fund and other things the line is run on a business basis. I do not see anything in the Report that it is not being run or will not be run in the future on a business basis. I consider it unfair on the part of the unofficial community to press for only one community which has already been spoon-fed for years and years and given extensive areas of the best land and Land Bank facilities; if they still cannot sustain themselves let them be squeezed out. One of these days I am afraid that the situation will come to such a pitch that the hon. the General Manager will be asked to supplement his ration train so that the producers if they cannot sustain themselves may be given rations every day when the train goes out!

In my opinion, Sir, there is a great necessity for a dictatorship in the administration of the Railway. For the last two years, 1933 and 1934, there has been a definite improvement in the revenue of the Railway. Before that we have had a very disappointing deficit and it has been made up and it has been made up because the General Manager has used his own opinion rather than be affected by threats issued by unofficial members. I still remember that in 1933 in the Budget session when I was a member of this Council, the hon. member, the seconder of this motion, said these words:—

“I think it would be very much better to be honest and for the General Manager to make a definite statement on behalf of the Government that they are determined that European producers in this Colony are not to exist longer than it will take to kill them by railway rates.”

That was his opinion two years ago and they still exist. It reminds me of those motion pictures which are announced to be “Coming shortly, coming shortly”, and never come. In spite of his apprehensions the producers are still existing although it may be due to the Land Bank they are indulging in more expenses and feeling the pinch.

I think, Sir, this motion should be absolutely thrown out by the Government. Government must warn this House firmly, and it will have good excuse if it does not do so politely, that they must keep their hands off the Railway and let the Railway have a chance for at least ten years to build up a reserve which will enable us to pay our loans easily.

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, I feel that in bringing forward this motion before the House the hon. mover has placed himself somewhat in the position of Don Quixote in tilting at a windmill. Sir, it is assumed that Chapter 11 of the General Manager's Report for last year represents the policy of the Railway Administration. Now, Sir, it is quite unnecessary for me to explain that the General Manager's Report represents nothing else but the views of the General Manager himself. It does not necessarily represent the policy recommended by the Railway Advisory Council or the policy accepted by the High Commissioner for Transport.

The point has been made by several speakers that it is only natural that the General Manager who is responsible for the conduct of the Railway should advocate a policy which in his opinion will restore the sound financial position of the Railway. He would not, of course, be fulfilling his duty if he advocated a policy that would bring the Railway into financial stress again. It is the duty of the General Manager to advocate a policy which in his opinion accords to sound business principles and a policy which he considers will achieve most speedily the object which we on this side of the House desire equally as much as the hon. members on the other side of the House, namely, that a reduction in rates should be effected at the earliest possible date compatible with the sound financial position of the Railway.

As I have already said the Report represents the views of the General Manager and does not necessarily represent the views of the Railway Advisory Council. I, Sir, have had the honour of attending only one meeting of the Railway Advisory Council but I must say that I definitely formed the opinion that the members of that Council were not persons who would easily be brow-beaten or would necessarily accept servilely the views of the General Manager. It is not for me to defend the views of the General Manager and he will no doubt do that himself at a later stage in this debate. But, Sir, a point was made that one of the reasons why this motion had been brought forward was that the members on the other side of the House have no opportunity of knowing what takes place in the Railway Advisory Council and that they therefore have to assume that what appears in the General Manager's Report is the policy of the Railway Advisory Council. May I read, Sir, an extract from a supplement to the Official Gazette published on the 9th April, 1935. It is from a despatch from the Secretary of State dated the 4th December, 1934:—

“The Conference”—meaning the Governors' Conference—“accepted resolutions drafted by the Kenya and Uganda Railway Advisory Council and by the Tanganyika

Advisory Council as giving a satisfactory general statement of the financial policy which should be followed by the Railway Administrations. These resolutions read as follows :—

(i) *Resolution of Kenya and Uganda Advisory Council.*

‘Recognizing the urgent need to obtain unanimity of railway policy in the territories served by this Administration and being aware of the supreme importance of avoiding any call upon either Government to meet deficits, Council agrees that the policy of the railway must be a business policy as prescribed in section 13 of the Kenya and Uganda Railway Ordinance, 1927, and in so far as that policy is influenced by considerations of agricultural and industrial development, it shall not include the adoption of measures which would be ultimately detrimental to railway interests or the provision of cheap transport where there is reason to believe will be unremunerative in its cumulative effect. The policy and recommendations of the Railway Administration, in considering rates matters, should be based on the principles embodied in this resolution.’

The despatch goes on to quote the resolution of Tanganyika Railway Advisory Council. This is to the same effect but puts the principle in rather a different way :—

“(ii) *Resolution of Tanganyika Railway Advisory Council.*

‘In the opinion of this Council there must be a dual policy—

- (a) to build up a sound railway budget with adequate reserves and renewals fund; and
- (b) to use the railway as an instrument of development.

It is only in ideal circumstances that adequate effect can be given to both sides of this policy; and when times are bad it seems impossible to devise a formula so that neither policy suffers unduly. It must be a question for individual judgment.’

The Railway Advisory Council will obviously consider both the views of the General Manager and also the views of the producers and, Sir, I think that it may safely be left to the Railway Advisory Council and the High Commissioner for Transport to arrive at proper and just decisions in such matters.

I would, Sir, like to take this opportunity to endorse the commendations which have been made by several hon. members. First, in regard to the wisdom of the Railway

Administration and the Railway Advisory Council in adopting a policy designed to place the Railway finances on a sound footing and, secondly, in carrying through that policy so efficiently that, as hon. members are aware, it is hoped as a result to be able to offer reductions of rates on the 1st of January, 1936, amounting to no less than £100,000.

This House is always given an opportunity to discuss any policy embodied in the Railway Estimates in accordance with the provisions of the Railway Order in Council, wherein clause 17 provides that the Legislative Council may by resolution approve or disapprove of the Estimates or propose modifications. It is not a concrete policy embodied in Estimates which is before the House to-day. The motion merely deals with the views expressed by the General Manager in his Annual Report, and for this reason and since there is no reference to the desirability of maintaining the Railway finances on a sound basis, Government is unable to accept the motion.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: Your Excellency, I have a little difficulty in intervening in this debate because I am responsible to another body for approval of Railway policy. I am responsible, as the hon. the Colonial Secretary has said, to the Railway Advisory Council. But as hon. members are aware it has been my practice for many years now to give this House and the country generally as much information as I can possible give them with regard to the working of the Railway. In fact it is a direct result of that policy that hon. members on the opposite side of the House have plenty of ammunition for this motion this morning. I am only too glad to continue that practice and to supplement here what I have said in my Report. From what I have heard this morning from the hon. mover in speaking to this motion I am only too glad to add any further explanation and to explain why I hold these particular views. I think it is of importance that members of this hon. House and the public too, should understand the Railway policy as fully as possible and from that point of view I will try and add to what has been said already this morning to make the position a little more clear.

I could understand my being in a very much more difficult position than this if at the end of this period of depression we had failed to pull the Railway through (and with it I hope, the country too). The position I am in is due to the fact that we have succeeded to an extent greater even than our own expectations, and the difficulty at the moment is that we are earning surplus funds which perhaps can be

utilized, or it is claimed that they can be utilized, in other ways rather than, as we have suggested, in building up a reserve.

First of all, I have been taken to task because that policy of building up a reserve is stated to be contrary to the general policy of the Railway as laid down in the past and particular with reference to section 13 of the Railway Ordinance. That section reads :—

“ The Services shall be administered on business principles, due regard being had to agricultural and industrial development in Kenya and Uganda by means of cheap transport.”

I cannot find anything that I have suggested in my report that is contrary to that section. The important question from my point of view as General Manager is the question of “business principles”. As General Manager I cannot favour any policy which throws that principle over. That is laid down definitely there as something for me to work to. In addition it is laid down that we should have due regard to industrial development. I contend that the tariff as now designed does have due regard to agricultural and industrial development. In fact so much so that it leads us into other difficulties which we cannot simply ignore. We have to face them. I have not suggested in this report that that policy should be changed or that I do not agree with it in any way. On frequent occasions I have said that we cannot recommend any change in the tariff policy at the present time, but we cannot simply ignore the difficulties that result from that policy. One of the difficulties is road competition, and other such rating matters. There are many other difficulties which we have to deal with daily because of what I have called the unbalanced nature of our tariff. There is nothing wrong with that. We have adopted that tariff together with its drawbacks, rightly or wrongly, and it is those drawbacks to which I am drawing attention in this Annual Report. I have not suggested that bulk rates should be done away with, but what I have suggested is that owing to their drawbacks, wherever we possibly can we should bring down our high rates. What I am aiming at is to bring them down without putting up the low ones. At one stage it looked as if we might have to increase the low rates in order to get over the difficulties that have arisen.

I maintain therefore that the policy that we have followed in the past few years definitely follows the instructions laid down in section 13 of the Railway Ordinance. What are business principles? The first one, as I understand it, is that we must administer the Railway so that our finances are in a satisfactory position. We must not have deficits, nor run

at a loss. In fact it is laid down in the Order in Council that we are specifically prohibited from carrying on any transport at a loss. What have we done to follow business principles? I maintain, and I think the hon. mover by the way he presented his motion recognized that fact, I maintain we have done our utmost to keep down the cost of working the Railway, which is the first point that controls the rates. We have been, during the past three years, very successful in the results obtained in that way. We have been able to show that the rates, as now charged to the public, judged by the average, which is the only way we can judge it, because we cannot take them individually, have never been lower than they are at the moment in the history of this Railway. That is something the country can count on and has received. The average is—I have explained in one of these pages what exactly that means in money—since 1928 it has meant a reduction or relief to the users of this Railway of no less a sum than £342,000. This is satisfactory and that follows directly from economic working and the elimination of un-economic services and costly services. That is the way in which we have given relief to this country after this period of depression.

The next point, Sir, is that I have been accused of writing a provocative and outspoken report. I have had to face that accusation on many previous occasions. I am afraid, Sir, that it is my nature to put down what I think and what the position is as it appears to me, and to put it down quite clearly in black and white, so that everybody can understand it. In view of all the support I have received from the hon. Mr. Pandya on that point, I need not say anything more about it, but my special attention was drawn to paragraph 47 on page 23 of the Report, in which I referred I think to distribution rates. It has been suggested that I have called into question the judgment of the commercial community in pressing for these rates and that is quoted as an example of a provocative statement. That is my view and my view is based on a considerable experience with regard to these rates and a considerable experience with these rates in other countries, from reports I have received from other countries. The remark that I have made here is taken from experience in South Africa where they held a big inquiry on this particular question and where the exact point I have made was discussed. So that there is nothing purely of my own in that particular paragraph.

Then, again, I have been taken to task for referring to the question of bulk rates. It has been suggested that I am in favour of abolishing these altogether and so ruining the agricultural industry. Nothing can be further from the truth

than that suggestion, if I have interpreted it correctly, as the Railway cannot carry on by killing industries or products. We live on what we get to carry, and it is our business to try and quote rates that will be fair to all users of the Railway and at the same time keep every commodity moving. I have made no suggestion whatsoever that these rates should be put up.

In fact, if I may deal with road competition now, because it is closely allied with rates, I will say that when that question was before the House it was put up on the ground that unless something was done to prevent us losing revenue owing to this wasteful road competition it would be necessary to raise these low rates, and that step I was anxious not to be forced to take. I suggest that it was for those reasons that the House agreed to pass the legislation eliminating road competition.

But I cannot refrain from pointing out that the discrepancy between the rates we have given to these bulk commodities, and the average rate of the Railway is greater on this Railway than on any other I know, and that point must not be lost sight of. From that fact we have these other consequential difficulties which arise from an unbalanced tariff. We cannot get away from them and have to face them and deal with them as they arise.

The chief criticism in regard to this motion is concentrated on the question of reserves. The hon. member for Trans Nzoia talked about huge profits and building up huge reserves. I should like to make it quite clear to this House, and to the country if it is possible to do so—I have repeated it over and over again—that our reserves shown on page 4 of the Report are not high. The Renewal Fund is the one quoted, and it looks to be exorbitant and as though we had far too much money in that fund. The Renewals Fund is built up on a definite principle. It is not a reserve fund at all in the general sense of the word. There are other ways of dealing with renewals. You can wait until the asset has to be retired and falls due to be replaced, and can then have a big expenditure in one year. That is one way. Some railways, not many, have adopted that principle. As a result their budget fluctuates up and down seriously, keeping pace with the assets that may for that particular year have to be replaced. The other principle, which we have adopted, and which is the general railway practice throughout the world, is to put a small but regular contribution each year into the fund. It is a working fund, not a reserve, available for one purpose only, to replace assets when they wear out. You can understand that at times the amount in

that fund grows because the assets do not always have to be replaced regularly. Rails, for example, only at the end of thirty to fifty years; when they have carried over a certain tonnage; they are replaced at intervals, so that when there are big replacements the amount in the fund drops. On the other hand, when we happen to have a small number of comparatively minor assets only to be replaced, the fund goes up. Our surplus is at the moment high for two reasons. One, we have quite a large programme of arrears to carry out, out of the fund; that is being overtaken now as we can manage it, and will probably take £600,000 or £800,000 out of that fund of £1,780,000. Deducting that figure, we shall find that the balance in the fund comes to quite reasonable proportions considering that we have capital assets valued at 22 millions to look after. That is not considered a large balance in the Renewals Fund. The second reason is that a number of our bigger assets are not yet due for replacement and we are accumulating funds against that time.

The next is the Betterment Fund, £46,800. That has almost disappeared. We have not for some years contributed any money to that fund.

The other two so-called surpluses are Loan Funds, £280,000, and Miscellaneous Capital Credits, £87,000, which is a form of loan balance and is not taken out of revenue at all. These are loan balances, and therefore do not come into the picture as a reserve.

So that when you examine the so-called reserves we find we have no general reserve at all. A general reserve is a separate thing altogether, and I have shown in another paragraph that we have £26,000 only in that reserve.

I hope that that makes it quite clear that we have not built up huge profits and huge reserves hitherto. What we are going to do in the future is the question under consideration. The Renewal Fund is working expenditure, I repeat, and is not a reserve. We use it for cash purposes, but that is purely a convenience; it is not a general reserve which can be called on to meet deficits or shortages of funds in other directions.

It has been suggested that the profits we have made amounted to about 11 per cent. In making that calculation, the hon. member included this contribution to Renewals Fund. After what I have said it will be agreed that that is quite an improper contribution to include because it is a working cost and is never shown as part of the profits of the Railway. He will agree with me that he should reduce his figure by that amount.

It has been suggested that the Railway's point of view differs from the Colony's point of view. I have never been able to follow that argument at all. The Railway point of view is that we have got to conduct our business on sound business principles as is laid down here, and, when that has been done, to give back as much as we possibly can to the Colonies concerned. I cannot do more than that. If you suggest that we are insisting on creating a revenue from savings and economies at too quick a rate, that is a question we can discuss and argue, only in that connection I would refer hon. members to our recent history. It was only three years ago, in 1932, when we thought that this Railway was going to go bankrupt. If that had happened I really do not know what the position of the two Colonies would have been and I do not know what the position *vis-à-vis* the Colonial Office and Secretary of State would have been. I am almost certain, however, that we would have had a London Board within six months of that happening. But the point I want to stress at the moment is that we were very nearly bankrupt in 1932. When Mr. Roger Gibb was here he did not think we could succeed in coming through; we ourselves were very doubtful about it. As I have explained in other Reports, we were lucky enough to get through that period and have survived, but we do not wish to lose sight of the lesson we then learned.

The reason we were in that difficult position was because we had no reserve. If you will remember, at the end of 1929 we had put a small sum of £100,000 into the general reserve to make a start. That went before we knew it was there. It is for that reason we are so anxious to put ourselves in a sound position as soon as we possibly can—because of that history which we cannot forget. The Railway Council, the High Commissioner, everybody, had agreed that the first essential is to build up our reserve in order that we shall not be caught in that position again. It is for the benefit of the people of this Colony, the public of these two territories. We do not like having to restrict the conditions under which we carry produce when depression hits these countries. We do not like having to put up rates. You are lucky that you did not have to put up money to meet a deficit. There was some rate increase which we did not like. It had to be done, because of the financial position of the Railway. It is because we want to avoid a similar position again that we urge that the question of building up an adequate reserve should receive full consideration. We cannot forget that experience, and we cannot now expect this House to throw caution to the winds and neglect the lesson learned in the past. It was because in 1925, 1926, 1927 and 1928 we threw caution to the winds and failed to build

up a reserve when we might have done that we got into difficulty in 1930 and 1931, and it is because we do not want to repeat that experience from the point of view of the public of the Colony that we urge we should build up this reserve now.

May I for a moment turn to the way in which we are building up this reserve? I have explained it clearly on page 78 of my Report, at the top of the page. I have said there :—

“Our estimates are invariably designed on very conservative lines owing to our dependence on precarious rain grown agricultural products, and it follows that when conditions are better than the average allowed for, increased contributions will become available.”

We must budget on those lines. I cannot tell in preparing my budget now for 1936 nor can I tell before the end of the year what the cotton position will be in Uganda next year or the crop position in this country. The biggest crop we have to consider is the cotton crop of Uganda, and right up to February or March of the following year that crop estimate may be wrong. We therefore have to budget on conservative lines, and that has another advantage: it keeps down our expenditure also to a conservative figure, a very valuable factor. When we budget on those lines, it means our rates are designed to give a revenue based on an average crop. If we get a much larger crop then we must show a surplus, and it is from that surplus that we have been able first of all to wipe out our deficit and now to build up our reserve.

I say that as a result of the adoption of this policy a reserve will be built up entirely on improved crops and so will avoid any possibility of hardship on any section of the community.

It is suggested that instead of putting that money to reserve, we should give it away at once in rate reductions, or a portion of it. We have to look at it from another point of view when considering rate reductions. We have to look at the revenue in 1934, and consider how much we can count on in 1935 and 1936. It is obviously unsound to give rate reductions in one year and have to take them back the next year because the crops have failed. We must, therefore, use only moneys we have permanently got for rate reductions. Examining our revenue for 1934 from that point of view, we found there was not more than £60,000 or £70,000, possibly £80,000, that we could count on as being certain to accrue the following year.

That is another aspect which we have to consider, and it is because of that aspect of the matter and because of the very much improved conditions this year that I was able to suggest to the Railway Council at their last meeting—and which you, Sir, announced in your opening speech to this Council—that we have now reached a position when we can definitely consider giving back £100,000 on the 1st of January, 1936. That is quite a substantial sum; it is very much better than I even thought would be possible when I was writing this Report, and it is due entirely to the fact that the improvements in 1934 were continued into 1935 and we hope will remain until the end of the present year. We do not know yet what may happen in the second half of this year. Our revenue has already fallen, but that is usual at this time of the year. We do not expect it to remain at a high level throughout the year. How much it will fall or how much imports will increase in November and December I do not know but there is every hope that we shall get them.

That, I think, introduces another factor in regard to rate reductions which is not always understood. We cannot take money away unless we are certain of getting it each year, otherwise we should get into immediate difficulties. That again emphasizes the need for a reserve. When we have a reserve we can of course budget much more closely, we can take risks because we know that if there is a drop one year we can probably make it up a year or two later. With a reserve we can take advantage of that position. Without a reserve we have got to be absolutely certain of not running into a deficit.

It was that condition of affairs which forced this House to recognize that it was sound business to prevent the wasteful form of road competition (which did no one any good) from being allowed to function. The Colony itself would never have got any revenue from Customs, because we ourselves would have had to deal with it if the Colony did not do so by legislation, by reducing the top rates and raising the lower ones. That competition would never have been allowed to exist as we could not afford to lose the revenue. The choice before the Colony was an alteration in our tariffs or legislation to prevent wasteful competition. I suggest that this House chose the wiser method.

That brings me to the question of the rate reductions we are now considering for next year. Obviously I must know where I am going to be with regard to road competition. If it is suggested that this road protection should not be continued, I have, obviously, got to consider how much of this £100,000 must be devoted to reducing our high rates.

That is an important point which I hope the House will bear in mind. It is one of vital importance, and I have already written to both Governments regarding it. It is of vital importance because it does affect the whole rating policy and the suggestions we can put up to the Railway Advisory Council as to how to make use of this £100,000.

I will not do more than refer very briefly to the question of publishing the proceedings of the Railway Council. The question has been examined from time to time, and on balance it has been considered that it would do far more harm than good. The Railway Council is of the nature of a board of directors and has matters put up to it which cannot be dealt with publicly in detail. To give a very brief résumé of its proceedings will only lead to additional questions where apparently we have not been sufficiently explicit or detailed. It was considered, when the matter was gone into, that no useful purpose would be served by publishing the proceedings or even by giving a summary. The effect of any resolution taken by the Council is usually published in one way or another. For example, rates changes are published as soon after as possible. Other matters come to the public notice as soon as effect is given to resolutions. Beyond that I think it would be very unwise to go and, as I say, the Railway Council itself has found difficulty in meeting the expressed wish of the public in that direction.

The hon. Member for Trans Nzoia asked where the £100,000 went to when he agreed to legislation against motor competition. At that particular time it helped to save us, and was one of the most important factors, from going bankrupt. It was not sufficiently large, unfortunately, to enable us to get out of the difficulty and give reductions in rates immediately, but it has been very instrumental in enabling us to consider rate reductions in 1936.

He also suggested that I failed to give him full information in answer to his question as to Kitale branch line figures. The new formula—my answer was quite a correct one—is based on the results of twelve months' working, and until the results of those twelve months' working are known I cannot give him the answer. The information is not available at the end of six months only, it will be known about the end of November, so that any action that can be taken as a result of that information can be taken in time for the new year.

I am not in a position, as I say, to commit the Railway Administration or anybody else to what has been called a Railway policy. That is a question dealt with by a special body, the Railway Advisory Council, on which there are no

less than three members of this House. I hope, however, that I have been able to explain some of the problems that have arisen as a result of the publication of my 1934 Report.

I do not think there is anything else with which I can usefully deal at the present time. I must again emphasize the need for the exercise of sound business principles. I must again emphasize the urgent need for a reserve as soon as we can collect it, and I must again point out that the way we are collecting it is from surplus crops over and above the average mean. I must again say that owing to the very satisfactory position this year we are indeed very fortunate that we are able to suggest rate reductions for 1936.

I think, Sir, that that is a complete vindication of the policy of the Railway for the past five years. If we had not carried out that policy very sternly, and against much opposition, we should not be in that happy position which we now are, of being able to say that from now onwards we hope to ease the burden rather than increase it. (Applause.)

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, I think there seems to be a certain amount of confusion in some parts of the House, and the first thing I want to deal with is the position of the hon. the General Manager and the Railway Council.

The hon. the General Manager prefaced his remarks by saying that he was in a somewhat difficult position in answering the debate here as he was responsible also to the Railway Council and the High Commissioner for Transport. Actually, I do not think he need be embarrassed by that position. He has himself urged on, and has had the support of, the Railway Council that he should not be a regular member of this House, but in supporting that recommendation it has always been understood by the Railway Council and laid down as a stipulation—and their view has been supported by the Secretary of State in a despatch—to the effect that he should always be here for any matters affecting the Railways and Harbours. In another minute of the Railway Council it says that the Council reaffirms their previous resolution that he should be able to attend either this Council or that of Uganda when railway matters of importance are under discussion. I think that disposes of any modesty he may feel by having to speak on these matters in this House.

The next question is the question of responsibility for policy, as it set forth in the hon. the General Manager's Report *vis-à-vis* the Railway Council. Of course, it is perfectly correct to say the General Manager is not responsible for the policy, but at the same time he is a public servant

as described in the Ordinance, and he does produce this Report every year, which is got up in a very able manner and gives a great deal of information to the public, and in that Report he does put forth his own personal views. When anybody who is a public servant does put forward his own personal views in a public document, there can be no alternative but those views are subject to discussion in this House. I think that must be so, Sir. At the same time, it is perfectly correct to say those views of policy as put forward by the hon. the General Manager in his Report do not in any way commit the Railway Council to the support of those views.

In actual fact, I think the main causes of perturbation in the minds of the people of the country created by this Report were on two or three main issues.

The first one is the question of reserve. I do not think it was so much the opposition to the policy of building up a reserve but the sentence in italics in paragraph 185 :—

“And nothing else should be allowed to interfere with this policy.”

That was the sentence, I think, which caused so much misgiving. That has been interpreted as meaning that until a reserve of a million pounds is built up there shall be no reductions in rates and so on. That, I think, is the point which is emphasized by being in italics.

As the hon. members, the Colonial Secretary, and the Treasurer know, when this matter came up before the Railway Council they did not support the General Manager in his views to the full extent. What we did, was that we agreed to the principle that a reserve should be built up in the same as reserve is built up in any commercial business and so on, but we did not agree that it should take precedence of everything else. What was agreed at the Railway Council was more on the lines of what the hon. member Mr. Pandya said was recommended by the Chambers of Commerce; they laid down 60 per cent to go to tariff reductions and 40 per cent to reserve. We did not adopt that, but what we did adopt was this. I quote from the minutes, though they have not been confirmed :—

“Council was of the opinion, however, that the rate of contribution to the Reserve Fund should be considered each year on its merits, bearing in mind the possible claims of the Betterment Fund and the need to reduce tariff charges.”

What that really meant was this, that probably when three quarters of the year were over it would be known, more or less, what was likely to be the surplus, and that should be

considered on its merits as to what proportion should go into reserve and what proportion should go back to users of the Railway who, of course, are the people who contribute the money which enables the Railway to have any surplus at all. I think this matter of reserve was one of the main points.

There was another point which also gave cause for alarm, but which in fact the hon. the General Manager did not press at the last meeting of the Railway Council. That was the suggestion that there should also be increased the sinking fund to pay off the 1946 Loan. It has not yet been discussed by the Railway Council, but it is a point which caused great alarm; personally, I think it a thoroughly unsound business proposition.

A third feeling which also gave rise to alarm was the expression of opinion by the hon. the General Manager in his Report that the only rate reduction should be on the higher classes in the rate tariff. I sincerely trust he will not press that point of view. When any question of rate reductions is considered, which will be in the course of the next few months, I trust that everything will be dealt with on its merits. In actual fact, the hon. the General Manager stated that there have been definite rate reductions and that the rates are lower to-day than they have ever been, but in effect although they are lower on some of the higher classes they are higher to-day than they were two or three years ago in the lower classes. It is the lower classes which affect those least able to bear any increased charges and on whom the burden has fallen during the last year or two. There have been increases on the low-rated classes 9 and 10, on certain export rates, and so on. I do suggest that it is entirely wrong to lay down that reductions must come on the higher rates. They should come on the rates which are going to give the greatest benefit to the development of the country and, although it has been quoted by the hon. mover, I think the expression on the question of business principles of the Railway given by Sir Edward Grigg when he was High Commissioner for Transport should be read once more:—

“The Railway Administration could not be considered ‘a business undertaking’ in the ordinary sense of the word; its real object was to serve the territories of Kenya and Uganda as one of the great activities of the State. The Railway must proceed on sound economic lines but its real function was to assist development generally.”

That is the point of view that we must keep in front of us. The Railway must be used to assist development. I am not advocating the unsound financial working of the Railway or anything else.

We are perfectly prepared to give all the credit due to the hon. the General Manager and his staff for the way in which they have won through very difficult times in the last three years, but at the same time I would like to claim a certain amount of credit for the Railway Council. I should like to refer to a minute in September, 1930, when the Railway Council caused a reduction in the estimates of expenditure of £78,904. That was actually done by the Council and was put into force by the Administration. In the following February, on further pressure by the Railway Council, the General Manager effected a system of reduction in a certain number of trains and so on to follow up that policy of reducing expenditure. This is not said in any sort of contentious way, but to let people know that the Railway Council do look after the interests of the shareholders and users of the Railway and that it was by cooperation between that Advisory Council and the Administration that the favourable position was achieved.

On the question of reserves in the past I think it cannot be denied that the policy of using so much revenue for capital expenditure was somewhat ill-advised and has resulted in the depletion of reserves.

Another point has come up, the question of secrecy about the meetings of the Railway Council and reports. I personally feel very strongly that there is not nearly enough publicity given to what is done in the Council. We have the General Manager's Report every year, but no report is issued by what I call the Board of Directors as it would be in any commercial concern, so that people really do not know what the Council are doing. There is nothing to stop it being done to-day, but the custom ought to be instituted immediately that after every Railway Council meeting a résumé should be issued to the Press giving all the main points which have been dealt with. The hon. the General Manager has pointed out that rates reductions are published, but it is the other questions that publicity is sought for, and I blame myself. At the last meeting I did say privately to the hon. the General Manager that after the meeting there ought to be a statement to the Press, and I ought to have brought it up in the sitting of the Council and asked Council to do so. He informed me that an announcement would be made by him. I think, however, it would be much better if the habit were adopted of always issuing a report so that the public could know what is being done.

The hon. the Indian members have brought up the question of rates reduction, but I do not think that perhaps they could quite have understood what the motion is driving

at altogether. I did not hear the hon. mover mention it very much, in fact he specifically said he would not deal with any particular rates reduction. But I do wish to emphasize once more the main principle: that unless you have producers in this country producing at a profit the whole economic structure of the country must collapse. Therefore, everything must be done to keep producers going, as on the results of their efforts everything else, whether it is the commercial community, the Railway, or anything else, is based. That is the reason why in a young country like this one has to have, as the hon. the General Manager explained, an unbalanced tariff and such big differences between the rates on some imports and on the exports.

I do hope, Sir, that that will be kept in mind, and that everything will be done which can be done to increase production in this country through the assistance of the Railway.

The hon. the General Manager explained the question of the Renewals Fund and so on, but I do not think he stated in reply to the hon. Member for Trans Nzoia that the Railway Council and the Railway Administration have both done what they could to get a reduction in the Depreciation Charge of $2\frac{1}{2}$ per cent to 2 per cent. That $\frac{1}{2}$ per cent would then provide a definite amount of about £60,000 to go into the Reserve Fund each year, which in turn would avoid having to take so much money out of the surplus on the workings to go into that fund. I do not think that was dealt with.

THE HON. SHAMSUD-DEEN: Your Excellency, I understood the Noble Lord to say that he could not understand the Indian members' opposition as the hon. mover had not advocated a reduction of any specific rate charges. According to the motion I can see quite clearly that it is, Sir, for a reduction of rates for agricultural and industrial development. That is perfectly clear and that is the reason for the opposition from the Indian community. Otherwise it is this that that agricultural activity, although it is certainly a mainstay of the country, is a line from which the Indian community is entirely deprived. However, Your Excellency, that is really quite beside the point. What I wish to say on this subject is that it is due to no antagonism of the interest of the monopolists of the agricultural activities of the country, nor is it owing to any desire to compliment the hon. the General Manager, but I do feel, Sir, that he is in a very unenviable position. If he had not worked up this reserve, if there were a deficit, or if, as he told us, this morning, the Railway became bankrupt, he would have been accused of incompetence. Now that he is building up this so-called reserve, we accuse him of accumulating money at the cost of the producer. If there

was a deficit in his budget he would not only be up against public criticism but actually committing a breach of law. As pointed out in section 13 of the Railway Ordinance he has to run the Railway on business lines.

I think that all this trouble has arisen, from my point of view, owing to an ineffective method of accountancy. The General Manager has explained to us that the reserve is merely a sum earmarked for renewals. I can quite imagine a man with a lorry plying for hire for the carriage of public goods from here to Nakuru; he does it for about three years and then he finds his tyres are worn out and tubes to be replaced, and instead of going to a shop and buying tyres at once, he puts the money aside until it is required. So that unless we wish to repeat the very sad experience we had when the late Sir Christopher Felling took over the Railway and all of a sudden we found that the Railway materials were falling to pieces and no funds to replace them, what did we do? We went to borrow the money from other countries. Unless we wish to do the same thing and compel the Manager to spend every penny he has, we shall certainly be confronted with the same difficulty as when Sir Christopher Felling took over.

The sound finances of the Railway are not entirely due to the prosperity of the country either here or in Uganda or they may be partly due to the exorbitant rates, but the fact is that the General Manager has obtained this by ruthless retrenchment in the staff and also by dealing with the road competition. I do not think it is fair that that money should be handed over in the shape of reduced rates especially to one class of the community.

I can see that the Noble Lord has also objections to the General Manager expressing the intention to build up reserves to pay off the 1946 Loan. I cannot see how he can oppose a loan being paid off which was definitely borrowed to be paid off on a certain date unless he wished everyone to follow the same example, that is to borrow and then deliberately not to take any action to repay it and keep on borrowing to repay the loans. I think it is really a financial matter to have honest intentions to save money when you can to pay off the loans. As I understand the Noble Lord, if his argument was carried to its logical conclusion it appears if there was more surplus he would like to have the whole of the export produce carried absolutely free of charge.

LT.-COL. THE HON. LORD FRANCIS SCOTT: I never said so. I never even mentioned export rates.

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CAPT. THE HON. H. E. SCHWARTZE : Your Excellency, I did not propose to intervene in this debate, but I would ask the indulgence of the House to answer two points raised by the Hon. Mr. Shamsud-Deen.

Taking the last point first, he seems to have imagined that it is the financial custom of countries to raise loans and to make arrangements by virtue of some enormous sinking fund to pay off those loans in full in cash on the date of redemption. I do not suppose there has ever been a loan repaid in that manner. The sinking fund bears no relation to the amount due for repayment on the due date. It goes some way towards it, but what invariably happens and I think almost invariably, is that another loan is floated to take the place of the original loan and so gradually matters are squared up and it is not the same thing as an individual giving a bill at ninety days and then defaulting.

With regard to his other remarks about one section of the community having the benefit, and those remarks were also made by Mr. Pandya and Mr. Mangat, I really and honestly believe that it is this fetish of thinking that every suggestion put up by the European Elected Members, as having some racial distinction, that has led them into this error. I do not know and I have no idea as to how this £100,000 reduction in rates is going to be utilized and I understand the Council and the General Manager himself does not know at present. The scheme will be put up and considered and eventually approved as put up or amended. I gather that there is no suggestion that the whole £100,000 is to go in reduction of export rates. I gather it will also include the import rates and probably low grade rates and the benefit will not be felt exclusively by the Europeans, but by every section of the community who find themselves under the necessity of purchasing imports which of course applies to every class in the country.

I am not asking for any support from the Indian Members. I do not mind if they vote with or against us. But if they wish to be taken seriously in the debate, as I am sure they do, they will not invariably believe that every motion put down by the European members has some racial hit. I can assure them it is not so and if they wish to be taken seriously and to help in the debate, as every member ought to wish to help, I can assure them that while they are fully entitled, if a racial issue arises, to speak as outspokenly and strongly as they may like, they should not always believe that every motion raised in this House is raised on a racial issue, as I can assure them it is not.

THE HON. F. A. BEMISTER: Your Excellency, I only just want to suggest to my hon. colleague from Mombasa (Mr. Pandya) that in view of the suggested reduction of rates and the suggestion that they should be reduced on imports, I think he is viewing the matter from a rather selfish point of view. It must be admitted that export rates are paid directly from the pocket of the producer and that any reduction or relief given in export rates does actually go to assist the man who produces the goods and works on the land. He is a merchant and he knows full well that every item of railway rates on imports is not paid by the merchant but is at once passed on to the consumer. Now this is not the case with the export rates because the goods exported from this country have to stand the competition in world wide markets over which the producer in this country has not the slightest control.

I am glad and the hon. the General Manager may be exceptionally glad to have received such encomiums of praise from Indian members because I happened to be in this House—I do not remember if the same individual gentlemen were there—when the motor competition proposal was being debated, and I was in doubt whether it was wise for the hon. the General Manager to leave the House alone or whether a few policemen should not have protected him in his peregrinations.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK: Your Excellency, I think that a great many points which I should have liked to have taken up in reply have already been dealt with by the hon. Member for the Rift Valley and other members on this side of the House. I would, however, like to touch just on one or two minor points before I terminate this debate.

The hon. Mr. Pandya in his remarks challenged me to say if I could see anything to substantiate my motion in paragraph 179 of the Report, of which he quoted three lines when actually the paragraph consists of seventy lines. Quite apart from that I believe even the three lines he quoted are quite sufficient to substantiate the reasons why we have put forward this motion. I do not know, Sir, quite what idea Mr. Pandya has in the back of his mind but I think he started by suggesting that there should be almost equality in rates and he did say that he did realize that on agricultural produce there would have to be some concession. All the hon. members representing Indian interests have taken up the point of view that the present rating system is very hard on the poor man as it raises the cost of living on the importer and on the trader. We admit that but I would like to make this

point clear : On what does the poor man, the importer and trader, live? which I think they have overlooked. In this country he lives on agriculture and on that alone. One hon. Indian member went so far as to say that if under these terrible world conditions agriculture as carried out by the Europeans cannot pay, the sooner we are squeezed out the better, or words to that effect. I should only like to think this that the Railway would be very occupied the day we were squeezed out and the trains would have to run a bit faster than usual or other people would be squeezed out too.

The hon. Colonial Secretary in his justification of the fact that the General Manager in his Report was not really responsible for the policy of the Railway but merely gave his own opinion, read out certain extracts from the Official Gazette of the 9th April, 1935. I have not that Gazette here but I should only like to say this. I believe the hon. member by reading out these extracts meant to infer that the opinion of the Railway Council coincided to a very large extent with the opinions of the General Manager on general policy. I do not think that was quite an accurate thing to extract from that particular Gazette, because—I am subject to correction—I believe that it referred to a meeting which took place between representatives of Tanganyika, representatives of Uganda and representatives of this country. If so, I was present at that meeting and it did not really refer to general policy; it referred to a rather difficult question which arose as to export or cheap rates on produce grown here exported into Tanganyika Territory because the Tanganyika people felt that possibly we were competing with their produce. I am taking East Africa as a whole. I would mention that I am not accusing the hon. member of misrepresentation but I am only explaining that I rather believe that those extracts did not refer to major policy.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS : On a point of explanation, Sir, those extracts refer to action taken on the Gibb Report and had nothing to do with the particular meeting to which the hon. member is referring.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : I thank the hon. General Manager for explaining that.

I would now like to refer to the hon. the General Manager's reply. In the first place I should like to say that I do believe that although it may take up a great deal of time, I do believe this debate has served a useful purpose. In the first place it has enabled us to make the point of view of the country we represent quite clear. In the second place,

it has enabled the General Manager to give an extremely interesting and instructive explanation of a great many points of which a great many people are ignorant. I think I made it quite clear at the beginning and I am sure we all have, that we are in no way attacking the General Manager. What we do fear though is exactly what he said. He said that they are unexpectedly accumulating surplus funds to a degree that he never anticipated and the question now comes, how are they to be used? Well he may have one idea and we members have another. The hopes we had in putting up this motion were that we should as a result of this debate get something definite, that the country would be able to tell what was the policy of the Railway, what was going to happen and what relief we were going to get. As I said in opening the debate, all we know so far is what Your Excellency stated in your opening address and I am afraid beyond explanations of the General Manager's point of view and reasons for his opinions, we have obtained no further knowledge at all as to what actually is going to happen in the next six months or next year, which was the object of this motion. I submit we have had more information from the hon. Member for the Rift Valley than we have obtained from the Colonial Secretary or the General Manager. For that reason, Sir, we propose to press our motion to a division. The General Manager did say that it would be madness to throw caution to the wind. This point was mentioned by the hon. Member for the Rift Valley, but I would like to stress it. We on this side of the House have never suggested for one moment that it would be wise to spend money too freely at the present moment. We know the necessity for caution, but what we do feel also is that not only apart from the question of 1932 and the Railway's survival, but to-day it is a question of the producers' survival, and therefore if the Railway has any surplus funds they ought to go to help the producers and not to keep the Railway going at the expense of those producers. That, Sir, is the basic reason for putting forward this motion.

The question was put and lost.

VALUATION BOARD.

CAPT. THE HON. H. E. SCHWARTZE: Your Excellency, I beg to move:—

“That this Council is of opinion that a Valuation Board composed of such Government officers and such representatives of the unofficial community as may be decided upon should be appointed to fix the upset prices of all Crown land hereafter to be alienated whether by public auction, tender or direct sale.

This motion will be in contradistinction to most of its predecessors at this session in that it will occupy the time of the House for a very short period, more especially as it has been intimated to me that Government is prepared to accept it.

This motion was put down by me as the direct result of a recent auction of plots in the vicinity of the Law Courts, when certain upset prices were fixed; because of those upset prices, no bid was received except one which I may fairly claim to be a contemptuous bid of £500, the total upset price being £3,950. I am not going to condemn or criticize that upset price, I do not think there can be two opinions as to the farcical nature of it, but I do realize that this was not the fault of my friend the hon. the Commissioner for Local Government or of the gentleman who was his chief adviser, namely, the Surveyor General. But it did go to show that it was the culminating point, that those gentlemen naturally have not the intimate knowledge of prices which are available to other people who spend a large part of their lives in business, whether in urban or rural areas, getting to know and having to know the values of land.

This motion is purely to set up a Valuation Board constituted as may be decided, no doubt, after consultation by Government with members on this side of the House, to help and advise the Commissioner for Local Government in deciding what is a reasonable upset price. Naturally he would not know, probably, that the value of a shop on one side of Hardinge Street is completely different to the value of a shop on the other side of the same street. That sounds a foolish thing to say, but in fact some of us people who have to deal with valuations in town know definitely it is the case, quite a small distance making the difference.

I am only speaking as far as the towns are concerned, and I am leaving it to my friend the father, I might say, or the grandfather at least, of the House, who has been kind enough to second, the hon. Member for Nyanza, to deal with the rural districts.

While this is no time to discuss the composition of this board, I do think so far as the towns are concerned that it should have on it on the unofficial side a banker, an approved valuer, and a solicitor. I say that because all those people of necessity are continually dealing with the value of town properties: the banker naturally in respect of advancing money; the valuer because it is his business; and the solicitor because he has to decide on a valuation before recommending clients whether to invest or not.

I understand the motion is going to be accepted by Government, and I would ask that this Board be appointed as soon as possible and that the representations from this side of the House with regard to the composition of the Board should be heard before the Board is actually appointed.

THE HON. CONWAY HARVEY: Sir, I am very glad of the opportunity of seconding this motion, but first of all I should like to express my gratitude to the learned mover for the respect to which my seniority appears to entitle me and which I invariably get from the hon. members of the House, especially the learned gentleman, the proposer of this motion.

The hon. the Commissioner for Local Government is fully aware that for a very long period of time I have myself criticized, constructively I trust, the upset prices of farmland. Sometimes they are too low; only the other day I was rambling over some land in company with the hon. member, which is to be put up shortly and I had occasion to criticize the upset price because I thought it was ridiculously low. In the majority of cases the reverse is the case.

Government, it appears to me, does it best without very much knowledge of the subject to base its valuations on recent transactions in any given year. I suggest that that is thoroughly unsound. One farm may be worth £10 an acre, but the one next door only Sh. 10 an acre. That happens every day in Kenya, as everyone knows who is familiar with the condition of farm land in the country. The value of agricultural land is that capital sum on which interest can be earned if the land is properly worked. There is a definition which I think is worthy of very serious consideration. As every one knows the valuing of agricultural land is a matter of considerable difficulty, but there are people in the country who have been doing it successfully for a large number of years, and I suggest—so far as formulas are concerned—the addition to the personnel of the Board suggested by the hon. Member for Nairobi South of one practical farmer with a good knowledge of general conditions throughout Kenya, and the hon. the Director of Agriculture. In my humble opinion those two would be quite sufficient to arrive at perfectly fair and reasonable valuations in farm land anywhere in the Colony.

The great danger of high upset prices is that the man who gets the land often has its development seriously cramped because the capital is taken from that development for its charges, one of the chief vices of rural economy and which in the interests of everyone should be guarded against, I think the right policy, and I have always favoured the direct alienation of land, is that when a case is made out

and the applicant proves his worthiness, and a reasonable price having been fixed, the applicant should be given speedy possession of the land and the lower the upset price fixed the better not only for the individual but for the Colony as a whole because there is all the more money for development. And it is development which counts, not the putting of a few extra shillings into the hands of Government at a given moment. That sum is as nothing compared with the value of a permanent settler and home-maker, who will develop the land and produce wealth in the Colony.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK: I only rise to support the remarks of the last speaker. When the hon. Member for Nairobi South moved the motion I thought at first that his suggestion for the personnel of the Board was a rather dangerous trio—a banker, a solicitor and a surveyor—because I quite agree with the last speaker, that in the interests of those who contemplate settling in this country two things are most essential: one is to get cheap land, the other is that when they do want to acquire land there should be no undue delay. I hope that everything will be done for the appointment of the Board, one, to protect such persons, and two, to hurry up the present methods of alienating land.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I should first of all confirm the statement of the hon. mover that Government proposes to assent to this motion, and I should like to explain the reasons why Government has taken that action.

Valuation, as hon. members will agree, is not an exact science; it is largely a matter of judgment, a judgment which has to be exercised on the consideration of a large variety of factors. One, or possibly more, of the important factors was mentioned by the hon. mover himself, and I think if his recollection does not mislead him, he is perfectly aware that I was aware of that particular factor. In a matter of assessment which is so largely based on judgment I personally accept the principle that the more expert advice you can get on which to form that judgment the better. That is the principal ground on which the acceptance of this motion is based. It is particularly advisable at the present time to increase the range of expert advice, because a number of problems are coming up for consideration on which expert valuation will be welcomed—Land Commission as well as town-planning valuations—many of which may be somewhat difficult. We have also the question of settling new settlers by direct sale of township plots as to which we only wish to get a fair value, and also in connection with Land Bank values; there seems need for a clearing house of information

or some centralized check on the subject of values. These generally are the reasons which led Government to accept this motion.

I regret, however, that the hon. mover drew so close an attention to the reasons which prompted him in moving this motion, and indicated that in his view the values at a recent Nairobi sale were of a farcical nature. Later in his speech he suggested that that might have been avoided if we had consulted various people, the membership of whom on this Board he considers advisable. It may be a matter of some interest to members to know that one of the persons in this town whom everybody would suggest should be the first to be a member of this Board entirely agreed with the upset price of the particular plot which the hon. member mentioned.

There is the point that when you are dealing with high priced plots in a town like Nairobi at the present time, you have got to consider not only whether you have fixed the proper price but whether there is a real and genuine demand for the plot itself. In this case I am not wholly satisfied that we have not reached saturation point for the time being and that no matter at what price plots are put up no reasonable offer would be made.

As so much attention has been drawn to the question of upset prices, it possibly may be of some interest to the House to know that during the last four years in respect of plots put up and sold, namely fifteen in number, in townships, prior to the recent Nairobi sale, thirteen plots have realized prices exceeding the upset prices and two have been sold at the upset prices. In the case of farms, ten out of eighteen exceeded the upset prices. I think, therefore, the suggestion that the fixation of upset prices during the last four years has not been faithfully dealt with is hardly justified by the facts.

In regard to the membership of the Board, there is one point that I should particularly like to see borne in mind, and that is that we do get people qualified to give us the technical advice which we need, and in dealing with proposals put up for membership Your Excellency will no doubt be guided by that aspect.

CAPT. THE HON. H. E. SCHWARTZE: In view of the time, Your Excellency, I shall not reply, but I should like my hon. friend to know that if I had time I should reply. (Laughter.)

The question was put and carried.

Council adjourned till 10 a.m. on Monday, 29th July, 1935.

MONDAY, 29th JULY, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, the 29th July, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, ESQ., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 11th July, 1935, were confirmed.

ORAL ANSWERS TO QUESTIONS.

WHITE HIGHLANDS : ORDER IN COUNCIL.

No. 47.—LT.-COL. THE HON. LORD FRANCIS SCOTT asked :

“In view of Government’s reply to Question 20, asked by the hon. Member for Nairobi North, will Government give an assurance that they will immediately make further representations to the Imperial Government stressing the urgency of some decision being reached with regard to the implementation of paragraphs 1441, 1449, 1469 and 1979 of the Report of the Kenya Land Commission which can be summarized as advocating that the White Highlands be safeguarded and declared by Order in Council?”

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: This matter will no doubt be under discussion by the Secretary of State with the Governor and it is not proposed to make further representations pending the return of Sir Joseph Byrne on 1st September.

BILLS.

FIRST READING.

AGRICULTURAL ADVANCES (AMENDMENT) BILL.

On the motion of the hon. the Attorney General, seconded by the hon. T. D. H. Bruce, the Agricultural Advances (Amendment) Bill was read a first time.

Notice was given to move the second reading of this Bill at a later stage of the session.

SECOND READINGS.

1934 SUPPLEMENTARY APPROPRIATION BILL.

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, I beg to move the second reading of the 1934 Supplementary Appropriation Bill.

This Bill is always regarded as purely formal. It seeks the sanction of this House for all expenditure incurred in 1934 other than that provided for in Estimates. I may say, Sir, that all the expenditure which this Bill seeks to authorize has already been approved by motion in the House when the various Schedules of Additional Provision were sanctioned.

THE HON. THE TREASURER seconded.

The question was put and carried.

NATIVE LIQUOR (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Native Liquor (Amendment) Bill be read the second time.

It is a very short amendment which this Bill contains, and is submitted with the intention of including in the Native Liquor Ordinance a provision which already exists in the ordinary liquor laws of this country. The section itself in effect will mean that no native will be able to obtain drink unless he pays cash for it; there is not even the provision which we have in the Liquor Ordinance that persons residing in hotels can obtain drink and have it put down to their account.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THE WAKF COMMISSIONERS (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Wakf Commissioners (Amendment) Bill be read the second time.

This amending Bill is to meet two points. It has been reported from the Coast that there is great difficulty in having meetings of these Commissioners owing to lack of a quorum because of the small number of Commissioners. It is suggested that the Provincial Commissioner of the Coast, or in fact any person appointed by Your Excellency, shall be added to the Commission in order that the necessary quorum may be obtained for meetings.

The opportunity was taken at the same time to make an amendment to section 13 of the principal Ordinance which deals with property which goes into wakf from a deceased Mohammedan native. The position at present is that the Ordinance is applied to such parts of the Colony and Protectorate as the Governor shall proclaim; actually, as we all know, the Coast area is in fact proclaimed. We have in this Bill altered the word Mohammedan to Muslim, as we are informed that that is the more correct designation, and we have also set out who exactly is meant by native. "Native" was defined as we know, in the Interpretation Ordinance, but it was not particularly clear and last year we added a special definition. We have therefore taken the opportunity in this Bill to set out in full whom we mean by the word "native", and in addition to those who are described in the Interpretation (Definition of Native) Ordinance it will mean "Arabs, Baluchis born in Africa, Somalis, Comoro Islanders, Malagasies, and natives, of the Muslim faith." In the committee stage I shall move that the word "include" be deleted and the word "mean" inserted; otherwise it might be thought that others other than those mentioned are included in the definition.

THE HON. T. D. H. BRUCE seconded.

THE HON. SHAMSUD-DEEN: Your Excellency, I do not see any reason why this measure should be made applicable to natives only. Wakf is part of the Mohammedan law, and it may be that a person, during his life time, by will decides to dedicate certain properties for public use or worship of God. That, I think, is applicable to all Mohammedans, and I am visualizing a period in the not so far distant future when a number of Mohammedan Indians in this country may decide to dedicate some of their properties as wakf. Unless Government proposes to have separate laws for native and Indian Mohammedans I think this is an opportunity when the wakf law could be made applicable to all Mohammedans.

A little while ago the handing over of the mosque in Nairobi to the Wakf Commissioners for them to manage was discussed, but it was decided for the time being to carry on as they were. But there is no reason why Indian Mohammedans should be deprived of an advantage which accrues by the passage of this Bill. I hope the hon. and learned Attorney General will consider the inclusion of all Mohammedans residing in the Colony irrespective of nationality.

THE HON. THE ATTORNEY GENERAL: As the hon. member is probably well aware, this is a very big principle which he has asked me to consider when, in fact, we are only

considering two minor amendments. At this stage I do not think that on behalf of Government I could express any opinion whatsoever with regard to this new principle. Perhaps, with Your Excellency's permission, this Bill might go to a select committee when we could discuss the matter in detail, but at the moment I can give no undertaking to accept any amendment.

THE HON. SHAMSUD-DEEN : On a point of explanation, it is a common thing for the wakf law in India being made applicable to all races. There is nothing new about it.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I move that this Council do resolve itself in a committee of the whole Council to consider clause by clause the following Bills :—

The 1934 Supplementary Appropriation Bill.

The Native Liquor (Amendment) Bill.

The Civil Procedure (Amendment) Bill.

I might take the opportunity of stating that with Your Excellency's consent the Wakf Commissioners (Amendment) Bill will be referred to a select committee, the personnel of which I will by leave of the House announce later in the day.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Council went into Committee.

In Committee.

THE CIVIL PROCEDURE (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE 1934 SUPPLEMENTARY APPROPRIATION BILL.

The Bill was considered clause by clause.

THE NATIVE LIQUOR (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE HON. THE ATTORNEY GENERAL moved that the following three Bills be reported to Council without amendment :—

The Civil Procedure (Amendment) Bill.

The 1934 Supplementary Appropriation Bill.

The Native Liquor (Amendment) Bill.

The question was put and carried.

Council resumed its sitting.

His Excellency informed the Council that the following Bills had been considered clause by clause in committee of the whole Council and reported to Council without amendment :—

The Civil Procedure (Amendment) Bill.

The 1934 Supplementary Appropriation Bill.

The Native Liquor (Amendment) Bill.

THE HON. THE ATTORNEY GENERAL moved that each of the above Bills be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bills were each read a third time and passed.

MOTION.

Re GRADUATED NON-NATIVE POLL TAX ORDINANCE AND LICENSING ORDINANCE.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : Your Excellency, I beg to move :

“That in the opinion of this Council the re-introduction of the Bill to make provision for the Levy of a Non-Native Poll Tax for 1936 is no longer necessary and the revenue which might accrue therefrom should therefore not be taken into account in framing the 1936 Estimates. This Council further considers that the Bill to provide for the licensing of certain professions, businesses, trades, arts, callings and industries should be so amended as to afford substantial relief to the commercial community.”

Your Excellency, in view of the unfortunate history of the past two or three years, members on this side of the House had hoped that it would be unnecessary to bring in a motion in these terms, still less to have to speak to it at any length.

Government's efforts to forcibly superimpose a direct form of taxation on existing high rates of indirect taxation during a period of unprecedented depression has already led to two major crises, and it now looks as though Government was determined to precipitate a third crisis upon this country. In order to explain what I mean, it is necessary once again very briefly to go over the history of these taxes.

All honourable members know only too well that when the world depression hit this country in 1929-30, the efforts of Government to reduce expenditure were inadequate and

did not keep pace with the inevitable falling off of revenue occasioned by the catastrophic distortions going on throughout the world. In 1932 Lord Moyne was sent out as financial commissioner, and he reported that he could see no indication that the financial difficulties of Kenya could solve themselves. Instead of giving adequate consideration to the basic factors which accounted for these difficulties, Lord Moyne took the far easier line of suggesting that further moneys would have to be extracted from the public, and he therefore added at the end of his report that in his opinion, as the native community of Kenya could not afford to contribute to any greater degree, the moneys necessary to attempt to keep Government going would have to be found by the non-native community. He further set out arguments in favour of an income tax as being the most appropriate way in which these extra moneys could be found.

Lord Moyne's sojourn in this country was not of very long duration. He was here just over two months, in that he came on 2nd March, 1932, and he left Kenya on the 8th May in the same year, so that his examination of the basic economic position of the country cannot have been very profound.

As the result of Lord Moyne's report, and without any consultation whatever with those called on to find these moneys, and thus in absolute contradiction to every principle which the British citizen the world over looks upon as his birthright, a gentleman suddenly arrived at our expense from England. The functions of this gentleman were apparently to draw up an Income Tax Ordinance, and the result of his efforts was published in draft for general information in January, 1933. The introduction of this measure was, and I think very rightly, most bitterly and violently opposed by the country as a whole, and it led to the first of the major crises to which I have referred.

The introduction of this Bill was not merely opposed on the ground that people considered an income tax as unsuited to an agricultural country populated by mixed races, but it was generally opposed on the far more general principle that the country would not accept the super-imposition of a permanent form of direct taxation on the top of the very high indirect taxation which already existed. It was, I think, at the time appreciated that an inquiry into the whole of our fiscal system might eventually be necessary, but it was contended that to institute such an inquiry under the very abnormal conditions of the world depression might not be very wise. In view, however, of the Colony's very precarious financial position at the time, it was equally generally agreed that some form of further contributions to revenue would have to be made in order to give Government the necessary

breathing space to enable it to readjust its machinery to changed conditions, and it was for this very purpose at the cost of tightening our belts still further we put forward proposals which were eventually approved by the Secretary of State in his Despatch No. 397 dated 7th June, which was published in a special issue of the Official Gazette on 14th June, 1933.

We want to make it absolutely perfectly clear that these measures of taxation were never agreed to by the country as being alternative to income tax. (Hear, hear.) I go so far as to suggest that this fact is accepted in paragraph 6 of the Secretary of State's Despatch. Nor, Your Excellency, were these measures of taxation agreed to otherwise than on the most distinct understanding that they were to be regarded as temporary. This fact has already been made abundantly clear by our Leader, the hon. Member for the Rift Valley, who in his speech in the budget debate at the end of 1933 referred to these taxes

“as a definite sacrifice which had been called for from the people of this country, and which the people of this country, however much they might criticize and object to extra taxation, had shouldered in a spirit of great citizenship, in view of which fact Government could not forget the undertaking given a few months previously that these taxes would be regarded as of a temporary nature and be reduced at the earliest possible moment.”

In this connection and in support of the motion to which I am speaking, I must also remind hon. members of the remarks made by the hon. and learned then Attorney General who said on the 3rd August, 1933 :—

“The legislation is expressed to be temporary in its nature. That, again, is in consonance with the policy of the Colony which has inspired this legislation. It will expire on 31st December, 1934, unless there is any need to perpetuate it, and that end can only be expressed by resolution of this Council.”

Also, on the 12th August, 1933, Mr. MacGregor, the then Attorney General, moving the adoption of the Report of the Select Committee on the same Bill, used these words :—

“This is expressed to be temporary taxation. Clause 37 of the Bill definitely brings it to an end at the end of 1934, subject always to the right of this House to perpetuate it.”

Now, Sir, all these events took place at the end of 1933, and from that time until the end of 1934 the public has loyally contributed by means of this emergency taxation

towards the expenditure of Government without demur, always believing that these emergency taxes would be reduced or dropped at the beginning of 1935.

Your Excellency, the history of the last session of Legislative Council must still be fresh in the minds of all hon. members. A second major crisis arose on the subject of re-imposition of these taxes and a truce was only, with difficulty, effected as between Government and the representatives of the people of this country on an undertaking being given that an Economy Committee would be appointed, which Committee was to make recommendations for drastic reductions in expenditure. That Committee has now reported and, furthermore, Government's financial position (and I must stress the word "Government's" because the average individual's financial position, far from having improved is, to my mind, actually worse this year than last year), Government's financial position has improved, so that not only can Government have no case whatever on which to base any endeavour to re-impose these taxes in their existing form next year but, I submit, such an attempt would constitute a gross breach of faith.

I have gone over the past history at some length because I believe that in the minds of hon. members opposite an entire misconception exists both regarding the position we have reached to-day and regarding the attitude of the country as a whole. It is, I believe, contended by certain hon. members opposite that it was unreasonable, if not unfair, that any member should have put the question I asked both in view of the fact that our Governor, Brigadier-General Sir Joseph Byrne, is at present absent and that Your Excellency is in an acting capacity, and also in view of the fact that there has been a change in the office of Secretary of State for the Colonies, and that our Governor is probably at this moment discussing these very questions with the new Secretary of State. Unreasonable as my questions are deemed to be, I believe that it is considered still more unreasonable if not unfair that I should follow up the entirely vague and indefinite replies thereto by this motion.

Your Excellency, I am afraid that neither we on this side of the House nor the country as a whole can subscribe to such contentions. We base our opposition and our stand on a major principle from which we have no intention of departing. The principle is that we have a definite right to be consulted and to have a say in all taxation measures. We definitely do not consider that in such domestic matters we should be subject to undue interference by the Secretary of State. Nor in view of the frequency with which Governors can go to England can we reasonably be expected to regard

the government of this country as becoming inoperative and incapable of taking any decision during the term of office of an Acting Governor.

Bearing in mind the considerations to which I have just referred, we consider that it would be quite impossible for us to accept a position whereby in the month of July, at the end of the month of July, only three or four months before the presentation of the budget, Government should admit that they have still not made up their mind as to the basis on which their budget is going to be compiled and that they have not yet considered the question as to whether they are going to re-impose these taxes next year or not. We are bound to ask : has the Government got a policy or has it not?

There is, moreover, another point of view which is held by hon. members opposite, to the effect that those of the elected members on this side of the House who are resisting these taxes are merely noisy "tub thumpers" endeavouring to achieve a little cheap popularity and that had we any foresight we would view the position from a totally different aspect.

The argument which it is considered would be more reasonable for us to put forward is, I believe, to the effect that as under the existing graduated poll tax the farmer, whose difficulties are admitted, to-day pays little or nothing, and as the commercial man who contributes under the Licensing Bill is presumably deemed able to do so, it is therefore unreasonable for us to agitate any further, as the only object we are likely to achieve is to save the Civil Servant and the salaried classes from making what is held to be a just contribution towards the revenues of the country via the media of these taxes. Surely it is argued that it would be wiser to retain these taxes and if any alleviation in taxation is found to be possible to endeavour to secure it in some other manner which might be more beneficial to the community as a whole, as for instance by means of some reduction in the tax on petrol.

Honourable members, this may sound very logical, but arguments put forward on such lines only display a complete misapprehension of our viewpoint, which viewpoint is based on two very major considerations of principle. We maintain firstly that the decrease in revenue is attributable to depressed conditions and not to any intrinsic failure in our fiscal system. And secondly we maintain that this country has embarked on a standard of expenditure which is quite beyond the capacity of the country to meet under any fiscal system.

Keeping these two basic factors in mind, we do not intend to permit a Government which has no policy (as is proved by the answers given to my questions and which gave rise to

this motion) in its desperate efforts to extract revenue at all costs, to change in a haphazard manner and on no definite plan our system of taxation which has answered well in the past from one essentially based on indirect taxation to one based on direct taxation. We maintain that Government expenditure must be brought down to within the limits imposed by present day normal revenue collections without the additions of these extra taxes. When this has been accomplished, but not till then, we are prepared to consider whether some investigation into our whole fiscal system is required, but any such investigation will have to go hand-in-hand with a re-examination and bold solution of the problems of salaries, pensions, loans, etc. In the meanwhile, whether it appears logical to honourable members opposite or not, we have no intention of countenancing the retention of the taxes which form the subject of this motion. We consider the Graduated Non-Native Poll Tax, viewed as a permanent tax is thoroughly unsound.

As to the Licensing Bill, we consider that, in its present form, not only does it impose undue and very real hardships, on the commercial community, but that it reacts detrimentally to trade.

Holding the views we do which incidentally have been perfectly consistent during the past few years, we sincerely trust that this honourable Council will accept this motion, as otherwise I feel it is only right to sound a note of warning.

Honourable members opposite must not labour under any false impressions, they must realize that the country as a whole is thoroughly roused on this question. Many people consider that the elected members in their anxiety to placate Government showed remarkable and regrettable weakness at the end of last year which resulted in our having been deluded, and that by judicious resort to political subterfuge Government have not only succeeded in retaining these taxes during 1935 but will eventually convert what were intended to be temporary measures of taxation into permanent measures. I am not for one moment suggesting that such views are shared by any honourable members on this side of the House, but the fact does remain that such views are fairly widely held throughout the country and those who hold them are watching the present situation pretty carefully, and I can assure the honourable members opposite that any attempt to retain these taxes will only serve to release a rising tide of irritation, bitterness, and mistrust.

I would terminate by appealing to Your Excellency to realize the true position first to obviate a third crisis which, I can assure Your Excellency, will probably be far more violent and far more difficult to deal with than have been

either of the two previous crises, in that the elected members on this occasion will certainly refuse to enter into any discussion or negotiations whatever with Government nor in common fairness in view of the history of the past few years could we be expected to do so.

Your Excellency, I beg to move. (Applause.)

CAPT. THE HON. H. E. SCHWARTZE seconded the motion.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, my hon. friend the mover has put the case so clearly, so succinctly and so fairly and strongly that there is very little left for me to say, and the only thing I am frightened of is that in my efforts to support his contentions I may weaken the very able case which he has put up, a case which I think is especially to be commended in view of the fact that he has only just got up out of a bed of sickness.

Sir, at the risk of reiterating what has been said I must just touch briefly on the history of these taxes. The hon. mover and myself served on what was known as the Expenditure Advisory Committee which recommended considerable reductions in expenditure. We realized in dealing with this that it would take some little time to enable Government to put these reductions into force and if we were to prevent the cash position of the Colony getting considerably worse that some extra revenue would have to be provided. Now, Sir, Government's solution was, as has been pointed out, to impose a permanent form of taxation of a direct nature in the form of an income tax to be superimposed on the existing forms of taxation, which were based chiefly on indirect taxation. I admit that we have had an income tax here before which proved not to be permanent because it was shown to be so unworkable and unsatisfactory that it was repealed, but we felt that if this happened again it was unlikely that we would once more be able to repeal it. We therefore, those of us who were prepared to advise the country to suffer still further in the way of taxation, advised them to do that on the definite undertaking that such taxes would be of a temporary nature. Now, Sir, I am emphasizing this now—I had a great deal to do with it at the time—I was asked by the majority of the inhabitants of this country to go home and put before the Secretary of State our objections to having an income tax forced on the country. Before I did so I made it conditional that we first provide some other means of helping the Government through this temporary period till they were able to put the expenditure of the country on a proper basis in proportion to the existing revenue. We therefore agreed to put up proposals for certain forms of increased taxation which were to be operative for two years. The second year came to an

end last December and there was no question whatsoever in my mind or I believe in any one else's that these were definitely temporary emergency taxation. As has already been pointed out Government presumably, if words mean anything, accepted that contention when the hon. the Attorney General in his speech made that definite statement.

Now, Sir, what has enraged the country, what has caused this very deep feeling which undoubtedly exists right through the country, is that we feel that Government has been dishonest over this. If last year Government had come forward and had said "we realize how bad things are; we hoped at the end of 1934 they would be a little better and some relief could be given. Unfortunately things are worse and we are going to have another deficit and therefore we must ask the country to pull up their belts even one more hole and bear this extra taxation one more year" then, Sir, many people would have said nothing. How Government are honest, they may not have achieved what they should have done, but at least they are honest. Unfortunately Government did not take that line; they took the line in this House that there was no question of this taxation being temporary; they were permanent taxes instead of a permanent form of taxation— income tax. And that is the attitude which has been the root cause of this tremendous feeling which exists to-day. I may say, Sir, that people go so far as to say it is quite obvious that Government mean to keep on these taxes in a permanent state with the view of blackmailing the country into accepting income tax.

Now, Sir, if things are to get right in this country, Government must show its sincerity by returning to the position in which we were before and as the hon. mover said once that is done the unofficial community will be quite prepared to consider the whole question of the burden of taxation on any more equitable distribution if necessary, but until Government shows that it is sincere, that it does mean what it said in this House and what we, representing the people in this country, believed that these were emergency taxes, till that is done this feeling will get more and more intense.

Going to the practical side of finance whilst last year Government were in their very bad position in that though fortunately it did not eventuate they anticipated a deficit of £50,000, there was some argument for asking the country to carry on still further this burden. This year, however, on those grounds Government cannot put forward that argument. I believe to-day the revenue of the Colony for the first six months of the year shows a considerable increase over the estimates and over expenditure. We have also had this Economy Committee which has now reported and which shows

how still further great savings can be effected. Government through you, Sir, have announced that their policy is that of rigid economy and if all those facts have been taken in consideration there can be no justification for continuing this emergency temporary taxation on its present basis.

I should like though, Sir, to emphasize what has been already stated by the hon. mover that whilst the Government finances are in a much better position to-day, the finances of the ordinary individual settler in this country and of traders who are dependent on the prosperity of those settlers is no better at all. Undoubtedly we have had good rains this year; there will undoubtedly be very much larger crops, but until those crops are of such a value that it pays the producer to produce them there can be no increased prosperity. I feel that even to-day it is not realized in Nairobi by the official community and by some of the unofficial community, the people who in which ever walk they are, drawing regular cheques monthly, those cheques being of even greater value to-day than what they were owing to the decreased cost of the necessities of life. I do not think they can realize what a desperate state the ordinary farmer in this country is—absolutely on the brink, not knowing from day to day whether he is going to be able to keep his home or whether he has got to throw up all he has done and be a wanderer on the earth without any prospect. I think, Sir, if people realize that, they must realize how deep and bitter the feeling is that Government think it necessary to keep on extra taxation which in fact are necessary to keep up and to pay the emoluments of the official side. I think you must realize, Sir, how bitter the feeling gets engendered. On the other hand, I realize that on the official side feelings also become very bitter. I think they feel that the unofficial community are striving to cut down their emoluments merely to put something into their pockets and prosper upon. That, Sir, I assure you is not the case. I do not think there are any of us who would grudge whatever emoluments the Civil Servants draw if we feel that the country can afford it and that it was not necessary to produce that sum by what we consider too large and too severe taxation.

You may realize, if you read the papers, that this same situation is arising in other parts of the Empire. Only this morning the newspaper says that in Mauritius matters have come to an even worse pass than it is here. Now, Sir, I believe that you, if I may say so, realize the position better than many others in this country. We all know that you are a true lover of Kenya and I think, Sir, in your speeches recently, both at the Agricultural Show and the Coffee Conference, you have given expression to sympathy and understanding more than has been put forth in official speeches for

some time past—(hear, hear)—and I thank you for it, Sir. I am one of those who have always believed and I still believe there is only one way this country can progress to prosperity and well-being, and that is by true co-operation between the Government and the governed. But, Sir, that co-operation must be bilateral and not unilateral and at the present moment it is up to Government to make the next move.

The hon. mover has anticipated that Government may say, in view of the fact of Sir Joseph Byrne being in England discussing these questions with the Secretary of State, Government may be unable to give any decisive answer. Naturally, Sir, we all realize the difficulties of the position of an Acting Governor in such circumstances. We quite realize that your hands are probably tied and that even if you wanted to do something which would please us you may not be able to do so at this moment, but at the same time, Sir, I do suggest that even when the Governor of this Colony has returned you will still be the chief executive officer of Government and that it is your duty to put clearly and strongly before him the intensity of the feeling which exists all through the country to-day. I say definitely that the time has come when Government must come forward and meet the legitimate demands of the people of the country. I think no one will accuse me of being a person who gives vent to wild and exaggerated statements or holds forth empty threats, but I do say this, Sir, and with all sincerity, that unless Government comes off its pedestal of self-complacent superiority and comes down to earth and does meet the demands of the people, there will be very serious trouble in this country. Now, Sir, you believe and I believe that nothing could be worse for this country. I have done what I can to keep matters steady. I have gone perhaps a good deal further than many of my friends and supporters would like. I have done so because I try to take a long view and I realize that any serious trouble in the country might have even more serious repercussions and put things back, but I do say this, Sir, and I say it deliberately, I can do no more and nor can anyone on this side of the House. The next step must come from the Government and the next step from the Government, if they wish to recover the confidence of the people which they have lost, is to accept this motion and carry out what is therein proposed.

I beg to support the motion. (Applause.)

DR. THE HON. C. J. WILSON : Your Excellency, I am rather reluctant to take any part in this discussion because I am entirely out of sympathy with the hon. the mover of this motion and with his supporter. At the same time, I do not think it is up to me to defend Government because, in my opinion, Government is largely to blame for the present

unsatisfactory position. I do not know that I shall do any good, and possibly I might only add a touch of bitterness to this debate, if I say that in my opinion income tax is the only reasonable form of taxation. (Hear, hear.) I do not know that I shall do much good by pointing out what is obvious to every thinking man, that income tax means nothing to a man who has no income, and even this poll tax means very little.

Sir, I think I should be taking the right course if I merely say this: that in view of the very heavy direct taxation on the native population of Kenya, which also has to bear the burden of that indirect taxation, in view of that far heavier taxation on the native population, I consider that any proposal to reduce or abolish taxation on non-native incomes is absolutely unjustified.

THE VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, I should like to associate myself with what my colleague has said, and I also should like to state that I shall be unable to vote for this motion for two reasons.

First of all, I consider it hardly playing the game to bring this motion and to try and pass it through this session while Your Excellency is acting on behalf of the Governor of this Colony who is in England at the present time. I quite understand that the idea of bringing the motion now is to warn Government with regard to the 1936 Estimates so that they will have the opinions of the elected members before them. At the same time, I should like to appeal—and I do so with all diffidence—to elected members to remember that this is only the first year when we can say that we are beginning to get out of the wood. I should like very much to appeal to them to allow this form of taxation for 1936, until the Government has had time, a little more time, in which to discuss the situation as it is and until the cash position of Government is a little more easier than it has been in the past.

I entirely agree with my colleague that if the European population—of course, I quite understand the position of people who say that every European pays £36-10 in direct and indirect taxation while natives pay only Sh. 6/25 or something like that, but I hold it against all comers that the native to-day in this country is bearing more than his share of the taxation that must be imposed on the people of the Colony for the running of Government. I do appeal very strongly to the elected members, and do so with all sincerity, that this thing be not forced for this year, but to allow Government to carry on, so that next year, if things improve and crops are

better, I certainly for one would join with the elected members in demanding from Government some regulation of the taxes of the country.

I am one who believes most emphatically that the only just form of taxation is that of income tax. (Hear, hear.)

THE HON. SHAMSUD-DEEN : Your Excellency, I cannot help sympathizing with this motion, but not in its present form, and I therefore beg leave to offer an amendment :

That the following words be added after the word "community" at the end of the motion :

"And that should the Government apprehend a deficit in the budget because of the acceptance of the above recommendations, income tax on a scale sufficient to make up the loss arising therefrom may be imposed."

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : I submit that that is a direct negative to my motion and of my speech.

HIS EXCELLENCY : It does not seem to me to be relevant and I cannot accept the amendment.

THE HON. SHAMSUD-DEEN : Then I can still speak to the original motion, Sir? I will not go into details, therefore, if I have the right to speak on the original motion.

Your Excellency, I have listened carefully to the debate this morning and I fail to understand how any procedure can allow a subject that has been debated and decided to be brought up again and again in this House, no less than three times in fact in the last year or two; at any rate, since I have been a member of this Council.

I entirely agree with the hon. mover and seconder that the present graduated non-native poll tax is a most unscientific tax and should be removed, but what justification have they for bringing forward this motion after having definitely agreed to this very tax? They merely reiterate that this was only a temporary tax. I was not in the Council at the time, but I read the papers, and this tax was always popularly known as an alternative tax. As one understands the ordinary English language, an alternative is a substitute for something else. Well, income tax was the tax which Government wished to impose. Certain sections of the community said "No, we do not want to have income tax, we suggest an alternative," and as income tax would not have been of a temporary nature they cannot call this a temporary tax at all.

I must say that when the hon. the mover and seconder of this motion have been talking about the inhabitants of the Colony opposing income tax, they have been talking about a section of the community belonging to the European population. Although I have no right to speak on behalf of the European population, I have been an inhabitant of the Colony for the past thirty-five years and know that a very large section of the European population is in favour of income tax. I can also say without fear of contradiction that the whole of the Indian population is absolutely in favour of income tax, the only scientific tax which will do away for all time with all these multiplications of various taxes such as graduated non-native poll tax, professional taxes, and so forth. They are only the evils of trying to avoid a proper tax such as income tax which has been introduced in all countries.

I have no desire to take up the time of the House unnecessarily, but I must say that when the Noble Lord talks about serious trouble in the country the time has come when Government should make it perfectly clear that if they mean to govern at all that they cannot stand these threats any longer. The Noble Lord says that unless Government climbs down and tells a handful of people "We will accept your dictatorship and would rather be governed by you than govern ourselves," there will be serious trouble—he has twice repeated those words. Those words have been used before and we, as loyal subjects of His Majesty the King, cannot listen to those words being reiterated again and again. We have had enough of them!

If Government introduces income tax the Indian community will loyally respond to the demand. You have heard the views of the representatives of the Indian community, and you will also find a large number of the European population will also respond very loyally to the payment of income tax, which will be to the relief of the poor people upon whom this poll tax presses so heavily. We have to run to the Chief Revenue Officer every day when people come in and say they are practically starving but are being sued for this tax, people who have no income at all. I must say this, to the credit of the Revenue Office, that when a case is presented properly they see that people have every leniency. But it is a very hard job for them, because the law as it stands at the present demands that every man in the Colony must pay a poll tax unless his poverty and distress are proved to the satisfaction of the Chief Revenue Officer, a method which I submit is a scandal. A man may starve in his own house, but it should not be necessary for him to place his position before the Chief Revenue Officer. If, on the other hand, income tax were introduced, the Colony would be able to get large sums of

money from those who are absent from the Colony but get large incomes which, though derived from this Colony, do not pay a cent to Kenya.

LT.-COL. THE HON. LORD FRANCIS SCOTT : On a point of order, has this anything to do with the motion, Sir?

HIS EXCELLENCY : Other hon. members have mentioned income tax.

LT.-COL. THE HON. LORD FRANCIS SCOTT : But not arguments.

HIS EXCELLENCY : I think it was the hon. member representing native interests, Dr. Wilson, who mentioned income tax, and I must allow the hon. member Mr. Shamsud-Deen to make his point.

THE HON. SHAMSUD-DEEN : The hon. the mover of the motion started with a mention of income tax from Lord Moyne's Report.

I would be the first person to support the motion wholeheartedly provided he can show Government where an equivalent sum can be collected from, and I am sure that it is absolutely relevant that I should be allowed to say that if Government were allowed to introduce income tax then we could do away with these other taxes. Large sums of money are sent away from the Colony every year out of the pockets of taxpayers, and we do not get a cent of income tax from them; interest on our loans which we send away, for instance.

After one has heard the account of the Noble Lord about the poor farmer, I think he should advocate income tax. Why should the poor farmer be paying graduated non-native poll tax when he has no income at all? Under income tax he would be exempt. In spite of that, the Noble Lord is advocating not income tax but that the present tax should be removed; in other words, he means that the unofficial members should carry on Government instead of the present Government.

I think I have already made it clear that I must challenge the statement made by the Noble Lord when he said he went to England at the request of the majority of the inhabitants. It was no such thing at all. The Indian community form the very large majority of the population of the country, and he certainly did not represent them.

Your Excellency, I really do not think the present is the proper time for a motion of this sort to be discussed in this House. I think this existing unscientific tax has its educative

value, because it will prepare people for the introduction of income tax. People have now almost become accustomed to keeping books in order to show what income they have derived during the year. I think the proper time for this motion should have been when the Economy Committee's Report had been discussed by the House. We have shown that Government can reasonably cut down expenditure and, having done so, there is some reason for an alleviation of the hardships imposed by the introduction of these taxes. I have made myself clear: although I support the motion in principle, I am doing so in the hope that the alternative taxes will be substituted by the original tax for which they were meant to be the alternative.

Council adjourned for the usual interval.

On resuming.

THE HON. ISHER DASS : Sir, I rise to support this motion, on two principles only: that the acceptance of this motion will afford great relief to the taxpayers of the country who are suffering under heavy burdens; secondly, that non-native poll tax and other alternative forms of taxation are unsound.

The only equitable and sound form of taxation is income tax, which I have all along maintained, if there was a necessity for raising revenue, should be introduced into Kenya.

Although I have supported the motion, yet I wish to make a few points clear, points which have been raised during the course of the debate by the hon. mover. I am wondering whether this motion has not been actually brought as a means of political propaganda. The Noble Lord has told us that there is very serious trouble in the country. I agree with him that there is, for some people, because they have not got much to do except to put in all sorts of time writing in the local Press about constitutional advancement. (Laughter.) Probably to meet this trouble, he thinks the best remedy is to move a motion like this, may be as a sort of political propaganda. Another thing is that hon. members on this side of the House feel perhaps that twenty-four months ago, in 1933, they have committed sins by accepting these alternative taxes instead of income tax, and that as a sort of penance they have brought this motion.

There would probably have been no necessity for me to speak if the hon. mover had not made certain mis-statements in the course of his eloquent speech. The first occurred when he spoke about the visit of Lord Moyne to this Colony which lasted from the 2nd March to the 8th May, suggesting that a stay of two months was hardly sufficient for a person to

acquaint himself with all the ins and outs of the country as a whole. This is only a suggestion because Lord Moyne unfortunately said something in his Report which was not acceptable to the European community. I could quote you thousands of instances of people visiting this Colony for shooting expeditions, staying in Nairobi for three or four days, and then going back and airing their views that they have seen the country, which is wonderfully fit for white settlement and all that sort of thing, and have been praised for what they have written. But to the man who knows the truth about the Colony, and to a man such as Lord Moyne, two months stay was quite sufficient, and in that time there were references in the Press to his visit and various representations were made to him as well. As a result, the income tax was introduced. The majority of the non-native population of the country whole-heartedly agrees with that principle.

The hon. mover forcibly suggested that income tax was opposed by the country as a whole—those are his words. In this connection I am sorry that I have to take upon myself the responsibility of removing any misunderstanding the Noble Lord might have tried to create. When Government, with the approval of the Secretary of State, decided to introduce income tax, there were meetings all over the country held by the different communities, and resolutions were passed and conveyed to Government congratulating them on the introduction of that tax. I will also state that at that time meetings were also held in Nairobi opposing the tax, and at one public meeting, at the last moment, half an hour before it took place, handbills were distributed stating that it was only intended for the European community and no one else. The agitation carried on against the imposition of income tax was an absolutely disgraceful form of agitation. Not only that, it was also a farce. We are now told that the country as a whole opposed it. The petition against it which was submitted to Government was signed by only 2,000 people roughly out of a total number of 50,000 non-native inhabitants of the Colony. In view of that, I wish the hon. mover had not suggested that income tax was opposed by the country as a whole. It has never been opposed, and never will be, and I say here without fear of contradiction that if a referendum were taken in this Colony to-day 85 per cent of the population would favour income tax. If the hon. mover desires to take up my challenge and I am proved wrong, then I will pay the expenses of the referendum. (Laughter.)

We have to be very honest, Sir. Laughing will not help the country; we have got to consider seriously what is actually the best form of taxation which we will accept, and a referendum is the only way in which we can actually know the true heart of the people.

Now, Sir, there is another question. Time after time we are told in this House that these alternative taxes were never alternative to income tax, that they were accepted as emergency and as temporary measures only in a very serious financial depression to raise revenue. No one will be more glad than I if the alternative taxes are removed altogether and no other form of taxation were introduced. Everybody would like to pay no taxes at all. It is a matter of common-sense that no Government can run a country without taxation or revenue, so that you have to have taxation. Even, for argument's sake, admitting that the settlers ever have a chance of running this country for the benefit of their own community, I suggest that even then there will have to be some form of taxation. If the Government of this country is to be run then we must have taxation, and a sound and equitable form only.

With regard to the statement often made that these were never alternative to income tax, I need hardly remind the House that the Report of the Alternative Revenue Proposals Committee of 1933 set out on the first page in very simple English that they were alternative, hon. members and the members of the Committee admitted it, and yet we hear a very different story to what that Committee actually stated. Here it is. Under the heading "Introductory" the Committee state :

"On the 15th March, 1933, Your Excellency was pleased to appoint as members of a committee to examine and report upon revenue proposals alternative to income tax."

That is very clear and simple English. (Hear, hear.) Those who signed the Report knew perfectly well they were alternatives, yet day in and day out we hear they were alternative to nothing. But you cannot have an alternative to nothing! On the last page of the same Report it is written in paragraph 10 :

"Although not strictly within our terms of reference we have thought it advisable, in order to simplify examination of the many alternative suggestions submitted to us, to indicate those which, in our opinion, are most worthy of detailed consideration. They are as follows :"

They accepted six forms of taxation instead of one. One would imagine that at least one alternative would be acceptable to income tax, but here they were so generous, so good hearted in the interests of the Colony, that they accepted six instead of one income tax. I am of opinion that at that time their generosity exceeded their discretion! All those gentlemen

signed this Alternative Report, yet the hon. mover to-day told us that these taxes were never accepted as alternative to income tax.

I hope that the hon. member when he replies to the motion will kindly explain one or two points. One is, that if this motion is accepted, what does he actually propose to have, the non-native poll tax? because the present one is graduated. Does he mean that the graduated tax will be removed and the non-native poll tax at a flat rate of Sh. 30 substituted? In which case, everyone, whether rich or poor, whether in a position to afford it or not, will have to pay, even people unemployed and those with large families to support. The second point which I hope he will explain is, that if at any time there is a necessity for raising revenue, what form of taxation would he actually suggest?

There is only one last point which I wish to make and that is a lot has been said and very unfortunately said in this House to-day about serious trouble in the country. We thought that after the year 1931 there was some suggestion on the part of some of the non-native population of the Colony that at least until the financial position of the Colony and certain things improved there should be no loose talk about constitutional advance business and that we should all put our heads together to work for the destinies of the Colony and I am surprised that it is hardly two years and the country not yet out of all the difficulties. From the report issued in the Official Gazette by your Government there is a temporary prosperity. That is not due to any prosperity as a whole in the world, but due temporarily to what this Colony is benefiting from other countries who are in troubles of their own, and therefore we benefit from those unfortunate circumstances and so, as I said, I hope that at this stage this talk of having serious troubles in the Colony and all sorts of threats should be once for all taken out of the mind and it will be more advisable in the interests of the Colony as a whole that we should put our heads together and put things in order without all this talk of constitutional advance.

THE HON. J. B. PANDYA : Your Excellency, I am going to be brief. I rise to support this motion and I must say I do not think the debate on this motion ought to have gone into the details of the pro and cons of income tax. (Hear, hear.) Your Excellency, the reference to income tax was very unfortunately made by the hon. mover and I suppose that is the reason other people had the chance to reply to that. But, Sir, with regard to the motion I do not think that any one on this side of the House could disagree with the principles mentioned therein. It takes into consideration the fact that the population as a whole in this country have not been

sharing in the prosperity in which the Government is sharing ; that everything is not quite so rosy about the homesteads of the people who inhabit this country ; and that is the principal thing we have got to take into consideration when we discuss this motion.

I think, Sir, that the hon. mover also made it quite clear so far as I understood him and the Noble Lord who supported him said something to this effect that if this taxation were removed and the budget was not balanced, they were quite prepared to consider the increased taxation which will be found necessary at that time. The difference of opinion would then be as to what form that taxation should take and I am in favour of income tax. I support the principle of income tax. But, Sir, this is not a debate on income tax. The point was made by the hon. Mr. Shamsud-Deen and which was supported by the hon. Mr. Isher Dass that these taxes called alternative could not be temporary because they were alternative to a permanent form of tax which is income tax and certain quotations were made from the report of that committee. But I think, Sir, that it is entirely misunderstood. The very reason why that alternative committee was appointed was to find out some revenue to bridge over the difficulties. And, Sir, those difficulties were bridged over in the form in which we passed those Bills at that time and it has been quoted that it is mentioned in those Bills that they are temporary. I do not think it is necessary to argue whether a certain form of tax is temporary or permanent. The point is quite clear that a reduction in taxation has got to come and I feel, Sir, that it should come. In my opinion the first thing which the Government is bound to take into consideration is the form of temporary taxation. That, Sir, is the principle and the issue on which I am speaking.

With regard to the trade licences I entirely agree with the hon. mover that the commercial community find them very heavy, but apart from that the issue is quite clear, namely, when prosperity returns to the Government, are we entitled to the reduction of taxation or not? And if we are, what is the first form of taxation to be removed? I think it would be quite fair for the Government to concede to the popular demand that these temporary measures should be the first to be removed. We can then examine the whole system of taxation and consider at that time the income tax. I am entirely in agreement with the hon. representatives of native interests that the natives are very highly taxed in direct taxation, but the issue on the whole should be considered after the temporary taxation has gone. I do not wish to take the time of the House, and I should like to support this motion wholeheartedly.

MAJOR THE HON. SIR ROBERT SHAW : Your Excellency, when the hon. mover and the Noble Lord were speaking to this motion and more particularly when referring to the brief and lamentable history of this affair I think they more or less took it for granted that certain facts and principles in regard to that history were within the knowledge of all hon. members of this House and required no particular explanation. In spite of that the hon. mover pointed out that the whole basis of the opposition to the Income Tax Bill of 1933 was that it was a form of extra taxation superimposed on the existing taxation. The hon. Isher Dass appears to be in some difficulty over this question of alternative and the whole point is this—possibly it will solve his difficulty for him—a committee was set up which devised certain methods of extra taxation which the people of this country had been consulted about, as was admitted to be their right by the Secretary of State, as an alternative to the form of extra taxation in regard to which Government had not consulted them at all. That was the alternative, Sir.

Furthermore, another point which the hon. mover and the Noble Lord naturally did not refer to in detail, nor would I did there not appear to be some misconception that it does not matter what form is imposed on any section, when a country gets into a state that this country is in when the sources of revenue are exhausted, any form of taxation imposed must be passed on. It is useless to say because the farmer only subscribes about £2,000 that therefore it does not affect him. Of course it does. It is passed on as it must be passed on by those who have to meet the taxes in cash. There is no section of the community in this country to whom taxation is passed on more directly in this manner than the natives of the country. They, Sir, have not yet reached the stage as we all know when they can produce very much valuable produce for export. The time will come no doubt. We all hope so. Nor would it do very much good if they could at the present time owing to the price level. Their main source of income is the internal market for their produce and their labour. If you crush the producer and the trader out of economic existence by taxation the man who must immediately experience the "passed on" burden is the native and the trader. It therefore astounds me to find that the hon. members representing native interests should oppose a motion which suggests that some of the burden borne by the native trader and producer of this country should be removed. If those burdens are passed on to the natives the relief will be immediately passed on to the native by the improvement of the local market and we shall be able to employ him again and this motion which is designed to remove this particular tax is part and parcel of a movement to endeavour to get

Government at least to acknowledge the necessity of relieving the trader and producer of the enormous burden they are carrying during the last five years in order that the producing industry may be set in order again and if you like in order that the native of the country will derive the benefit which he should derive, if Government will only realize the necessity for it and put the principles of it into practice.

THE HON. THE ACTING COLONIAL SECRETARY : Your Excellency, on this occasion I suffer the disability which is so often experienced by speakers who speak at a late stage in a debate, in that many of the points which I hoped to make have already been anticipated by earlier speakers.

Now, Sir, the replies which I gave earlier in this session to the hon. mover's questions regarding the re-imposition of the Non-native Graduated Poll Tax and the Licensing Ordinance were to the effect that the intentions of Government in regard to the 1936 budget had not yet been formulated. That, Sir, was a statement of fact. Several hon. members have referred to the fact that Sir Joseph Byrne is now in England and he is no doubt and has no doubt discussed this very important matter with the Secretary of State, since, as this House is aware, it was on the direction of the Secretary of State that the alternative taxes were imposed in substitution for the income tax measure which at that time had passed its second reading. However regrettable it may be, Sir, it is a fact that it is impossible for Your Excellency to give any definite information regarding what proposals will be incorporated in the 1936 budget until such time as His Excellency Sir Joseph Byrne at least returns to the Colony.

Now, Sir, there are two important considerations which arise out of the motion before the House to-day. One of those very important considerations, Sir, is that referred to by the hon. and venerable member for native interests. The hon. mover, as a member of the Economy Committee which has just reported, will be the first to agree that the re-establishment of the cash position and the building up of liquid reserves are of primary importance. They are, Sir, in fact the first essential for any proposal that Government may have under consideration for assisting the agriculturalists in this Colony. Now, Sir, the net additional revenue attributable to these taxation measures in 1934 was approximately £33,000 in respect of the graduated poll tax and £13,700 in respect of increased licence fees, that is a total of £47,000. Sir, until Government can clearly see its way ahead and is assured that the cash position is in a sound condition and that there are moneys available for developmental purposes, it is surely, Sir, unwise to consider the abandonment at any rate of taxation measures which will produce revenue to approximately that

these alternative taxes being temporary, but I say here absolutely definitely and I defy any hon. member in this House who was present during the debate in this House on the alternative taxes to deny that I am right when I say it was an accepted fact from the Governor downwards that these were temporary and in order to enable the Government budget to be balanced and nothing else. I will prove that by quotations, but I would, Sir, challenge any member on the Government side of the House to get up in this debate—now is their chance—and repeat that these taxes were anything but temporary and that the nature of those taxes was in order to bridge the difficulty of Government namely the balancing of the budget, and deny that it was an understood thing on all sides of the House that as soon as the budget could be balanced without the amount receivable from these taxes, then those taxes would go. That was the understanding between the country as represented by us and the Government and I challenge anyone on the Government side to deny that, as I understand it was in 1934 when I was not here.

May I quote from the debate on the Graduated Non-Native Poll Tax in August, 1933. I find these quotations are practically entirely quotations from my own speech. I must apologize for seeming egotistical in the matter but it is not really. I was speaking on behalf of this Colony at the time and I made in that speech a quite clear and definite statement as to what these taxes were for and no member on the Government side ever suggested that I was saying anything but the strict truth of the bargain made. I will quote first of all from page 490 of Volume I.A. of 1933 :—

“I would further say this, that surely, even if those gentlemen who believe that with this taxation imposed there will not be a deficit but there will be a surplus, that is an additional reason for supporting this taxation at the moment, because the sooner we can show that not only is the budget balanced but that there is a surplus the sooner we can demand, and demand rightly, and put up a case that is incontrovertible for the abandonment of these measures which have been expressed to be of a temporary nature.”

Again on page 491 :—

“This country, despite what hon. members may say, the vast majority of this country, accepted the position that as a temporary measure extra revenue had to be found, and they said they would meet it in one way, but they would not have it in the other way. That was the whole basis and burden of Lord Francis Scott's discussions with the Secretary of State.”

Lord in supporting this motion. It is a regrettable position not only from your point of view but from the point of view of all of us. It is regrettable that you in the responsible position which you now hold really have your hands completely tied so that it is not until the return of the *de facto* Governor of this Colony that any decision can be taken by Government on this very important and most vital issue.

Now, Sir, I regret that in the latter part of the speech of the hon. Acting Colonial Secretary he has in fact led us to believe that one of the considerations that will influence the Government in deciding whether to abandon any suggestion of reimposing these emergency taxes will be whether the abandonment of such could take place without a consideration as to whether there must not be the imposition of some tax based on what he is pleased to call the ability to pay. Now I do not propose to enter at this stage into the question of the merits or demerits of an income tax in a Colony like this. My views are well known. They have not changed and they never will change, but it is in my view quite irrelevant to the issue raised by this motion and the question now before the House. The hon. gentleman was not present during what I may call those hectic days in 1933 when we were discussing whether or not the income tax bill was to be withdrawn and certain other measures put in its place.

THE HON. THE ACTING COLONIAL SECRETARY: On a point of explanation, Sir, I was not drawing any comparison between the non-native poll tax and income tax. I said that there were other forms of taxation in which Government could give relief. I was not trying to infer that Government had under consideration income tax.

CAPT. THE HON. H. E. SCHWARTZ: I naturally accept the hon. gentleman's explanation but it does not meet my point which was this that we base the demand for the non-reimposition of this emergency taxation because we have had in 1933 a definite and binding promise that these taxes were of a temporary nature and would be withdrawn and we say the time has now come for Government to honour their promise and any question as to consideration, other than the promise given on the facts as they were in 1933, cannot be considered by us at all.

Now, Sir, I want to make the point that it has not been suggested by the hon. Colonial Secretary that the facts in argument set out by the hon. mover in his speech were anything but the absolute truth. It has been suggested by certain other hon. gentlemen that there was never any question of

Again on page 492 :—

“For that reason, I again make my appeal to those gentlemen to play the game, and, however much they dislike it, to support these measures on the understanding which we all agree to, and which Government has accepted, that they are purely temporary measures to bridge a temporary gulf, and that when that gulf is bridged, they will go.”

That is clear enough speaking and that was accepted by acquiescence by the Attorney General and the members of the Government on that side of the House and does not the very wording of the Secretary of State's despatch lead to the same conclusion—the people in Kenya said that they accepted the proposition that the budget must be balanced and the proposition that there must be new form of taxation to balance the budget. I have never in a long experience in this House and in another place been more sure of the justice of my case and the truth of the facts as I state them. I had a lot to do with the negotiations that took place with the Government of this Colony with regard to these alternative taxes. I took no little part in the campaign against income tax and if one takes the trouble to read the speeches that I made here and at the mass meeting in Nairobi and other places, they will see that one of the chief arguments that I put up against income tax was that income tax was a tax of a permanent nature and that we were not prepared to agree to the superimposition of a tax of a permanent nature on the existing indirect system of taxation we already had, but that we would be prepared, as a substitute for a permanent tax and in order to give Government time, to agree to the imposition of a purely temporary nature to cover a temporary period. There can be no question about the arrangement between the Government and the people of this Colony. The people have kept their share of the bargain up to the hilt and longer than they said they would keep it. Is it not reasonably fair to appeal to Government now and when they decide to incorporate the policy in the budget, to keep their share of the bargain too and not let us down, and though I do not often use strong language, I say if they do that would be deliberate political dishonesty.

I am not going to argue at all with regard to income tax, but I do just want to make one remark in reference to the speech made by the hon. member Mr. Shamsud-Deen. He had his facts all wrong. He said that one of his great arguments in favour of income tax was that people would not go running to the Revenue Office if they had not an income to pay on. If he looks up the schedules of the Bill, the minimum payment was Sh. 40 whether a person had an income or not, so that his chief argument falls to the ground completely.

If I am right, as I know I am, as to what the bargain was, what is the position to-day? The position to-day is that we are faced this year or were at the beginning of the year when the budget for 1935 was passed, with a small surplus. The position now at the end of July is that the estimate of revenue for the year is very considerably in excess of that shown in the budget, and the Economy Committee have reported and have shown possible savings amounting to £133,000. You, Sir, stated in your opening address when Council met some three weeks or a month ago, that you were happy to say that the financial position of the Government of the Colony was a good deal better than had been anticipated, and you were kind and fair enough to emphasize the word Government.

We have a position that now, at the end of July, where as far as can humanly be foreseen, the budget can be balanced and leave a very nice surplus even without the imposition of these emergency taxes. We have it accepted by all who know that the position of individuals of the Colony is, as the hon. mover said, considerably worse to-day than it was two years ago. We therefore have the position that people are less able to bear the burden of emergency taxation and the position of Government is no longer in such vital need of revenue derived from that emergency taxation. There is no reason to suppose that the position in 1936, from the Government revenue point of view, will be any worse than in 1935. Figures, reasonable figures, will show that in framing your estimates for 1936 that without this £33,000 that the hon. the Colonial Secretary quoted with regard to poll tax and £14,000 regarding licences, that with this £33,000 and some at least of the £14,000 cut out of revenue you will still be able to balance your budget and still have a surplus. If that is so, and I say it is, Government having promised that when the budget could be balanced without this taxation, and it will, how can you possibly stand up and say "We are not going to keep our promise, but we might possibly consider some kind of relief from taxation but not necessarily in this form?"

We stand on the pledge given by the Government in 1933. The effects of that pledge have now reached maturity. The budget for 1936 can be balanced if we go back to the position before the emergency taxation was passed. I say that not only have we the right, but the complete right, to demand that Government's pledge should be kept by Government—if they are honest they cannot possibly refuse to honour that pledge made in such clear and unequivocal terms in August, 1933. (Applause.)

THE HON. THE TREASURER: Your Excellency, before the hon. mover replies, there is one question which I should like

to put to him, and I hope he will be able to answer it categorically because it seems to me of considerable importance that Government should know exactly what his advice is.

The question I wish to put is this: Having regard to all the circumstances of the Colony, presupposing reduction in taxation is possible within fairly narrow limits, does he advise Government that the burden should be removed in the manner suggested by him in priority to all other relief in other directions? Some 13,500 people pay the minimum non-native poll tax and 10,500—including 70 to 100 who have an income of over £2,000 a year—pay more than the minimum. Does he suggest that the poorer sections of the community remain where they are and that total relief should be given to those people who pay more than the maximum? In other words, if £50,000 is available for taxation relief, does he really consider the repeal of the graduated non-native poll tax and a modification of licences is preferable to all other methods of lightening the burden of taxation on the community as a whole? because from his remarks he obviously understands the relief proposed would assist very materially the Civil Servant, the professional man, and traders but that it would afford no relief of conditions as far as the agricultural community is concerned and do virtually nothing for the native population.

So far as the remarks of the hon. member Sir Robert Shaw are concerned, I cannot support his argument. If applied to myself, the acceptance of this motion would mean that £50 would go into my pocket. It might assist the traders to some extent, but I doubt if it would assist a single native, and it would obviously assist me a great deal more than any other section of the community!

LT.-COL. THE HON. J. G. KIRKWOOD: Sir, I had no intention of intervening in this debate until Government announced its intention of not accepting the motion. In 1933 I moved a motion in this House which put the blame on to Government for the pathological financial condition which the Colony found itself in, and had Government accepted the warning of the elected members previous to that time there would have been no occasion for the imposition of these taxes. That motion was not, of course, accepted, but I want to state here this morning that I have come to a definite conclusion, hence my rising, that for the future I am in definite opposition to Government. If this tax is reimposed at the end of the year I will advise those people who have sent me here to resist it, and to resist Government by every possible means in their power. One has got to come to a decision some time, and I have definitely come to that decision this morning.

THE HON. J. B. PANDYA : Your Excellency, on a point of information, I would like to ask the hon. member to make it clear whether it is to be constitutional or unconstitutional resistance?

LT.-COL. THE HON. J. G. KIRKWOOD : If the hon. member who has just spoken will define what he means by constitutional or unconstitutional I will give him an answer! (Laughter.) I might even call in the fire brigade, I do not know.

In December, Sir, His Excellency Sir Joseph Byrne went so far as to ask for an interview with the European elected members. That interview was granted, and I want to state here and now that at that interview I informed Sir Joseph Byrne that I believed his offer to set up a committee to study ways and means of saving not less than £100,000 was a genuine one, and he said it was Government's intention to form that committee and find the savings, but would not put the responsibility on officials by having them associated with it. It was, and still is, the duty of Government. Holding that opinion, I also asked whether it would be necessary to reimpose the non-native poll tax in view of the fact that it was not due for payment until the end of 1935. I am afraid that that suggestion was possibly the cause of Sir Joseph Byrne going on sick leave! (Laughter.) But I submit that it was really a reasonable suggestion.

If that gesture in December last was genuine and honest and it was intended to find £100,000 savings on the budget for 1935, there was no necessity, and there is no necessity, to reimpose this tax at the end of this year. It is rather astounding that Government should hide themselves behind the statement that they have not yet considered the budget for next year. If they have not done so and are not in course of preparing that budget or investigating the possibility of the next budget, then I say that definitely they have failed in their duty; it cannot be done in a moment.

The hon. and ven. member representing native interests has told us that the natives are overtaxed. I am not prepared to agree with that statement, but I do definitely know that the European population and the non-European population generally are overtaxed in this Colony. I do definitely know that Government has known and tried to make a red herring of it, that the farming community pay very little towards this tax, for the purpose of this motion, and by so doing to try and split the camp; that is, to put the agriculturists up against the commercial and other communities in this Colony by pointing out to them "In any case, you don't pay." They do not, for the simple reason that they are being

squeezed out of existence by railway rates as well as by direct taxation, definitely squeezed out of existence, and it is really astounding to me that Government does not realize the situation. I have been asked in the last two days by at least a dozen people that question: "Do you consider that Government does not realize the serious position of the Colony?" I am unable to answer that, I cannot answer for Government. All I can say is that if they do realize it they will not admit it.

Now, Sir, if you were to travel to say Eldoret you could see two of the most important firms in that town about to close their doors. I have seen the largest retail business in that township already close up, many months ago. That was the result of the collapse of the finance of the agricultural people in that district, and, not only that, it is going on continuously throughout the Colony, of farmers closing up and left derelict; not one, but dozens of them. They get out in many cases for the value of the house and, in many cases, for less than the value of the house and farm. We realize that this is an agricultural colony and that without agriculture it could not exist, without belittling the importance of the mining industry or any other subsidiary industry. The Colony has lived on agriculture, and to-day agriculture is going out of action; the pioneers, especially, those men who came out in 1930 and before, and those who came out under the Soldier-Settlement Scheme, where are they? I could tell you what has taken place, but this is not the time to go into detail.

I give you the broad fact, that the agricultural industry of the Colony is on its last legs, and I use this motion as an opportunity to challenge Government to doublecross us again. It has been done, and done for the last eight years since I have been in Council, but this morning I have definitely made up my mind that I am going in opposition to Government, and if I do not get my following I will go outside where I will get a following. It is impossible for me—and I am speaking for myself—it is impossible for me to consider any longer trying to co-operate with Government which is not a government and does not know its own mind, which is run from Downing Street, as I know to be a fact. It is not run by this Council but by the Secretary of State and it is impossible for him or any other man in his situation who does not understand our difficulties, who has more difficulties of his own in the Imperial Parliament which do not give him time to study our difficulties. The position is very critical; indeed, it has got beyond being critical. It is simply a question of what action has to be taken. As far as the answer to that is concerned, I will leave it to the future. It is not for me to decide for other people what they are going to do, but I tell you that when the people whom I represent ask me to leave I shall leave, and it will be done constitutionally. If it is not, it

will be because Government has forced it on me as well as forcing it on to this Colony, peaceful people who have made their homes here, sunk every penny they possess in this Colony. It is absurd for Government to imagine that the farmer, the commercial man, whatever one's work may be, to sit tight and say nothing when we know the ship is sinking, and sinking fast.

That is the position, and that is the way I feel about it this morning. I feel very much the same as I did at Loos, Passchendaele, and on the Somme when I felt safe going over the top and facing the whole German army. I would feel quite safe if I had in facing this Government what could be done in a short time . . .

THE HON. SHAMSUD-DEEN : Is the hon. member in order in being allowed to make such seditious speeches in this House?

HIS EXCELLENCY : I have not heard anything that could be definitely called seditious. He says he hopes his position will continue to be constitutional.

LT.-COL. THE HON. J. G. KIRKWOOD : As usual, you find the Indian members opposed to the European elected members. (No.) They are divided among themselves and have been ever since they came back to the Council.

DR. THE HON. A. C. L. DE SOUSA : Is the hon. member . . .

HIS EXCELLENCY : I cannot hear the hon. member.

DR. THE HON. A. C. L. DE SOUSA : I suggest that everybody . . .

HIS EXCELLENCY : I cannot hear what you have said.

DR. THE HON. A. C. L. DE SOUSA : The hon. member said we were divided among ourselves.

LT.-COL. THE HON. J. G. KIRKWOOD : May I repeat that?

DR. THE HON. A. C. L. DE SOUSA : That is not the case, Sir, and I request the hon. member to withdraw it. It has nothing to do with the question now before us.

HIS EXCELLENCY : I see nothing out of order in that. The hon. Member for Trans Nzoia may resume.

LT.-COL. THE HON. J. G. KIRKWOOD : They are divided among themselves, and I have never known them to be united ! They do not agree among themselves or with the European elected members, and they do not agree with Government. They are always in opposition. They have tried to draw a red

herring this morning by introducing the subject of income tax into this debate. I am not going to be misled, or mislead Your Excellency, by discussing a matter that has nothing to do at all with the motion before the House this morning.

I am extremely sorry that Government is unable to accept the motion. It is a perfectly simple one asking you not to include the graduated non-native poll tax or the revenue from it in your new year's estimates; in other words, to implement the promise that has been given that this was a temporary measure to bridge over the difficulty which Government was going through. This community has now made the sacrifice for two years, and I as a European elected member cannot advise the people I represent to allow it to be imposed any further. If I was asked whether this should come off before others or not, I should say definitely that temporary taxation should come off first, and afterwards such things as are imposed on agriculture and, on everybody, petrol tax. But that does not arise now. This tax should come off and should not be included in the 1936 budget, and I have to agree with the warning issued on behalf of the whole of the members by the hon. mover that Government must expect trouble if it does not come off.

THE HON. F. A. BEMISTER: Your Excellency, as I was one of those people who brought forth the pleadings of the hon. and learned Member for Nairobi South in 1933, I would like to remind the House that there were at that time several of us who were not in agreement with the alternative taxation. In fact our policy was at that time that there was no extra taxation needed and our quarrel and dispute with our colleagues was on that basis and it was quite clear to everybody in the House at the time that those items of taxation were put on to enable the Government to study economy and reduce expenditure. That was the definite understanding I think of everybody on practically both sides of the House.

Now, Sir, these methods of taxation were invented by the Government consulting the people who were actually not responsible to anybody for the advice that they gave them and I think you will remember that the advice that was given in the first instance was £88,000 from the trading tax alone, which has had to be cut down to some £14,000 or £15,000. You never asked the elected members to advise you with regard to those extra systems of taxation. You took the evidence of people entirely outside with no possible chance of creating a liaison, the real liaison, which is supposed to be maintained between elected members and the people and Government, and that was why, Sir, I, with three others, opposed those systems.

But there is one remark of the hon. mover which I very strongly object to and oppose. He says that the trading community have paid these taxes for the last three years without demur. Now, Sir, I am going to tell you that I know a lot of people who are traders and I doubt if there is one trader, shipper or anybody who has to suffer it himself—I am not talking about the manager who pays out the shareholders' money from home—I am talking about those men who have to actually provide the money to pay those taxes—and I am willing to say and I can almost prove that there is not one per cent of the traders who actually have not demurred, if not to the Government, but to their local Chamber and local Association.

There is only one point, now, Sir, that I would like to refer to and that was the remarks made by the hon. Isher Dass when he criticized the committee who discussed the alternative proposals and he complained that these proposals were put up—he stated they were definitely put up as a definite objection to income tax. Now, Sir, it reminded me of an advertisement I saw coming up in the train of a person going to be hanged and he turned round to the executioner and said "I would rather have a Players".

THE HON. N. S. MANGAT: Your Excellency, as soon as the hon. Colonial Secretary had replied generally to the debate I have taken it for granted that although the Government was in sympathy with the motion, at the present time it could not agree and hoped sincerely the unofficial members including myself would leave the matter at that and with the promise of the Government that this matter will receive further consideration. It is to be regretted that the hon. Member for Trans Nzoia has brought in matters which are really such that they should not have been brought in this motion and are most undesirable. Now there is no question whatever that every tax in this country is temporary. No taxation is permanent. As soon as we find that we can do without a tax it will be repealed at once and this Council I believe has the same authority as the English Parliament has of determining that whenever we wish to repeal a law they can repeal it. So there is no question whether it is temporary or permanent. What we really feel is that as soon as the Government is capable of meeting its budget out of other taxation it should give some relief. I think the only point of difference is that while the European members want that relief in the shape of the repeal of the Graduated Non-Native Poll Tax, the Indian members want that relief in the shape of relief in the Non-Native Poll Tax, that is the minimum of the Non-Native Poll Tax should be such as to exempt the majority of the people who have no means to pay. I think the Government

is quite in order to say that if it has to give relief in some direction it ought to give it to those most deserving of that relief. The principle of the Non-Native Poll Tax has been called unscientific and primitive and many other terms and I think that is the main thing to be repealed, that is the Non-Native Poll Tax not the Graduated Poll Tax.

I have heard with complacency the hon. Member for Trans Nzoia. He had an opportunity of referring to the Indian members' attitude that we opposed the Government and also the unofficial members. We oppose for reasonable grounds. We do not mind following our own leader, but we have our own opinions on the matter. If we have opposed some motions brought forward by some of the European elected members we have done so because we felt that we had the approval of one community and not of the general body of the inhabitants of the Colony. We have heard so often that the farming community is not able to pay any taxation. I think no one has any objection to the imposition of a tax which excludes those people. The best way would be on the form enunciated by the hon. Colonial Secretary, that is, capacity to pay. I know it is an old phrase but it is full of truth as generally all the old phrases are. The hon. Member for Trans Nzoia has said that the farmers are the backbone of the country. I do not say that they are not the backbone, but for the last ten or twelve years it seems to me that that backbone is suffering seriously from ricketts and should be replaced by some other community. The farming community is not simply composed of Europeans. There are natives also and it does not necessarily mean that if the Europeans cannot get relief they will go out of action if that relief is not given. They have their millenium. I think those times are quite gone now. The last millenium was in 1791.

I can only warn those members of this House who show any intention of resorting to that desire of access to power and we must correct this very quickly and see the wisdom of Government also in deciding these matters.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK: Your Excellency, after listening to this debate two or three hours I am rather wondering whether some of the members of this House do not suffer from some aural disability because they have dragged into the debate the merits and demerits of income tax and have immediately come to the conclusion that I was speaking against income tax. Had they been listening they would have realized that in my opening remarks I have not said one single word against an income tax measure as a method of taxation. As has been stressed by other members who have spoken on this side of the House, what I did say was that we would not have a new, to this country, form of

direct taxation superimposed on all the existing forms which have served us in the past and I further added that when the time came for an inquiry it would have to be a thorough inquiry and then we would see how we stood. We were not going to have piecemeal alterations during disturbed times such as the present. (Hear, hear.)

I was also interested to note that the hon. Indian members some of them, with notable exception the hon. Mr. Pandya, propose to vote against this motion and I expect . . .

DR. THE HON. A. C. L. DE SOUSA : On a point of explanation, I do not think the hon. member is perfectly correct in saying that. Until now I was going to vote for the motion.

THE HON. SHAMSUD-DEEN : I made it perfectly clear that I was voting in favour of this motion.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : Well, Sir, they seem to have changed their minds since the interval. I am glad for their sakes they are going to do so because otherwise I feel that perhaps some of their constituents who are suffering from having to pay high trade licences would not be quite so pleased with their representatives as they otherwise might be.

Now, Sir, the hon. and venerable member representing native interests has stated that he considered it was unfair and unnecessary for me to bring forward this motion during the time when Sir Joseph Byrne was absent. It has also been mentioned by the hon. Member for Nairobi South that he regretted deeply that this came on during your regime and that he could understand that you are in a very difficult position. I also regret that it should come in your regime but for an entirely different reason. I regret it because we on this side of the House have a very sincere regard for Your Excellency (hear, hear) but I will not accept that an acting Governor cannot act. If every time, Sir, a Governor goes home we have got to wait until he has had long discussions with a new Secretary of State before our domestic affairs can be dealt with, then, Sir, what is the good of our being in this House at all? (Hear, hear.)

Both the hon. members for native interests, I fear I have never understood why, are hostile to the European settlers . . .

VEN. ARCHDEACON THE HON. G. BURNS : That is contrary to fact, Sir.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : May I say, Sir, that they have shown their hostility once or twice. I am very sorry because I cannot understand it and I really

and truly believe that the best friend the native has got in the country is the European settler and I would like to assure the hon. and ven. member and I am now speaking for myself that I have always considered that the natives in this country are grossly overtaxed, although I am in a minority on this.

The hon. Mr. Shamsud-Deen started by saying that he could not understand why we were allowed to bring forward a motion of this kind year after year. Well I should have thought the reason was obvious—that even if we did not bring it forward it has got to be brought forward because the Ordinances to which this motion refers come to an end after the end of each year and therefore it is quite obvious that they must be temporary and we have every right to bring them up as often as we please. It has been repeated again and again that we on this side have talked about representing the majority of the people and that they were against income tax and we have been told that that is not the case because practically the Indian community as a whole are in favour of it. Mr. Shamsud-Deen rather twitted Lord Francis Scott for making that statement and other members have referred to it as coming from me. It is very difficult to keep one's temper when one sees people trailing their coats the whole time in front of them, but I want to make this point quite clear that I still have sufficient faith in the virility of the race from which I come to know that they will not submit to dictatorship either by the Indians, the India Office or by the servants of a gentleman six thousand miles overseas. (Hear, hear.)

THE HON. SHAMSUD-DEEN : How does this arise on the debate in this country?

HIS EXCELLENCY : Order, order ! Carry on.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : Mr. Isher Dass, Sir, expressed a desire for a referendum to be held throughout the whole country and he further guaranteed to bear the expenses of such a method of finding out what people want. I would just like to draw the attention of the Revenue Office to Mr. Dass's probable wealth.

Now, Sir, before coming to the Government's reply, I want to allude to one thing Mr. Pandya said and that is that he regretted and felt it was unfortunate that I had ever mentioned income tax. I do not think that on second thoughts he could have imagined a serious motion on these lines being put forward without some mention of income tax.

The hon. Colonial Secretary again referred to the fact that he was unable to give an answer and that the Governor was discussing these matters with the Secretary of State and

in the same breath he talked about the necessity of building up the cash position and liquid reserves. I can only conclude from those remarks that those are the lines which this interesting discussion is taking in London and I would point out that we have always insisted that we would not permit the continuation of these temporary taxes in order to build up surplus balances. Hear, hear. He also suggested that the best way of assisting the agriculturalists was to try and restore such surplus balances. It seems to me a queer form of economics when you take money away from the people, chew up a bit of it and hand back what is left. It does not seem to me that is going to help the agriculturalist to any very great degree.

Now, Sir, the hon. Treasurer asked for a categorical answer to a question. He wanted to know whether I would advise Government to remove these taxes and to go back to the system whereby everybody, regardless of their incomes, paid much the same amount. I thought I had made that position perfectly clear as to other methods of relief in my speech. I certainly believe that these taxes should come off first. I have explained the reasons why in my speech but I had better reiterate them. These taxes should come off first because it is a pledge that they should do so and because when we get back to where we were, we can then re-examine the position and in re-examining that position we must remember that Government is not the only taxing machine in this country. There are a good many others including the Railway and we have got to take all the factors into consideration when a proper inquiry is made and we do not want piecemeal alteration of our fiscal system. The proper way as we have always said to restore the prosperity of the country is by cutting down the overheads of Government.

Lastly, Sir, I would just like to refer to a statement Mr. Mangat made. He said that this Council has certain rights and can repeal taxation as and when it likes, also that all taxation was temporary, and so he did not know why we particularly selected these taxes. We particularly selected these taxes because they have always been specifically known to be temporary and because the Ordinances come to an end at the end of the year, and as for the rights of this Council I am very doubtful if we can do anything at all until we have had anything up to six months' correspondence with a Secretary of State six thousand miles away. He also suggested that we should withdraw the motion. I have no intention whatever of withdrawing it. I know it will be defeated, but, with your leave, Sir, I beg to put it.

The question was then put.

HIS EXCELLENCY : I think the noes have it.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : Divide.

The question was again put and lost by 21 votes to 16.

Ayes : Mr. Bemister, Major Cavendish-Bentinck, Messrs. Conway Harvey, Hoey and Isher Dass, Lt.-Col. Kirkwood, Messrs. Mangat and Pandya, Major Riddell, Major Robertson-Eustace, Capt. Schwartz, Lord Francis Scott, Mr. Shamsud-Deen, Sir Robert Shaw, Dr. de Sousa and Mr. Wright.

Noes : Mr. Barton, Major Brassey-Edwards, Mr. Bruce, Ven. Archdeacon Burns, Messrs. Fazan, Fitzgerald, Harragin, Kirsopp, La Fontaine, Logan and Morris, Dr. Paterson, Mr. Pilling, Sir Godfrey Rhodes, Mr. Sikes, Captain Tisdall, Messrs. Vidal, Walsh, Waters, Welby and Dr. Wilson.

APPOINTMENT OF SELECT COMMITTEE.

WAKF COMMISSIONERS (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL moved that the Wakf Commissioners (Amendment) Bill be referred to a Select Committee consisting of the following :—

The Hon. the Attorney General (Chairman).

The Hon. C. J. J. T. Barton.

The Hon. Member for Nairobi South.

The Hon. Member for Mombasa.

The Hon. Shamsud-Deen.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

*Council adjourned until 10 a.m. on Tuesday,
the 30th July, 1935.*

TUESDAY, 30th JULY, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m on Tuesday, the 30th July, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 29th July, 1935, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table :—

BY THE HON. THE ATTORNEY GENERAL :

Report of the Select Committee appointed to consider and report upon the provisions of a Bill to amend the Wakf Commissioners Ordinance.

Report of the Select Committee appointed to consider and report upon the provisions of a Bill to control and regulate marketing of native produce.

NOTICE OF MOTIONS.

Notice of the following motions was given :—

BY THE HON. THE ATTORNEY GENERAL :

That the Report of the Select Committee appointed to consider and report upon the provisions of a Bill to amend the Wakf Commissioners Ordinance be adopted.

That the Report of the Select Committee appointed to consider and report upon the provisions of a Bill to control and regulate marketing of native produce be adopted.

BY LT.-COL. THE HON. LORD FRANCIS SCOTT :

This Council expresses its appreciation of the work performed by the members of the Select Committee on Economy and of the able report produced by them.

This Council, whilst emphatically disagreeing with the recommendations set forth in paragraphs 114 and 251 on the subject of (a) Defence Force and (b) District Councils, trusts that Government will lose no time in considering the report in detail, in order that the majority of the remaining recommendations may be implemented forthwith and become effective prior to the submission to this House of the 1936 Estimates.

BILLS.

FIRST READING.

On the motion of the hon. the Attorney General, seconded by the hon. T. D. H. Bruce, the following Bills were each read a first time :—

The Suppression of Noxious Weeds Bill.

The Girl Guides Bill.

The Boy Scouts Bill.

Notice was given to move the second readings of the above Bills at a later stage of the session.

MOTION.

ECONOMIC DEVELOPMENT COMMITTEE REPORT.

MAJOR THE HON. F. W. CAVENDISH BENTINCK : Your Excellency, I beg to move the following motion :—

“ This Council, having considered the Report of the Economic Development Committee and Sessional Paper No. 1 of 1935, is of opinion that the measures proposed in no way rectify the existing situation. This Council further considers that the gravity of the position disclosed by the above-mentioned Report calls for the immediate introduction by Government of far-reaching remedial measures, and that Government, having seen fit definitely to negative in advance the method of relief subsequently suggested in the Minority Report, and to do so in spite of the terms of reference provided and whilst the Committee was sitting, should inform the Colony of the reasons for such refusal and should further inform the Colony what adequate steps it proposes to take to alleviate the critical conditions affecting the farming community.”

Your Excellency, Legislative Council has now been in session for a considerable period. During that time there have been many debates on many subjects, but I would like to preface these remarks by stressing that no matter has been considered during this session—one might add, during any of the recent sessions, there has been no subject which in any way approaches the importance of the subject we are going to discuss this morning, namely, the basic economic position in which the Colony and the citizens of this Colony find themselves to-day. The subject is a difficult one to discuss, and for this reason we generally seem to avoid trying to do so. Instead of facing frankly and with courage the reasons of the difficulties which are confronting us at the present time, we appear always only too ready to be drawn into violent controversies over suggested piecemeal remedial measures which, whether adopted or not, will in fact have very little effect on the real situation.

The motion to which I am speaking falls into two parts. The gist of the first part is to the effect that the measures proposed by the Report of the Economic Development Committee and the very few proposals accepted by Government as set forth in Sessional Paper No. 1 of 1935 are in no way adequate to the existing situation. The second part of the motion is more comprehensive and more important, and I shall deal with that later. I shall therefore begin by endeavouring to substantiate the statement made which underlies the first portion of the motion.

Now, Sir, the history of the appointment of the Economic Development Committee is not without interest. Although at first sight this may appear to be irrelevant, it is in fact very relevant indeed to the motion. At the end of 1933 the Member for Uasin Gishu moved that the Select Committee on Estimates, in addition to examining the draft Estimates of 1934, should consider what additional provision would be required to provide for an adequate programme of economic reconstruction and should consider the advisability of further loan funds being obtained to finance such a programme. The member who moved that motion, Mr. O'Shea, held the view that under the difficult circumstances which existed towards the end of 1933 it would be sound policy for the country to find new moneys for expenditure on carefully considered reconstruction schemes. Mr. O'Shea's suggested panacea for the cure of a serious depression was not new; it has been tried in many countries; it has been tried in this one on a previous occasion. Such a course does undoubtedly afford temporary relief to a hard pressed community in that it arrests stagnation by circulating fresh money, but to my way of thinking it is dangerous because after the money has been spent, unless things have considerably improved, one is left with the aftermath of interest and loan commitments which in some cases it is impossible to meet.

However, whether one agreed with the application at that time of Mr. O'Shea's nostrum or not is quite beside the point. The fact remains that by his speech and motion in this House he showed that he had given serious thought to the basic economic difficulties in which this country found itself. As a result of that he considered it was absolutely essential that a profound examination of the whole financial policy of the Colony should be undertaken in order that it might be possible to gauge whether the provision of such loan funds would do any good or not, and, if we came to the conclusion that they would do so, whether such loan funds could be obtained. This Council, as many hon. members will recollect, had a very long debate on his motion. As a result of that it was resolved that a serious inquiry into the Colony's whole economic position was long overdue, and it was resolved to appoint a special *ad hoc* committee for this purpose.

In view of the importance of the issues which were at stake, His Excellency the Governor, before proceeding to the appointment of this Committee, consulted the Secretary of State, who at that time happened to be in this Colony. The Secretary of State gave an interview to the European Elected Members, during the course of which he said that, "leaving aside projects of definitely remunerative expenditure" (whatever that might mean) "he considered that it would not be prudent or practicable for the Colony to raise any large sum on the market." This interview was followed up by a statement, authorized by the Secretary of State and made by His Excellency the Governor in this Council on the following day, to the effect that, in the opinion of the Treasury and of the City of London, Kenya had borrowed as much as was justifiable in view of her financial position, that any suggestion that Government should borrow in order to take over existing mortgages or relieve the farmer was not a development proposal, and as a relief proposal could not be considered. The question of how Kenya came to be no longer credit-worthy or how the farmer was to be kept on the land I need scarcely add was not alluded to.

Thus the general implication of statements made by those in authority over us in February, 1934, was to the effect that it was no use appointing any committee to make inquiries, because, although it was generally realized that the economic position of the Colony was extremely precarious, the Secretary of State had decreed that nothing could be done.

Now Elected Members not unnaturally refused to accept this position, and they reminded Government of the undertaking given a few days previously for the appointment of a committee to make proper inquiries. The Colonial Secretary, in reply, stated that in view of the Secretary of State's pronouncements Government felt great hesitation in proceeding with the appointment of a committee which might, incidentally, have the inconvenient effect of leading the public in general to foster futile hopes that some real attempt was going at long last to be made to cope with the situation! He added, however, that the point had been taken up in debate that the pledge given by Government was not going to be fulfilled. This he regarded as an overriding consideration, in view of which Government was prepared to proceed with the appointment of the committee, although he held out no hopes that that committee would achieve the results which it was originally hoped might be obtained.

Your Excellency, I have gone over all this back history in order to demonstrate that although between the periods covering the year 1930 and the end of 1934 it must have been apparent to everybody that the position of the Colony and of

all the communities in this Colony was becoming precarious, nothing was done to remedy the position beyond an attempt at reducing overhead expenditure of Government, an attempt which was not adequate to the fall in revenue. When at length a suggestion did come from the unofficial side that at least some further inquiries were essential, the answer was in the negative! Nor would any further investigation whatever have been made had not Government found itself forced into the unpleasant position of either having to admit it had given an undertaking it was not prepared to carry out or to appoint this committee. Meanwhile, every other country in the world, save the colonies and dependencies under the control of the Colonial Office, had been forced not only to institute the most meticulous inquiries but as a result of such inquiries to take drastic steps to preserve their equilibrium.

So much for the history of this committee's appointment, which shows that the original intention which underlay such appointment was to enable this Colony also to make some investigation into our basic economic position and to provide a means of examining far-reaching and adequate measures of relief. I now come to the deliberations of the Committee itself and the criticisms of its recommendation which are made in the motion to which I am speaking.

Now, Sir, the terms of reference given to this Committee were very embracing, extremely wide: they were to examine and to advise upon any proposals directed towards improvement of the Colony's balance of trade, and towards maintenance and development of its agricultural and industrial resources. Such terms of reference should have empowered the Committee, as was intended, to probe pretty deeply into the basic troubles which confronted this country.

Personally, I only became a member of the Committee after the draft Report was already in existence, but I speedily formed the opinion that, in spite of the terms of reference provided, no genuine attempt had been made to really face the factors which had occasioned the frightful difficulties with which the country is contending, and that as a result the recommendations made by the majority represented a policy of expediency no more ambitious than to endeavour to ameliorate to some small degree the disasters which are still overtaking this Colony. My opinion was shared by two other members of the Committee, with the result that we drew up a Minority Report in which we stressed that the true picture delineated by the data collated by the majority had not been faced in the Majority Report but had been glossed over, and that a false impression had been conveyed to the effect that the tide had already turned and that amelioration of the position was only a question of time. We therefore presented our deductions

from precisely the same data. The deductions we made are known to everybody who has read the Minority Report, so there is no need of my elaborating them here; neither do I propose to run through the numerous recommendations and suggestions made in the rest of the Report, which will be found finally summarized in Chapter 8, pages 171 to 183. I will, however, add this: that although many of us do not consider that the recommendations made were adequate, nevertheless we all admit that the Report does contain very many valuable suggestions and proposals.

I will therefore now pass on to the action taken, or rather which may be taken in the distant future, by Government on such proposals. In view of the unfortunate history of this Committee, one would have thought that the proposals put forward would have been regarded as of the utmost importance, and that Government would have considered them and acted with the greatest celerity. But what, in fact, has happened? The Committee sat in April of last year and reported in October. We have now patiently waited from October until the end of July, thus losing no less than nine valuable months, at the end of which time we are favoured with a White Paper which can hardly be said to reflect any undue enthusiasm on the part of Government to take positive action.

I am afraid that the truth of the matter is—and that is why I went into the history of its appointment—that Government did not regard this Committee as being really important. On the contrary, they were inclined to regard it, certainly in its initial stages, as being rather a nuisance and rather dangerous, in that unless carefully watched it might make inconvenient exposures.

In the motion to which I am speaking we criticize the measures proposed by Government in the White Paper, and I certainly think that our criticisms of what can only be described as a singularly uninspiring document are thoroughly justified. With the sole exception of paragraph 27, it contains very little but vague suggestions as to what action might possibly be taken in the future.

In paragraph 27 we are definitely informed that Government have transmitted a despatch to the Secretary of State recommending that the capital of the Land and Agricultural Bank should be increased by half a million pounds; also that the monetary limit for advances to individual farmers should be increased. This is satisfactory, and I only hope that the Secretary of State will pay due regard to the representations made by Government. I would, however, add that this recommendation is one which has been persistently put forward by the unofficial community for some years past.

But beyond this recommendation, what do we find? We do not find very much! Firstly, that we cannot afford a Statistical Department. Then we are told that a Standing Board of Economic Development may be appointed in the future after further information has been received from the Government of Tanganyika. One would have imagined that during the period of nine months which has elapsed an opportunity might have been found to obtain that information before now. As far as railway problems are concerned, we are told that the question of a reduction in annual depreciation charges has been again referred to the Secretary of State, for the umpteenth time, I suppose, and that the question of railway rates levied on maize has been referred to the hon. the General Manager, with, no doubt, the gratifying results that we heard a week or two ago. Apparently little can be done to encourage the shade-drying of hides because of a new method which might be invented. On the subject of overstocking, although great stress was laid in paragraph 421 of the Report on the importance of taking immediate steps to give effect to the recommendations laid down in paragraph 2040 of the Kenya Land Commission Report, we note that no reference is made to such recommendation. I need hardly say we are told it is necessary to institute propaganda in order to encourage natives, who cannot afford to pay for it, to eat more meat, and we are told that the Provincial Commissioners are examining a scheme for freezing and canning 100,000 head of cattle. Where they are going to be frozen or canned is not disclosed. A project for a fertilizer factory at Eldalat and the Athi River bridge are mentioned. Both of these projects were, of course, in existence long before the Economic Development Committee sat. Several subjects are, we are told, in due course to be referred to the Standing Board of Economic Development, notably the subject of eggs, and notably the troubles or difficulties of the gold-mining industry. Apart from the foregoing, Government gives its usual blessing to any attempt at piecemeal maintenance of high internal shilling prices for maize, butter, etc., without, of course, drawing undue attention to the inconvenient fact that our internal market is a very limited one. No reference is even made in the White Paper to the frightful importance of the subject of loan conversions, which was referred to in the Economic Development Committee Report.

So much for the Sessional Paper. I have, perhaps, been unkind, but as I stated when I commenced my remarks, my task is to demonstrate that the measures proposed will not in any way materially rectify the existing situation. The White Paper, except as regards its allusion to the Land Bank, reflects a policy of "Wait and see" or "Let it be referred to another

committee" or "Let us avoid the issue", and this no less than nine months after the Report of the Economic Development Committee has been available.

I now turn to the second part of the motion, in which we say that we consider the gravity of the position as disclosed by the Report calls for the immediate introduction of far-reaching remedial measures, and we ask for the reasons why Government have negatived such methods of relief as have been suggested, and we further ask what alternative proposals Government has got.

The Report is now many months old, and it may be claimed by those who do not agree with the terms of this motion that the position has now altered for the better, and that the view we take is entirely unjustified. I feel therefore that I must endeavour to demonstrate that the view we take is justified. Naturally, Your Excellency, I admit that the financial position of Government is very much better, but it does not follow that because Government are temporarily finding it easier to collect the revenues required to meet their overhead expenditure that of necessity there is any real betterment in the financial position of the individual citizen, or any permanent and basic improvement in the economic position of the Colony as a whole.

As regards Government finances, Your Excellency pointed out in your Address from the Chair at the beginning of this session that it was anticipated, as late as November of last year, that we should end the year 1934 with a deficit of well over £50,000, but that when the accounts for 1934 were finally closed it was found they disclosed a surplus of £2,244. This result is certainly gratifying, and was due to three main factors: Firstly, to a sudden very material rise in receipts of Customs duties during the months of November and December; secondly, to the fact that departmental savings exceeded the estimates anticipated; thirdly, to an appreciation in the value of Government's investments, which had taken place in certain funds.

The increase in Customs duties, which I understand is still being maintained, can be attributed partly to the fact that stocks held by merchants had reached a very low level, and the merchants felt obliged to restock, and were encouraged to do so on a bigger scale because of encouraging reports of the Uganda cotton crop, and owing to the fact that very considerable sums of money which had been expended in the gold-mining areas of this country were now beginning to circulate. The Customs position is also affected by the importations and requirements of the gold-mining companies, and quite considerably by Japanese dumping.

The second factor, i.e. increased departmental savings, was greatly stressed by Your Excellency in your speech. On calculating the anticipated deficit in November last, a conservative estimate of some £45,000 in departmental savings was made. Under the Treasury system of accounting it is quite unavoidable that there should be departmental savings, and we have referred to this subject in the Economy Report. I would go so far as to say that Your Excellency's financial advisers must have anticipated that the savings for 1934 would be in excess of the £45,000. The actual amount saved was £80,624. I should, however, like to add that the comparable figures of departmental savings for the past four years, calculated on the same basis, are as follows:—

1931	...	...	...	...	£304,846
1932	...	...	...	...	£219,887
1933	...	...	...	...	£145,964
1934	...	...	...	...	£80,624,

so that although the savings achieved during 1934 were creditable, they were not phenomenal or unprecedented. So much for last year.

We now, I think, must turn to this year, and we are glad to see that Government's financial position is still being improved. Such figures as are available go to show that revenue has considerably exceeded estimates for the first four or five months. The comparison made by Your Excellency to demonstrate this improved position was to take the four months of 1934, in which there was a big deficit, and compare them with the first four months of 1935, in which there was a considerable surplus. Whilst it cannot be gainsaid that the revenue of the first four months of 1935 has exceeded revenue collected during the first four months of 1934 by £83,990, and that the return of revenue and expenditure for the first four months of 1935 shows an improvement of £74,000, I would suggest that the simplest way of putting the position is to say that the revenue collected during the first four months of 1935 has exceeded expenditure by £33,000, and thus, this year, we are £33,000 on the right side, whilst last year for the same period we were £40,000 to the bad on the wrong side. Last year the deficit was put right by an unexpected improvement at the end of last year, and equally the better position we are in to-day might easily be found to be less hopeful were we to receive a setback during the next six months. I do not say that I anticipate a setback, but I do say that it would be unwise for Government to think that their revenue position was unduly secure, especially if one dissects it, as I feel I ought to do now.

From what sources are we getting the increased revenue this year? Firstly from Customs Duties, and secondly, from Taxes, and chiefly as regards the latter from native sources, but in order to arrive at some proportionate appreciation, not only of Government's but of the individual's position, it is essential that the sources from which these moneys are derived should be very carefully analysed.

I suggested a few moments ago that the improvement of the Kenya Customs position might not be due to an improvement of conditions generally, but might be attributable to importations effected by gold-mining companies, and to the influence of wages which were being paid in gold-mining areas to a certain section of the native population. Such a statement can be proved. On page 24 of the Annual Trade Report for 1934 will be found a tabulation of Kenya's share of Customs revenue. According to these figures, revenue collected by Kenya in 1932 was £595,336; in 1933, £583,852, and in 1934, £611,572; this, of course, as against a figure of £900,000 which used to be collected in 1928 and 1929. Incidentally, I should like to point out that the figures I have quoted are not the same figures as appear on page 5 of the Trade Report for 1933. The one set includes Excise, and the other set of figures does not, which is of course really immaterial, but my object in making this observation is to point out that these Trade Reports are never drawn up on the same lines for two consecutive years, so that it is almost impossible even with practice to follow up any line of statistical inquiry. As an example, take the value of retained trade imports. The figures as given on page 27 of the 1933 Report must have been worked out on quite different lines both from the retained trade import figures given on page 14 of the 1934 Trade Report and from the figures submitted by the Customs Department to the minority of the Economic Development Committee when they drew up their report. Those figures will be found on page 228 of the Economic Development Committee's Report. Your Excellency, I therefore hope that it may be possible that Government will in future try and devise some means of uniformity in the yearly compilation of this extremely important report.

Anyway, whichever figures we take, it does not alter the position, and the fact remains that our Customs revenue improved last year by £28,000 or £29,000. A small portion of this improvement can of course be accounted for by the fact that certain duties were increased during the last two years, but an examination of what types of goods have contributed to this increased revenue will help to show us what section of the community is buying to-day. Without elaborating this at inordinate length, I would refer members to pages 33 to 36 of the 1934 Trade Report, in which appears a summary of the

principal articles imported during the last three years. As would be expected if my deductions are correct, you will find that the increase takes the form of iron and steel manufactures, industrial machinery, fuel oil, lorries, motor cars and petrol, all of which, I submit, are destined for the mining industry, and various types of cotton piece goods are also increased, part of which are required for native trade, and part of which have come in as a result of Japanese dumping.

These deductions can still further be substantiated by looking at the table on page 29, which distinguishes countries of origin. In that table it will be noted that there has been a large increase in imports from Great Britain, i.e. mining machinery, etc., a large increase in imports from Persia, i.e. oils and petrols, both also for the mining industry, an increase from the United States, accounted for by petrol, oils, cars and lorries, also for use in connection with mining development, and, last but not least, an increase of no less than £320,000 during last year in the value of imports from Japan, which I think goes some way to show that there must have been some Japanese dumping. As against these increases, there have been decreases in precisely the classes of articles that one would anticipate if the deductions I have made are correct.

We now turn to the improvement in tax collections, and we must ask ourselves whether this improvement is due to better conditions or to some other cause. As far as native taxes are concerned, fair rains and a cessation of the locust infestation have of course helped to restore the position. But to my mind the main factor which has led to increased revenue from this source has been the unprecedented intensive pressure brought to bear by Government since October last year. This pressure in the case of non-natives takes the form of a severe combing-out by the Revenue Office, which I think is not a bad thing, but in the case of natives by unprecedented activity on the part of Administrative Officers, and this allegation can I think be substantiated by the fact that no less than £34,000 of tax arrears have already been collected this year, and by the fact that Government have seized stocks and produce very early in the year to be sold at very low prices in order to secure their taxes.

On the other day, Your Excellency, during this very session, the hon. and venerable member representing native interests told us that the natives were selling maize at 50 cents per bag in order to pay their poll tax. Now I wonder if it has occurred to the hon. members opposite what this means? Presupposing that a native cultivating with a hoe can produce 8 bags of maize per acre, which after all is not a bad average, it means that the native has with a hoe to break up, plant and harvest no less than 3 acres in order to meet the tax he has

to pay on one hut. I submit, Sir, that it is impossible for any man, white or black, to carry on and do that for any long period of time, any more than it is possible to seize cattle and sell them for Sh. 3 per head with impunity for an indefinite period.

So much for the analysis of revenue and for my comments on Government's financial position; and I think that I have said enough to demonstrate beyond doubt that one factor and one factor only has prevented the total collapse of even Government's position. That factor is the timely influx of extraneous moneys into the gold-mining industry. Let us now consider a very much more important aspect of the problem of the economic situation of the Colony as a whole and of the individual as apart from that of Government.

In doing so, I think one has to begin by issuing a warning that it would be folly for us to allow gold-mining prospects to befool the main issue. Personally, I admit that I am sanguine with regard to this new industry, which we are all delighted to note is making rapid strides. I have said we owe a great deal to it in that large sums have been spent in wages, much needed employment has been given to citizens, and a great many purchases of substantial amounts have been made locally. At the same time, one must endeavour to retain some sense of proportion. The gold-mining industry has come to stay, and in the near future we shall probably see quite a number of fair-sized gold-mines profitably operated in this country, or I hope so, but I can see no indication of a second Rand here, nor even of a second Ashanti goldfield. Furthermore, I think it is not improbable that during the next year or two gold-mining companies may possibly be spending less money locally than they have done in the immediate past, for the reason that they have now passed the stage of wild prospecting, and are getting down to development and trying to get to a stage of production, but the really important stage of export of gold in large quantities must be quite a long way off. Bearing these aspects in view, I cannot believe that Government seriously consider that it is feasible to maintain their structure, let alone to maintain the equilibrium of the Colony as a whole and of its inhabitants, merely on moneys coming in, i.e. on imported capital attracted by a comparatively embryonic gold-mining industry. Surely, Sir, the only sound basis to a country's economic structure must be its actual productive capacity and its exports, just as surely as the prosperity of the citizens of a country must depend on being given a fair chance of receiving full value for their work. It may be that we shall in due course get to the stage of exporting considerable quantities of gold, and it may be that the price of gold will stay at the present high price, but those are surmises as to the future, and what concerns us now is the present.

At present this Colony must rely to a very large extent, if not almost entirely, on agriculture. If this Colony is going to go on on the lines we on this side of the House anticipate, it is agriculture and only agriculture which must be its mainstay. Let us therefore examine the export position as a whole, as one indication as to whether or no the citizens of this country are being given a reasonable chance of survival.

I know when I talk about exports that hon. members opposite will claim that other things have to be taken into consideration besides domestic exports, in that apart from domestic exports we have invisible exports and a considerable entrepot trade. Now, Sir, this red herring can, however, be exploded by looking through the various annual reports, because the entrepot trade really only affects a few, a comparative minority, amongst the citizens of this country. I maintain that the position of domestic exports forms one of the most tangible indications as to the prosperity of the country and its inhabitants. The total value of our domestic exports during the last few years has been as follows:—

In 1928	...	...	...	£3,266,403
In 1929	...	...	...	£2,745,910
In 1930	...	...	...	£3,422,571
In 1931	...	...	...	£2,343,874
In 1932	...	...	...	£2,280,982
In 1933	...	...	...	£2,246,999
In 1934	...	...	...	£1,909,871

This shows that our domestic exports fell from £3,266,000 odd in 1928 to £1,900,000 in 1934. Let us look at agricultural exports, which of course include native exports. The figures during the last few years have been these:—

In 1929	...	...	...	£2,388,745
In 1930	...	...	...	£3,110,327
In 1931	...	...	...	£2,063,241
In 1932	...	...	...	£1,977,406
In 1933	...	...	...	£1,901,929
In 1934	...	...	...	£1,602,212

which will show that our agricultural exports have fallen from £3,110,000 in 1930 to very nearly half (£1,602,000) in 1934. The figures I have given will also serve to stress the point which I made a minute or two ago, namely, the extent to which we depend on our agricultural exports. In the year 1934 our agricultural exports were the equivalent of 84 per cent of our total domestic exports; in 1929 they were 88 per cent of our total domestic exports. It is therefore quite obvious that even at the present time we have to rely chiefly on our agricultural exports.

From a casual glance at those figures it might not un-naturally be presumed that drought and locusts had caused a substantial falling off in the quantities exported, or, alternatively, that farmers and planters were holding back their crops pending better prices. I only wish that such a simple explanation would suffice. Actually, of course, the reverse is taking place. In spite of the fact that many individuals have been engulfed by the economic storm and that a great deal of land has reverted to bush, the survivors by dint of tremendous exertions have actually produced latterly in greater quantities. To prove this, I may add that in the year 1929 our total tonnage of agricultural exports was 90,233 tons, valued at £2,388,745; in 1933, the last year for which figures are obtainable, our tonnage amounted to 127,493 tons, or one-third more, and its value was only £1,901,929, or between a quarter and a fifth less. The average price received in 1929 was £26.4 per ton, whereas in 1933 it was £14.9 per ton.

As a further example of what is happening, let us take an individual commodity—maize. In 1920 we exported 335,408 cwt. of maize which were worth £183,973. In 1933 we exported 1,156,473 bags of maize, three and a half times as much or an increase of 250 per cent, and it was only valued at £218,514, or an increase of 17 per cent. Such examples can be quoted over and over again.

It is therefore obvious that we are doing our best to increase the quantities of our exports, and in this I am of course including exports of native origin. But what good has this effort done? If hon. members care to glance at the very depressing graph on page 109 of the Annual Trade Report for the year 1934 they will find that in spite of all our efforts in the direction of increased production we are back to the level of 1920 as regards the sterling value of our total domestic exports, and meanwhile our commitments have increased enormously.

If therefore we follow a line of investigation based on the Colony's exports, the only conclusion we can come to is that the position both of the individual and of the Colony must have been precarious for the past few years and is getting worse. There are, however, many other lines of investigation, and they will all tend to bring us to the same conclusion. Take, for instance, a line of inquiry based on the individual producer's balance-sheet and his margin of profit. On pages 33 to 35 of the Economic Development Committee's Report, and still more on page 213, section 122, a picture is presented of the fall in price which has taken place in the products of each of the industries on which this Colony depends. On pages 252 and 255 will be found very carefully worked out costs of production. A few moments' study of the data collated on these pages

should serve to convince even the most stubborn optimist that the prices of export commodities over practically the whole field are less than the costs of producing them. Nor is the position improving. With the sole exception of sisal, prices are still going down, and even the coffee industry, which has hitherto always been regarded as the one stable industry in this Colony, can to-day only be said to have a somewhat gloomy outlook.

Thus any line of inquiry based on the position of the individual brings us to precisely the same conclusion, that things are getting worse, and wholesale bankruptcies are only a question of time unless some improvement takes place. The only hope for the moment that the individual can see lies in a disaster. It lies in a war between Italy and Abyssinia and our getting a market in that way, and when we get to the pitch of depending upon a war for our survival we are in a pretty bad way.

HIS EXCELLENCY : I do not know if the hon. member would like to take the interval now?

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : I have got a good deal more to say.

HIS EXCELLENCY : I think we had better adjourn for the usual interval.

Council adjourned for the usual interval.

On resuming :

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : Your Excellency, I think that I said enough before the interval to show that any line of inquiry based on the position of the individual brings us to precisely the same conclusion : that the position of the individual and the position of the Colony as a whole, as separate from Government's finances, are in a bad way.

The present disastrous state of affairs obviously derives from the fall in "price level" or the appreciation of the value of the pound sterling in terms of commodities. During the last budget debate both the hon. Mr. Pandya and myself gave many figures bearing on this subject, and I have no intention of going over all of them again. In fact, I must apologize to the House for the number of figures I have had to go into this morning. If members are interested enough to pursue the subject any further, a study of any early copy of the agricultural census of the Colony, say, dated about 1920 or 1921, which was the earliest, I think, and compare it with one about 1928 or last year's or the 1933 Agricultural Report, will prove interesting.

But what is the good of going on painting this depressing picture? The picture is there for all who care to see it, and is clearly reflected in both the Majority and Minority Reports of the Economic Development Committee. What we do regret, Sir, is that we can see no appreciation of that picture reflected in the White Paper. We therefore cannot help asking ourselves—does Government realize the position or does it not? In other words, to refrain from repeating what I said yesterday, has Government got a policy or has it not?

Of course, it may be that Government really do believe that the position can be met by the appointment of a Board of Economic Development; in other words, by passing the buck on to somebody else, or by merely increasing the capital the Land Bank by half a million sterling. I can, however, hardly credit that Government can for one moment believe that these measures are even going to begin to deal with the basic situation, even though coupled with a continuance of the policy we have followed in the past of, by statute, maintaining the high level of internal prices. On the other hand, it is also possible that Government is confident that it can maintain itself, and I suppose the Colony, or some section of it, on the gold mining industry and on the native, on the presumption that the gold mining industry shows signs of becoming a good revenue producer, and on the presumption that the native has no costs of production, and therefore it is only a question of stirring him up into further activity in order that he should increase his production and necessary revenues are forthcoming. This is an appalling economic theory, but one, I am afraid, that is held among officers of the Colonial Civil Service, and, I venture to predict, in the Colonial Empire as a whole, and if this theory is held to a greater degree it will lead to great trouble in some of our dependencies before long. Anyway, if Government, or, as I believe more probable, if the Colonial Office are really thinking along these lines then, Sir, it is high time that some definite statement to that effect was made, because it will mean that every ideal for which we have struggled in the past is going to crash, and that white settlement will be doomed unless we ourselves take some action of self-preservation.

If, as I hope, on the other hand Government do realize that there is a limit to producing at a loss, and that any prolonged attempt of legally enforcing the maintenance of higher internal shilling prices in a country with only a limited market will in the long run only make matters worse; if Government do realize that they have only suggested hopelessly inadequate minor palliatives and that so long as the existing sterling "price level" remains, it is only a question of time before East Africa as a whole will be sucked dry by its London obligations and its overhead commitments; if, Sir, Government do realize

that the only effect of good rains this year will be to permit a few of the very best farmers in the country to merely carry forward their obligations instead of increasing them; if Government realizes that the banks, merchants houses, and the commercial community are all extremely worried over the position, as many of them consider that although it may not happen this year or it may not even happen next year, it is only a question of time before the card castle which Government's lack of policy has substituted for the fairly firm structure which we had evolved, comes crashing to the ground; if Government do realize these facts, then we consider we have a right to be told what remedial measures Government or the Colonial Office propose to take.

We are all thoroughly aware that the troubles which confront us are not peculiar to Kenya; they are to some extent world wide. Nevertheless, every other country, including England herself, has had to do something to remedy their effects, and has had to seek relief either by a reduction in the exchange value of their own monetary unit, or by a conversion of their loans, or by a suspension of their sinking funds, or by a taking over of all farm bonds, reducing interest to a nominal figure and writing off a substantial proportion, or by providing, as in the case of the Union, colossal railway concessions, etc., or by flooding the country with new loan money or, in many cases, by frank default, or as in many cases, by a combination of two or three of these methods and efforts.

This being the case, we are at a loss to understand why the Secretary of State for the Colonies should imagine that the forty-nine dependencies over which he has control should differ from all other comparable countries and territories. We can only attribute his complacency to the fact that the majority of such territories are populated by peoples who are inarticulate and cannot understand as yet what is happening. That, however, is not the case in this Colony, and I should have thought that this Colony presents an example of the results of bureaucratic insensibility so clearly as to force belated attention in that apart from the disabilities shared to a greater or less extent with the forty-eight remaining dependencies we in Kenya carry the highest proportionate administrative overhead, the most onerous loans and we suffer from the aftermath of an extremely inequitable rupee fixation. However, in view of the fact that neither our Government nor the authorities in Great Britain appear in the least anxious to do anything, the unofficial community, whose very existence is at stake, have not unnaturally during the last two or three years put forward remedial proposals. The very fact that these proposals were put forward by those who have made this country their home, by those who realized that their very

existence and the future of their children is at stake (an anxiety not shared by those set in authority over us, for their position is secure) the very fact that such people put forward remedial proposals should have been sufficient to ensure that the most meticulous consideration should be given to all such proposals.

I shall, however, now show that this has not been the case. The first proposals made were, as would be expected, on the lines of reductions in overhead expenditure. Pressure to this end was brought to bear by the unofficial community but was resisted up to the last moment by Government, who were nevertheless in due course forced to take action by virtue of the fact that their estimates of revenue failed so signally to be realized year after year. The appointment of the Expenditure Advisory Committee was only achieved after a long struggle and then only with very strictly limited terms of reference. Suggestions for the conversion of our very onerous loans were turned down in the interests, I suppose, of the English bondholders by the gentleman who was supposed to look after the interests and to be responsible for the welfare of the whole Colonial Empire. Failing this method of relief, proposals were then put forward for the provision and expenditure of further loan moneys to relieve the internal position. These proposals I have already referred to in the course of these remarks. The answer was, of course, "No."

The last proposal to which I will refer is one which has been made from time to time during the past two years. It is the one which was definitely put forward in paragraph 276 of the Minority Report of the Economic Development Committee, to the effect that consideration should be given to the avenue of relief followed by innumerable other territories and countries, i.e. the reduction of the exchange value of the East African shilling to a point at which costs and prices could be brought into some sort of harmony. This proposal once again only resulted in our obtaining a completely unreasoned and somewhat bad-tempered negative, uttered on no less than three occasions. Incidentally, on one occasion that negative was uttered I maintain quite unconstitutionally during the period when the very Committee, which Government had itself appointed to go into such proposals, was sitting.

Your Excellency, in view of the serious crisis through which this country is passing, are we not at least entitled to expect some reasoned argument in justification of Government's repeated refusals to adopt proposals put forward by those who are really interested in that their very existence is at stake, proposals moreover which are based on methods of relief which every other country in the world has been driven to adopt?

I fear I have made a very long speech and a very dull one, but my excuse is that this subject is extremely comprehensive and one which could easily be spoken to at very much greater length. I think, however, that in my remarks I have at least substantiated the necessity for the motion which I have put forward in that I have demonstrated that the measures proposed in the Report of the Economic Development Committee and accepted by Government in the Sessional Paper in no way rectify the existing situation. Further, I think that I have shown that the present position is serious and does call for the immediate introduction of far-reaching remedial measures. Lastly, I consider that in view of the gravity of the position which I have established we have a right to be informed of the detailed reasons which have occasioned Government to negative suggestions we put forward ourselves, and to be told what alternative steps Government propose to take. (Applause.)

Your Excellency, I beg to move.

THE HON. E. H. WRIGHT: Your Excellency, I beg to second.

Sir, the very nature of this motion, coupled with the existence of this Sessional Paper, would indicate that there is something radically wrong with the whole system of government, and the better to work out the thesis I feel at the outset that I cannot do better than quote an extract from Sir Edward Grigg, a former Governor of Kenya, who, lecturing on "The Constitutional Problems of Kenya," spoke of Kenya as—

"having a theoretically all-powerful Governor at the apex of an irremovable Civil Service; but these public servants of the Crown are under the orders of the Secretary of State for the Colonies, who is himself responsible to Parliament. In simple terms therefore the Government is a local autocracy subject to a distant democracy."

It might, perhaps, not be impertinent to give a definition of democracy as "a system of government of the unfit by the unscrupulous."

Sir Edward Grigg goes on to say:—

"The distant democracy may change its rulers as it pleases at shorter or longer intervals for reasons which have no connection with the Colonial Empire, and the whole of that Empire may then undergo a change of policy . . . Whatever they (the local autocracies) may think themselves on the problems with which they deal, they are in duty bound to obey the orders and reflect the moods of a remote and busy Parliament, elected as a rule on issues which are entirely irrelevant to those problems. . . Bureaucracy is not in this century a popular system of"

Government, but its difficulties are obviously aggravated when it is subject to the accusation of representing a remote, inaccessible and ill-instructed power instead of governing on the merits as its own officers with all their local knowledge see them."

Now, Sir, I suggest that taking this Sessional Paper setting out briefly the views of the Government of Kenya, we have a clear case wherein the views of an "ill-instructed power"—and a remote one at that—only are represented, and the local views are completely disregarded, notably in the very brief reference in it to the recommendation in the Minority Report on a matter within the Committee's terms of reference but which had already been prejudged by the Secretary of State, for the last paragraph of the Sessional Paper reads:—

"In view of the statement made by the Secretary of State for the Colonies at his interview with the European Elected Members of the Legislative Council on the occasion of his visit to the Colony during 1934 (a statement published in the Press), and in view of the subsequent public statement made by Sir Joseph Byrne on the authority of the Secretary of State, it is not proposed to pursue the matter further."

That, Sir, is in respect, as you know, of the recommendation of the Minority Report arguing the case for devaluation of the currency. Well, that is a charge of bad faith, and it shows that no matter what the result of their examination, regardless of what they should find in their examination of the economic position of this country, certainly in respect of the currency, our recommendations regarding that would be completely disregarded by order of the Secretary of State.

The reference to the statement of the Secretary of State is rather remarkable. That statement begins by characterizing the inflation proposal as, in his consideration, "utter madness" or worse than that, and he goes on to say it would shatter our credit, forgetting the while that he had previously explained carefully that our borrowing capacity had reached its limit, so that the statement in itself was meaningless, if not exactly stupid. Finally, he makes a remark to show that he went by his own conviction, which apparently the home Government shared, "that that way damnation lies."

So, Sir, we all look in vain, and the hon. mover has asked for it emphatically, for any reasoned argument against the only measure, remedial measure that the Economic Development Committee put up, and that in the terms of the Minority Report. But, to judge by the Sessional Paper, it would seem that we are expected calmly to accept the dictates of that one-time Secretary of State simply because he did not

like the matter and because, as Government says, "it is not therefore proposed to pursue the matter further." So, Sir, the attitude Government has displayed in this Sessional Paper, coupled with the pontifical arrogance of Sir Philip Cunliffe-Lister, goes beyond all bearing.

The people of this Colony feel, the producers of this Colony feel, definitely, that while this condition of Government prevails they are never likely to get a square deal.

To quote a little more again from Sir Edward Grigg, in the same very interesting lecture on constitutional problems, he went on to say:—

"No constitutional devices . . . will prevent a further weakening of Imperial authority in Kenya if that authority swings from one policy to another or ignores local opinion or pursues one-sided aims. If our people there are goaded into further political agitation, they will win. Our colonists always have and always will. Let us at all costs then, while there is yet time, avoid the folly, so often perpetrated elsewhere, of driving them to extremes."

That, Sir, was Sir Edward speaking in 1933.

But go a little further back, and a little paragraph from the Hilton Young Commission Report in 1928 is not to be ignored:—

"Local opinion, when it comes into conflict with distant authority, has always the advantage of more direct and immediate contact with reality. When it comes to a real struggle, opinions derived from the reading of dispatches have little power to withstand those formed by contact with life, and the Imperial Government tends in consequence to surrender in the end to the more full-blooded convictions of those on the spot."

The authorities I have quoted from are, I submit, better qualified to judge of our problems than Sir Philip Cunliffe-Lister who, I think, holds no monopoly of brains, and it is comforting to know that having latterly been driven to extremes by the folly of the old Secretary of State we are assured on such excellent authority that in our case we are bound to win.

The hon. mover in his comprehensive speech for the motion, dealt very well with the plight of the farmers, which chiefly concerns me; so well indeed that it seems hardly necessary to stress the matter unduly. But I do, Sir, want to emphasize one or two of those points.

I know of farmers, and good farmers, who for five or six consecutive years have failed to make ends meet. Good farmers. In some cases their plight is desperate, pitiable,

but they are a class of people not very weakly nor given to unduly whining about their difficulties, yet who feel that the odds are desperately weighted against them. A series of bad years of drought, coupled with locust infestations, and their other depredations, have failed to shake them, followed up by other evils such as very very low price levels quite inadequate to meet production costs while at the same time having to pay the same burden of transport rates, then relatively high, but now they feel they cannot cope with it. They are going, and they are wondering when the exodus is going to stop. In a district that I know very well, there are 20,000 acres of once fertile fields completely out of cultivation. Where are these settlers? Are there more going? Can the Colony afford to lose them? And that is the issue involved in the motion so well put by the hon. mover. To these farmers, many of them pioneers, who started with high hopes the possession of the land and the handling of it, means much more to them than people outside the land can understand—they get deep-rooted into it, and it is a sentiment that must be appreciated to be understood. That deep-rooted attachment to the land, its transformation into fertile fields, is far greater than one can imagine, considering its hope and well-being and preservation greater than life itself. But they feel, too, when their difficulties are extended year after year that there is something inequitable about the scheme of things when the primary producer attempts to sell his produce at figures definitely unremunerative. He looks around and hears a proposition put up by a committee well qualified to deal with the situation who in a report shows the whole facts with ruthless clarity. The minority of that Committee have derived from those facts the unassailable truth in my assumption that there can be only one remedy.

Now Government, in its lighthearted fashion, because a past Secretary of State says "that that way damnation lies." pass the matter up. Settlers, Sir, will not have that; they want some reasoned argument as to why remedial measures operating fairly beneficially in other countries are expressly to be avoided here.

Not only does the Minority Report derive from the excellent data in the Majority Report an unassailable conclusion, but it does put up this constructive plan, and the producers of Kenya want to know and hear full and reasoned arguments for its rejection. They are not satisfied that that is a fair way to treat such a case.

So, Sir, in my last few words I would ask that Government will give us in reply to this motion those reasoned arguments, cogent reasons, if there be any—and I have heard none yet—against the devaluation proposals put up as the sole means whereby the producer has a chance at all. It will

not be sufficient for Government here to say that because the late Secretary of State says that that leads to damnation that it cannot therefore be done. It will not be sufficient to say that it is an impracticable proposition and will not work because, after all, we have the whole producing world giving ample evidence that it operates very well elsewhere. The producers of Kenya want nothing less than reasoned argument for the rejection of these devaluation proposals, and if they are not forthcoming Government in a last resort must surely say, if it is a Government at all, how they are going to cope with the problems shown in this Report and how they are going to keep the farmers on the land.

We must all be aware that the habit of Government is rather to suppress the symptom than to remove the cause, but I do ask you, Sir, to say that Government in this important instance shall get to the cause and remove it with all speed. I put grave emphasis on that, because other than devaluation I do not know what the treatment is to be. I have searched around, and I have heard no cogent reason against it and can find no other solution. A restoration, and that speedily, of price levels is the first essential to the existence of the people on the land, and when I say that I identify the natives with the settlers. If that is not achieved soon then we—and if Government would only see it, Government itself—must soon become involved in a common chaos.

THE HON. A. C. HOEY: Your Excellency, in supporting the motion before the House the hon. mover has covered the ground very fully, and I am going to try and put to you the position of the producer in the most simplest way that I possibly can and, without quoting any references, to tell you in straightforward manner what the position of the producer is.

I am not going to start and paint a great gloomy picture of the producer to-day. He has got his troubles, but thank goodness in this Colony you have a type of man who is determined to stand up against them and to do everything he possibly can to win through—he is not going to surrender lightly.

The root cause of his trouble is the fall in commodity prices, but as we are unable to wave a magic wand and restore those prices we have to look around and see what we can possibly do to find some internal form of relief to the producer, whether he be native, European or Indian, because, as everyone will agree, the prosperity of this country is based entirely on agriculture.

There is one point which has been referred to by the hon. mover which I think requires a great deal more information, and that is the question of loan commitments of the Colony.

The other day we heard of a big conversion loan, and to the man on the land it leaves him in a position of amusement that nothing whatever is done as regards the public debt of this country by way of conversion, either to embrace the whole of the Colonial loans or to deal separately with the Kenya position. This Report brings out the fact clearly, that if a conversion scheme could be carried out it would mean a saving on interest of approximately £200,000 a year. I maintain that there is every cause for criticism of Government on this heading, because there has been no authoritative statement issued by those who are responsible for the negotiations of this Colony's loans. I do not know if it is the Crown Agents in London who do this business in connection with the Colony's loans, but whoever they are there should have been some statement made as to why it was impossible to go ahead with the conversion. Of course, I do not believe it is impossible, but possible, and that is what 99 men out of 100 feel in this Colony to-day, and they feel that lack of action at home is causing a great many producers here to feel they are not getting the sympathetic treatment due to them.

If we could have a conversion which would mean a saving on interest charges to the extent of £200,000 a year, what would be the immediate result? The immediate result must be that a great deal of that £200,000 would go to the railway, because of the railway loans, and that would mean at once a reduction of railway freights which is so absolutely essential to this Colony. The policy of extortion by the railway to-day is the greatest hardship on production that the country could possibly suffer from, and I say that with the fullest possible meaning. We should get a great deal of relief in that way. And what is the position? The position is that we are left high and dry, nobody knows exactly what is going to happen, there is no relief. I am not one of those who to-day think we should introduce any vast ideas of subsidies, because I do not believe in subsidies, and I believe we have got to look inside for relief and especially in connection with the railway position.

That unsatisfactory position does prevail, and it is causing very deep concern, and there is an atmosphere of very considerable uneasiness and really despair in some quarters over this state of affairs. What does it come down to? I maintain it comes down to this point of view, that the form of control which is exercised over this Colony is so completely bureaucratic that we cannot possibly hope to get along any happy road of progress in this Colony until we either break away from that control or get that form of control modified to an extent to give the people of the country the opportunity of having a very much greater say in their own affairs than they

have got to-day. (Hear, hear.) I think, Sir, that is the position which is being forced on us, and it is a position we have got to realize.

I am a lover of Kenya, I have been here many years, and I do feel that if this country is to progress it is necessary that more happy relations should exist between the Government and the people of this country. There should be, and I am sure every fair-minded man will agree, a spirit of confidence and goodwill between Government and the people, because it is only by the goodwill of the people that Government can really govern. I regret to say that that is not the position to-day because we feel that we have got so little say over our own affairs—in this House we have motions, we have divisions, and it is always that authority on the other side which is directed by that bureaucratic authority of Downing Street which prevents the people of the country having any real say in their own affairs.

If that is to continue, I deliberately say this: that we on this side of the House are wasting our time. (Hear, hear.)

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, in the first place I wish to congratulate the hon. mover on his very able and exhaustive speech. (Hear, hear.)

I fully realize, Sir, that the gravamen of the motion is that Government has felt unable to accept the minority recommendation that there should be devaluation of the East African shilling. (Elected members: Oh, no.) I am leaving it to the Treasurer, who is also Currency Officer, and who will address Council later, to explain why Government has been unable to give effect to that recommendation.

The Economic Development Committee was composed of those members of the community, unofficial as well as official, who were regarded as the most competent and qualified to examine proposals directed towards improving the Colony's balance of trade and towards the maintenance and development of its agricultural and industrial resources and to advise Government on those proposals. The Report of that Committee is the subject of the motion before the Council to-day. Government has fully considered the recommendations of the Committee, and the action which it has taken and is taking is recorded in Sessional Paper No. 1 of 1935.

Now, Sir, I could understand this motion being brought before the House if the position were that Government had rejected *in toto* the recommendations of the Committee. But what is the actual position? Government has expressed concurrence in or has accepted 26 out of 29 recommendations of the Majority Report. The inference therefore surely is that

those recommendations which Government has felt unable to accept are the most important recommendations of the Report and that the value of that Report has been vitiated by Government's inability to accept those recommendations. I should like to refer briefly to what those recommendations are.

Firstly, that there should be a Statistical Department. Well, Sir, Government felt that the financial position would not justify the re-creation of a Department whose abolition was due to a direct recommendation of the Expenditure Advisory Committee made so short a time ago. Government however fully appreciates the value of statistics, and it is proposed that one of the duties of the secretary to be appointed to the Standing Board on Economic Development should be the preparation and collation of statistics of value to the Colony. The statistics will not be quite so comprehensive as those formerly prepared by the Statistical Department, but it is anticipated that the statistics which this officer will collect will be main ones of value.

The second recommendation which Government has definitely said it is unable to accept is in regard to a Standing Shipping Committee. The reasons for that are explained in the Sessional Paper. Government feels that intervention by Government in a matter of this sort would probably do more harm than good, by introducing a sectional point of view into matters which are of equal interest to and relate to the whole of East Africa rather than purely local problems of Kenya.

The third recommendation which was not accepted was the appointment of additional foresters. The justification of Government in not accepting that recommendation is that at the present moment Government is considering an entirely contrary recommendation by the Economy Committee that the present Forestry Department should be reduced.

Government is asked in the motion to state what adequate steps it proposes to take to alleviate the critical conditions affecting the farming community. The reply must be that Government proposes to give effect as far as possible to the various constructive recommendations of the Economic Development Committee and will carefully consider any constructive proposals which may be put before Government.

The sole object of appointing that Committee was that Government should have the best advice possible to assist its efforts to restore prosperity to the Colony, and having accepted the great majority of the recommendations Government is now informed that the measures proposed in no way rectify the existing situation. Government is also twitted with the fact that it has not given immediate effect to the various recommendations. The hon member referred to the fact that Government has not a fairy wand, which it can

wave and give immediate effect to comprehensive recommendations, and if we examine more carefully what action Government has taken I do not think the accusation that Government has delayed in taking action is justified.

Take for example the recommendations regarding the dairying and maize industries. They have been referred to fully representative committees which are now sitting. Those committees were appointed some months ago, and have not yet reported. You can hardly blame Government for the fact that those committees have not yet reported. While considering this Report, Government has at the same time, had a committee sitting endeavouring to ascertain in what way Government expenditure can be further reduced. Surely the position is not quite logical. The hon. mover has said that the view of a great number of people in this Colony are that the devaluation of the East African currency would do all that is necessary to alleviate the present position . . .

MAJOR THE HON. F. W. CAVENDISH-BENTINCK: I have never said one word in favour or against devaluation. All I have asked for is an explanation as to why the recommendation in the Minority Report was rejected.

THE HON. THE ACTING COLONIAL SECRETARY: I did not say they were the views of the hon. mover: I said the hon. mover stated that those were the views of a considerable body of opinion of people in this Colony. I would, Sir, remind the House that though there may be a large body of persons in the Colony who hold that opinion there is also a considerable body of persons in the Colony who consider that devaluation would be disastrous to the Colony.

But, Sir, I listened to the speech of the hon. mover for some constructive suggestions as to how, failing devaluation, Government could remedy the existing position. The main theme of his speech from beginning to end was that something must be done. As I have already stated, Government did appoint the Economic Development Committee to make recommendations to Government and advise Government on that point, and Government is endeavouring as far as possible to give effect to their recommendations. At any rate, until the recommendations which that Committee has put forward and which Government is proposing to adopt as far as practicable, have been tried, it is I suggest premature to say that the proposed remedies have proved valueless and will not to any extent relieve the condition of agriculturists in this Colony.

Government, Sir, has by balancing the budget removed one obstacle which would have prevented effect being given to any proposal to assist agriculturists involving expenditure. With an unbalanced budget it would not have been possible

even to consider the raising of additional loan funds for the purpose of increasing the capital of the Land Bank or for any other purpose. It has been said that the budget was balanced by fortuitous circumstances and through no efforts of Government. Government can at least take credit for the fact that during the period 1930 to 1934 the net recurrent expenditure of Government has been reduced from £2,062,583 to £1,635,213, a reduction of £427,370 in four years of net recurrent expenditure. The fact that the budget has been balanced has made it possible for Government to recommend to the Secretary of State that a loan should be raised in order that the capital of the Land Bank might be increased. The statement recently made by the Secretary of State in the House of Commons, which was recorded in yesterday's *Standard*, does give rise to the hope that that loan may be forthcoming. As the hon. Treasurer has already stated, if it is forthcoming, it is proposed that the monetary limit of advance to any one farmer should be increased to £5,000 and that the limit of advance for discharging an onerous mortgage should be increased to £3,500.

I have an important announcement to make. It is not quite relevant to the motion before the House, but you, Sir, have authorized me to make it. A telegram has been received this morning that the Colonial Development Fund has made a free grant of £23,590 to the Colony to meet the cost of the Eldalat fertilizer factory.

Among the recommendations made by the Economic Development Committee was one that a Standing Board of Economic Development should be appointed. That has been accepted by Government, and active steps are being taken to give effect to it. We have been twitted regarding the time it has taken to get information of this subject. It was necessary to write to the Government of Tanganyika, and that Government referred us to the Sudan Government, from whom they had obtained the information on which their department was formed, so that it was necessary also to write to the Sudan Government thus causing delay. The main function of this Board will be to initiate schemes, examine proposals, and advise Government how best to develop the resources of the Colony. I may say that Government will give the most careful consideration to any recommendations which that Standing Board may make.

Proposals for a reduction of railway rates are under consideration by the Railway Advisory Council, and though it is not possible for Government to indicate what reductions will be recommended by that Council it may safely be assumed that proposals for the relief of the primary industries of the Colony will be included.

Steps have been taken to afford relief in regard to payment of land rents and stand premia in the Laikipia district, and an application for the grant of similar relief in the Nyeri-Nanyuki district is under consideration by Government at present.

Protection is already afforded in the internal market by customs tariffs and preferential rates on the railway to country produce. It is admitted that that market is limited in extent, but it is nevertheless a fact that every consumer in the country at the present time does contribute materially to the support of local industries.

Apart, therefore, from resort to direct monetary subsidization of certain industries, it is not easy to see by what means Government can assist agriculture further.

The question of subsidization raises a very important issue. Since agriculture is admittedly the ultimate source of the wealth of the whole Colony, for how long and to what extent can one section of agriculture continue to support another section of agriculture? Sooner or later they will probably both fall into the ditch.

It is true that Government is made the scapegoat for all the ills that occur in this country, but I suggest that it is unreasonable to hold the view that Government is responsible for the critical condition in which certain industries are at present. It is alleged that the cost of administration is too high—I have already referred to the great reduction in recurrent expenditure which Government has made in the last four years. Even, however, if expenditure were further reduced by £100,000 and that sum were distributed in relief to all classes of taxpayers, the relief thereby afforded would not materially alleviate the condition of the farming community. The relief would not convert an uneconomic farm under present circumstances into an economic farm. And in this respect I must sound a note of warning. The Report of the Economy Committee has, I consider, conclusively shown that on the present basis of administration any material reduction of expenditure must involve reduction of services to the community. Reduction of Government expenditure and alleviation of taxation, desirable as they are in themselves, would only be palliative and would not remove the main cause of the depression which, as one speaker has already pointed out, is the result of the growth of customs barriers, currency manipulations and restrictions of trade generally throughout the world. The critical condition of certain industries in the Colony and elsewhere is wholly beyond the control of this Government—and nothing this Government can do will raise the price of commodities in the world's markets. The problem is by no

means confined to Kenya, and in this connection I should like to quote from an article in *East Africa*, of the 27th June. I had not intended to read it, but the impression conveyed by the hon. mover's speech is in my opinion altogether too gloomy. With your permission therefore, Sir, I propose to read one or two extracts from that article :—

“Those speakers and writers in Kenya who have repeatedly laid stress on the trials and tribulations of the country have over-emphasized the troubles of a country which, like many others, but certainly in no greater measure than some others, has suffered one cruel blow after another. Indeed, nobody who has been in close touch with the situation during the last three or four years could withhold sympathy from the Colony. Government and its officials, the Railway and their staff, settlers, merchants, and missionaries have all been affected. Nor has the burden fallen by any means only upon the Europeans: Indians and natives have suffered, many of them seriously . . .”

The article then goes on to draw attention to various signs which show that the position is not quite so serious as it was at one time.

I do not propose to tire the House with reading the whole of the article. I should however like to read the concluding paragraph :

“This little collection of facts—from which mining developments are deliberately excluded—does not purport to exhaust the list of pointers in the right directions, but it does, we suggest, establish the fact that Kenya—and it is from Kenya in particular that complaints have come—has definitely turned the corner, and that her champions would be far better advised to recognize the progress which has already been made, and is being quietly increased. While no possible advantage can come from exaggerated and recapitulated tales of woe, definite psychological and practical advantages can, and will, flow from the growth of a confidence which we believe to be thoroughly deserved.”

In conclusion, Sir, Government is aware of and is not callous to the sufferings which agriculturists in Kenya, in common with agriculturists in other parts of the world and throughout the Empire, have been experiencing, and will continue to take every measure that is practicable to assist them. Government is, however, not prepared to subscribe to the view that the measures now proposed do not in any way rectify the existing position, and for this reason is unable to accept the motion.

THE HON. THE TREASURER: Your Excellency, I am relieved to find that the hon. mover and other members who have spoken to this motion have not embarked upon any elaborate arguments either for or against the proposal contained in the Minority Report of the Economic Development Committee, which was to the effect that the sterling value of the East African shilling should be reduced to a point at which costs and prices should be brought into harmony.

This scheme is at best somewhat nebulous and the whole question of currency manipulation, devaluation, depreciation—call it what you will—raises so many abstruse issues upon which world authorities disagree, that little useful purpose would be served by an academic discussion of the theory in this House if it can be proved that the application of any scheme of this sort to Kenya is in fact impracticable.

I have described the proposal as being somewhat nebulous and to illustrate this point one is faced at the very outset with the difficulty of ascertaining exactly the area to which this proposal is intended to apply. I think it must be assumed that application to Kenya alone is utterly out of the question, as it would involve a new currency issue for a ridiculously small unit and would raise insuperable difficulties in a thousand directions. Business relations between the territories—which of course as you know are considerable—would be completely upset and any idea of closer union would, of course, immediately go by the board.

The minimum area of application would therefore seem to be the East African Currency basin, which, as you know, comprises Kenya, Uganda and Tanganyika Territory with Zanzibar joining the group with effect from 1st January next; and when viewed from this somewhat wider angle the difficulty of another type immediately begins. Uganda and Tanganyika Territory have expressed no desire whatsoever for any change in existing currency, and it would be impossible to visualize any set of circumstances which could justify substitution of the rupee in Zanzibar for the shilling currency, followed almost immediately by a devaluation of the substituted coinage. Here the veto of the Secretary of State must be presupposed, even if he had not already made a pronouncement on the subject.

But the proposal has a much wider significance, as it must be perfectly clear that the application of the scheme to East Africa would raise a similar issue in regard to all other parts of the Colonial Empire, as all are more or less dependent on agriculture and all are suffering from depressed commodity prices. We should then be faced with the position of having a series of local currencies throughout the Colonial Empire depreciated in varying degrees according to some arbitrary

standard. What that standard is, I mean of course the East African standard, or rather the standard to be applied to East Africa, I have been unable to ascertain, but some figure of 33½ per cent has been mentioned, and how it is to be "pegged" does not appear to have been specified by those who advocate devaluation, but it must be abundantly evident that the question raises issues of the gravest Imperial importance, issues which cannot possibly be settled by local legislation but which must be judged from an Empire standpoint and settled by the Imperial authorities. Even if Kenya alone were involved, which is not the case, an Order in Council would be necessary, and it is for this reason that the dictum of His Majesty's Government must be accepted.

The motion puts a definite interrogation. It is, in effect, "Why did Government negative in advance any method of relief by a reduction in the sterling value of the shilling during the time the Economic Development Committee was sitting?" The reply shortly and plainly is that it did not, but I will amplify that statement.

The Secretary of State's original pronouncement was made before the Committee had started their deliberations. The hon. Member for Aberdare has touched upon this pronouncement but, with your Excellency's permission and in order to refresh the memories of hon. members, and I hope of the public generally, I should like to read it in full. It appears as an extract in paragraph 598 of the Majority Report of the Economic Development Committee, that is, the Report of the Committee which we are at present discussing. It reads as follows :

"It would not be fair to leave anyone in any doubt as to what is the view of His Majesty's Government in this matter. In the first place, let me say that in this matter you are one of three territories. The strongest representation made to me of many representations in Uganda and made to me by the European community and the Indian community coming together was the most emphatic plea that in no circumstances should the shilling be unlinked from the pound sterling. The view taken in Tanganyika is, I know, the same. I may also add that I have not met a single business man in this country who has advocated any other policy to me. I have had, on the contrary, the most emphatic views expressed to me as to the unwisdom of such a course. I think such a course would be absolute madness; it would destroy your credit. It is impossible, because even if Kenya wished it, Tanganyika and Uganda would never agree and it would mean unlinking yourselves entirely from these Territories. As regards the effect on your credit at home, I think I speak

with authority . . . It would certainly shatter your credit completely. It would not affect the world prices at which you sell your produce by one farthing. I very much doubt whether you could keep wages down with the cost of living rising under such a system. It would of course add terribly to the weight of your debt charges, and it would in the opinion of every financier I have consulted, and every commercial man, lead at once to an immediate attempt to realize securities and to call in mortgages. My own firm conviction and the conviction of His Majesty's Government is that that way damnation lies and I must frankly say to you with all the firmness at my command that in no circumstances whatever would the Government contemplate such a course."

Despite this completely unequivocal statement a campaign advocating devaluation was proceeding while the Economic Development Committee was sitting, and in order to allay any fears with regard to the integrity of the local currency, and to minimize the damage which was in fact being done, a statement reiterating the decision, not of this Government but of His Majesty's Government, was made by His Excellency in Legislative Council on 24th July, 1934.

It must be remembered that, as I have explained, the decision must rest with His Majesty's Government and that in addition negotiations of this sort cannot properly be conducted in the market place. As soon as there is any talk of currency devaluation or depreciation, monetary conditions are disturbed. Overseas investors become nervous and withdraw their capital from the Colony; others contemplating local investment hold their hand until they are in a position to know what lies in the future, while residents would be tempted to send their money out of the country until the process of devaluation is completed, in the meanwhile deferring payment of their local bills.

If currency depreciation were in contemplation as a serious issue, which emphatically is not the case, the first and obvious step would be to prohibit, or at least drastically to restrict, remittances out of the Colony. Openly to discuss depreciation without taking this step might have led to the most serious consequences, as a calling in question of the very basis upon which all business is conducted would ordinarily result in a great deal of money being sent out of the country and a grave disturbance of all business operations. Suspicion was, however, allayed by the announcement to which I have referred and little disturbance resulted in fact, but in my opinion damage will continue to be done so long as these discussions persist.

I have attempted to show that a decision on this matter must of necessity lie with His Majesty's Imperial Government, and I should have thought that this fact would have been recognized and accepted by everybody.

For the reasons I have given, six of the nine members of the Economic Development Committee came to the conclusion that currency devaluation was completely outside the scope of practical politics; one member, the hon. mover of this motion, found himself unable to express any definite opinion on the subject, whilst the remaining two members, Colonel Griffiths and Capt. C. B. Anderson, of the *East African Standard*, in spite of the unequivocal pronouncement of the Secretary of State, signed a Minority Report advocating devaluation.

I suggest to the hon. mover that Government did not "negative in advance the method of relief subsequently suggested in the Minority Report" signed by two members out of nine on the Committee. What Government did do was to reiterate the decision of His Majesty's Government, the final arbiters on this matter, in order to allay suspicion aroused by and to minimize the damage done by open advocacy of currency deflation, and this, I suggest, was the only course Government could take.

It will be remembered that at that time an increase in the Land Bank capital was contemplated and this has since been recommended by the Economic Development Committee and supported by Government. To suggest that £500,000 sterling should be borrowed in London, converted into ten million shillings, lent to various clients at Sh. 20 to the £ sterling, and in the same Report to suggest that the sterling security covering the loan should subsequently be reduced by a third seems the strangest way of putting up a case for a Land Bank loan from London. The loan has not yet been sanctioned and the method of relief alluded to in this motion can scarcely be expected to improve the prospects of obtaining it. At any rate, the speech of the hon. mover will do little to attract further capital for settlers to this Colony.

Again, the mainland territories have for years advocated extension of the currency basin to include Zanzibar, as it would mean that trading facilities would be enormously improved and it would reduce to a minimum the possibility of the Currency Loan Ordinance being brought into operation. Yet when this becomes a practical possibility the whole business is endangered by talk of currency depreciation.

I submit, Sir, that Government at least has acted sensibly and wisely in this matter and that it has pursued the only wise course possible in the circumstances. As the hon. the Acting Colonial Secretary has said, Government will continue in its

efforts to alleviate the position of agriculturists but it cannot give its support to any scheme involving a depreciation of the local currency.

The hon. Member for Eldoret raised the question of conversion of loans. As he knows, it is a very difficult question. In common with other Colonial loans, there is a fixed stage of maturity, and the earliest date in the case of Kenya is 1946. That being so, they stand of course at a big premium on the London market. There are hundreds and thousands of millions borrowed on the same sort of basis, but so far as I know there has been no conversion scheme of that sort in regard to a loan which has not yet matured. The matter has, however, as I think Your Excellency stated the other day, been again referred to London, and certainly every possible investigation in the matter will be undertaken.

THE HON. J. B. PANDYA : Your Excellency, the Report about which this motion has been moved is a mine of information. But beyond this I do not consider that it is able to show much in regard to the development of the country. I do not wish in any way to belittle or to show any disrespect or to minimize the arduous labours of that Committee, but in my opinion when even after the acceptance of majority of recommendations by Government, there is dissatisfaction, it appears to me that, to a certain extent, the time of the members who sat on that Committee has been wasted. In my view, Government's opposition when this Committee was appointed was more than justified by the results of this Report. Government would surely have been able to recommend those things in a shorter time than the Committee has been able to do.

In this Report, there is an exaggerated importance given to the discussion of the industrial and agricultural position of the highlands. It is not, in my view, a fair picture of the economic position of the country as a whole. It is just like a picture in which a certain portion is drawn a little bit grotesque, or out of harmony, with the rest of the picture.

The hon. mover in a very able speech gave us a large amount of information, statistics and figures, and conclusively proved that the mainstay of the Colony, the agricultural industry, is completely broke. We all agree with that, and I have the greatest sympathy with the producers in this country. We all agree entirely that we are facing in this country a serious situation in regard to agriculture. But what is the remedy? I entirely agree with the hon. the Acting Colonial Secretary when he said that he failed to find any constructive suggestion in regard to the improvement of agriculture. We have every sympathy, we who are not agriculturists, and I am not, but

what is the remedy? The remedy, as far as one can see, is that we want more money to come into the country. And from whom do we want these loans? We want these loans from the Secretary of State whom we abuse here every day. (Laughter.) We want these loans from the British Parliament under whom we are not prepared to be governed any more. (Laughter.) We want these loans from that British democracy which we wish to have here but whom we abuse in England.

What is the justification, what exactly do we want? In one breath we say we shall have nothing to do with the Secretary of State who is 6,000 miles away, and that we can maintain ourselves, and in the next breath we say "We are broke, give us money." How can those positions be in any way complementary? That is my difficulty, Sir, and that will be the difficulty of everybody who views this sort of thing with sympathy.

In this Report, as I said previously, an exaggerated importance is given to certain industries. I should like to say that there is not given in this Report that importance to native agriculture which it definitely deserves. There is a difference of opinion in regard to the support which should be given to native agriculture. Mr. O'Shea, in his dissenting minute—he made a very big noise in this House (laughter), and was responsible for getting this Committee appointed. Immediately it was appointed, and he became a member, he went away to England, for a holiday or on business, and when he returned to this country he attended two meetings and signed the Majority Report. (Laughter.) I say, with all respect, that if you have this kind of public responsibility we cannot progress. If he really believed in the importance of the economic development of the country, and it was because of him that this Committee was appointed, then I say in all sincerity that he had no business to go away until its Report was issued.

THE HON. A. C. HOEY : Your Excellency, on a point of information, as I am filling the place on this Council of Mr. O'Shea, I want to say a word in explanation, because he has been accused of complete disregard to any public duty. That is not the case. Mr. O'Shea had to go to England urgently, and he had no idea whatever when he went on the Committee that he would have to go to England. I consider that the attack made on him by the hon. member is totally and absolutely unjustified.

THE HON. J. B. PANDYA : Your Excellency, I do not wish to attack anyone, far from it. I wanted to demonstrate the responsibility of public life.

HIS EXCELLENCY : Order, order! Are you quite sure this is relevant to the debate? I see none at all.

THE HON. J. B. PANDYA : I am quoting Mr. O'Shea from this Report. In his dissenting minute he wrote :—

“Least of all I am in sympathy with a policy of endeavouring to strengthen Government finances by intensifying native production for exports. If it is unfair to Lancashire cotton spinners that they should have to sell their labour against the competition of operatives in other parts of the world where a standard of living costing less to main is readily accepted, is it any less unfair to the civilized farmers of this and other countries that Government should deliberately stimulate the competition against them of unpaid woman and child labour.”

That was the point I was developing, that Mr. O'Shea, in his dissenting minute, drew attention to the fact that native agriculture ought not to be supported in this country. (Elected Members : No.) I am very glad that is not the policy of the European elected members on this side of the House, but I pointed out the fact that there is a division of opinion, and I was stressing that because Mr. O'Shea was responsible for having this Committee appointed. I am very glad indeed that that is not the policy of members on this side of the House, and therefore I do not wish to stress it any further.

HIS EXCELLENCY : It is now five minutes to one o'clock. Will the hon. member be much longer?

THE HON. J. B. PANDYA : I shall not be able to finish this morning. We will sit till one o'clock and then adjourn.

HIS EXCELLENCY : The House will adjourn now till ten o'clock to-morrow morning.

*Council adjourned till 10 a.m. on Wednesday.
31st July, 1935.*

WEDNESDAY, 31st JULY, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, the 31st July, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 30th July, 1935, were confirmed.

MOTION.

ECONOMIC DEVELOPMENT COMMITTEE REPORT.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK having moved :

“This Council, having considered the Report of the Economic Development Committee and Sessional Paper No. 1 of 1935, is of opinion that the measures proposed in no way rectify the existing situation.

This Council further considers that the gravity of the position disclosed by the above-mentioned Report, calls for the immediate introduction by Government of far-reaching remedial measures, and that Government, having seen fit definitely to negative in advance the method of relief subsequently suggested in the Minority Report, and to do so in spite of the terms of reference provided and whilst the Committee was sitting, should inform the Colony of the reasons for such refusal, and should further inform the Colony what adequate steps it proposes to take to alleviate the critical conditions affecting the farming community.

THE HON. H. E. WRIGHT having seconded.

The debate having been adjourned.

The debate continued.

THE HON. THE ACTING COLONIAL SECRETARY : Your Excellency, on a point of explanation, when speaking to this motion yesterday I made the statement that during the past four years the net recurrent expenditure of Government has been reduced by £427,370. I was referring to the table on page 4 of the Economy Committee Report. I should have said the net

recurrent expenditure other than Debt and Pension Charges, after deducting the proceeds of the Levy on Official Salaries and certain reimbursements, has been reduced by this figure. It is, of course, the case that the Debt and Pension Charges have unfortunately increased during the period to which I was referring. These are, however, contractual obligations over which this Government has no control.

THE HON. J. B. PANDYA : Your Excellency, I quoted yesterday Mr. O'Shea in regard to native agriculture. I feel that if his plea were accepted it would knock the bottom out of the principle of trusteeship of the natives on which the Imperial Government and the Government of Kenya base their claims to administer this country. I do not, however, wish to stress this point and give an exaggerated importance to the view of Mr. O'Shea, because in this very Report which we are discussing the majority in paragraph 258 say :

“We are in substantial agreement with that section of the Report which examines the position in native areas. We support the proposal for appointment of additional agricultural officers in the native reserves and would stress our concurrence with the need of a positive policy of promoting production on a definite and sustained plan.”

That being the case, we know that the majority of the Committee are in favour of native agriculture.

Sir, I should like to point out that in regard to this Report the development of the coastal area appears to have been somewhat overlooked. If one turns to the Report, they will find that there is very little attention given to the development of that area, and I should like to register my protest against this disregard, because it would appear that the Committee was mainly interested in the development of the Highlands. My submission is that the Highlands do not comprise the whole of Kenya. When we look further into the Report and study the facts, what do we find? That practically not a single agricultural industry in this country has been a paying proposition, yet agriculture is in one way or another being supported, is indirectly being subsidized, by the whole of the population of the country. It is being spoon-fed in various directions; as an instance, all industrial and agricultural machinery is imported duty free. Heavy protective duties are also levied on imported articles which could be imported from other countries at cheaper prices. There is low railway freight on export crops, and there is also low railway freight on the transport of machinery and such other requirements of the agricultural industry.

If we analyse the whole thing, it appears to me that the whole structure of Government and the Railway is moving in one direction and one alone, and that is to support agriculture in this country. And that support is to a very great extent mainly directed towards the interests of a small community of settlers of 2,000 in a population of $2\frac{1}{2}$ million Africans, 35,000 Indians, and 17,000 Europeans.

The hon. mover drew attention to the imports of 1934 in comparison with 1933, and he said there was an increase in industrial machinery, fuel, oil, lorries and similar things which are required for the mining and other industries. If we analyse this, we find they do not pay any customs duties, so that they have contributed nothing to revenue and they pay also a very low railway rate. The point I was trying to make is this : that as I have indicated, the agricultural industry in this country is subsidized to a very great extent. What more can anybody do to support that industry? Is it possible that the rest of the community should subsidize it by any other means, an industry which even with all this subsidization is not a paying proposition?

Everyone has sympathy with the present position of agriculture in this country, a position which is world wide, but the point is : what more can we do, and how can we do it? From where are we to get the means to subsidize this industry which is never satisfied? The moment Government gives something there is always a demand for something more. On every occasion it is brought home to us that agriculture is the main wealth producer in this country. We all accept that position. But the point I wish to make is that the basis of that agriculture need not necessarily be white agriculture. We have in this country a plan for developing the agricultural industry by exports, and that, Sir, must depend upon the world prices. How can we in this country expect the world to pay the prices at which we produce an article? We have got to produce an article which will fetch a price in the world market which will pay us.

This Report proves conclusively one thing—that there is no single article as far as I can see which could be produced in the Highlands by settlers at prices at which it could be sold in the world markets at cost, whereas we also see from the Report that to a certain extent the natives can produce these articles which they can afford to sell at a profit. Therefore there need not be, as far as this country is concerned, any fear in regard to the position of the country as a whole. If agriculture is the main source of wealth to-day, and we do not deny it, is there any reason why that wealth could not be developed through natives? Is there any reason why the agricultural industry could not progress by support to the natives?

And, as we have seen in regard to Tanganyika and Uganda, I see no reason why this country cannot be prosperous with support in that direction. In the interests of the country as a whole, uneconomic development or production should stop as quickly as possible.

I quite realize, Sir, that I will be misunderstood. It will be considered that I bring this point of view on a racial line or because I am prejudiced by racial issues, but I should like to make it quite clear and to emphasize that I have no such thing at the back of my mind. I am sincerely feeling that the interests of the country demand this very frank expression of opinion, and as far as I am concerned I am not jealous of anybody. I do feel personally, and my religion teaches me, that if anyone suffers or if they prosper, it is because of their own actions. I am not jealous at all of anybody prospering, but it would be wrong for me not to mention what I honestly believe as to the manner in which this country should progress.

We are often accused in this House of raising the racial issue. I have no desire to emphasize that . . .

LT.-COL. THE HON. LORD FRANCIS SCOTT : That is why you always raise it on every occasion.

THE HON. J. B. PANDYA : I should like to say in explanation that the composition of this House is such that these things cannot be helped. As an instance, what we desire in this country is identity of interests. In this very House two days ago when the motion for the abolition of taxation came in, we supported that motion, because we saw with the Europeans that we were going to benefit without any differentiation in that matter. That demonstrates that the way in which we can get rid of such issues in this House is not by establishing the privileges of any section of the community but by having identity of interests of all sections. Now, Sir, if as we are in this country to-day we happen to have to face if as we are in this country to-day we happen to have face these issues on racial lines, no one is more sorry than myself, but I have to do it because I cannot escape it.

In regard to the protective duties which are imposed in this country, I do not desire to take up the time of the House, because I had my say on another occasion, the last budget session. All I wish to do now is to stress what is mentioned in this Report, that this protection has been excessive. It has reduced the consumption of those articles which were protected. The figures to which I refer are quoted on page 90 of the Report in paragraph 306, to the effect that the sales of local flour went down from 101,841 bags in 1928-29 to 71,319 bags in 1933-34, a drop of 30 per cent. In case of

sugar the drop has been more serious. In paragraph 232 on page 273 it is mentioned that the sales of local sugar went down from 178,386 cwt. in 1928-29 to 97,285 cwt. in 1933-34, a drop of 45 per cent. This is the result of excessive protection of the imported article.

In regard to wheat flour, the Economic Development Committee recommended in the Majority Report in paragraph 616 (5) :

“We do not consider that a case has been made out for an increase in the import duties of wheat and flour and suggest that in the present circumstances of the world wheat market the immediate objective of the local wheat industry should be to develop the local demand. This line of development appears to us to require a reduction in the local price of local flour.”

Commenting on this in Sessional Paper No. 1 in paragraph 16 it is mentioned that :

“Government is of the opinion that the line of development suggested is one which can only be taken by the industry itself.”

I entirely disagree with this view. In my opinion it could only be done by the intervention of the Government.

There are two ways of getting this desired result which are mentioned in the Sessional Paper No. 1 issued by the Government. One is by fixing the maximum price and the second by reduction or removal of the suspended duties. In this connection, I am surprised that no clause was inserted in the Sales of Wheat Ordinance for protecting the interests of the consumers for fixing the maximum price of flour. As an example, in the Sale of Pyrethrum Bill, as the result of its consideration in Select Committee, the hon. Member for Nyanza got a clause inserted in which the price of pyrethrum is controlled by the average London price for the previous three months, plus 20 per cent and cost of gristing and packing. In view of that, I think there is some justification for having a similar power in regard to the sales of wheat flour. It is held by Government that this can only be done at the request of the industry concerned. The point I wish to make is this : how is it possible for the industry which wishes to maintain high prices for the benefit of growers or millers to reduce them in the interests of the consumers without the intervention of Government? The only way in which it can be done, and I hope Government will consider it, is by inserting a clause so that prices can be controlled for the benefit of the wheat consumers or by a reduction of the duty.

I do not want to bring in a question which has been discussed in this House, but I should simply like to refer to it,

that on a previous occasion the European elected members took objection to certain minor amendments by Government at the influence of outside interests. They called Government spineless. I say that as far as our experience goes this Government is not spineless, it has plenty of strength. But how can they possibly accuse Government of being spineless when they themselves want Government to capitulate to them every time so that in their interests it is necessary that Government should be spineless? But in spite of that I hope Government will take certain action to protect the wheat consumers.

Coming to the sugar industry, I do not wish to discuss it in view of the fact that Government has not yet formulated any plan with regard to this industry. But the point I wish to bring up in this House has reference to the scandalous treatment of the Indian producers of sugar cane at Kibos by the industry there. No one can say that the protection to the industry has been given in the interests of the millers. In regard to this Natal is an instance where Government had to intervene when the sugar cane growers' interests were threatened, when it regulated the price to be paid to them; the price fixed was on a minimum selling price of £24 a ton of sugar with Sh. 19/6 being paid to the growers per ton of sugar cane. The Kibos Indian planters have complained and submitted a case to Government several times in regard to the prices paid them, but so far no notice appears to have been taken. I should like to stress this point, that the Indians at Kibos have played a very important part in the establishment of the sugar industry in this country. They were the first pioneers who grew cane in that area, the suitability of which was demonstrated by them, and the first sugar mill was installed in that area. There was unfortunately at the time no clause inserted to protect the interests of the cane growers, when protection was given to the industry, and perhaps due to that Government has not been able to intervene in regard to this matter. The land as Kibos is no good for anything else except sugar cane . . .

HIS EXCELLENCY: Has this anything to do with the motion? The motion is "that the gravity of the situation demands far-reaching remedial measures by Government."

THE HON. J. B. PANDYA: In that motion is mentioned the economic development of the country, and I am discussing sugar cane and the development of that industry. I will not take up much time. The motion also mentions that adequate steps are necessary to alleviate the condition of the farming community, and I am discussing the interests of the Indian farming community.

In regard to sugar cane, the Nyanza Indian Farmers Association in a letter which they wrote me complaining of the treatment given them by the sugar millers said :

“The Victoria Nyanza Sugar Company have informed us that they would pay the Indian farmers at the rate of Sh. 6 per ton. On hearing this we had an interview with Mr. Abel and with Mr. Moffit and discussed with them the question of sugar cane price. We said that Sh. 6 per ton was very low and very unreasonable price. After discussion Mr. Abel said that he was unable to increase the price.

The reason for offering such a low price by the factory is that the Indians have got no means of their own to manufacture sugar.

In our opinion the price they have offered is not sufficient to maintain ourselves even, but we are compelled to sell as, if our crops stand on the farms for two or three months more they would be ruined.”

This extract shows the injustice in regard to this industry. I made certain inquiries with regard to the fair price which should be paid, and I went to the extent of collecting figures from Mauritius, Natal, and India, and I should like to quote them for the information of the House to prove my case as to the way in which the industry in the Nyanza Province suffers.

In India, the price fixed by the Indian Government to the sugar cane growers is Rs. 8 12 annas per ton or Sh. 13 per ton on a selling price of Rs. 224 or £16/16 per ton. The selling price in Nairobi was £24 per ton, but that has been reduced now because of the competition among the millers themselves. I am, however, basing my case on the figures shown when the industry was normal.

LT.-COL. THE HON. J. G. KIRKWOOD : On a point of order, I submit that the industry in Africa is normal : sugar Sh. 47 a fortnight ago is now Sh. 15.

HIS EXCELLENCY : There is no point of order in that.

THE HON. J. B. PANDYA : Even if we take into consideration the total net return to the miller which, after paying the loss of exports is supposed to be about £12 per ton, the price on the basis of what is being paid in India on a selling price of £16/16 per ton of sugar should not be in Kenya less than Sh. 10 per ton of sugar cane, whereas the millers here only offer Sh. 6 per ton, and they do so because there is no provision in the law for intervention by Government.

Regarding Mauritius, I am informed by one who is familiar with the system there that a sugar factory in Mauritius . . .

HIS EXCELLENCY : Order, order !

THE HON. THE ATTORNEY GENERAL : I am sorry to intervene, Sir, the hon. member justifies his statements with regard to Mauritius and other places by saying that the last three lines of the motion reads as follows :

“and should further inform the Colony what adequate steps it proposes to take to alleviate the critical conditions affecting the farming community.”

I take that to mean that Government is being invited to express its views on what steps should be taken, but not for the hon. member to state what steps he thinks should be taken. This is an invitation to Government. (Hear, hear.)

HIS EXCELLENCY : I must ask the hon. member to confine his remarks as far as possible to the actual terms of the motion.

THE HON. SHAMSUD-DEEN : On a point of order, every member has the right of suggesting to Government what steps should be taken. I do not think the hon. member Mr. Pandya is out of order.

THE HON. J. B. PANDYA : I shall not be long, I quite see these figures bore the House, but unless I give them I cannot substantiate my case in this particular matter. I want to prove that the treatment meted out to these farmers, is unjust and unfair.

I will not take up the time of the House, Sir, but will simply say that in Mauritius a sugar cane factory delivers from 6.6 per cent to 8 per cent in weight in sugar for sugar cane. If we take a medium rate of 7.5 per cent, if the cane grower delivers to the factory one ton of sugar cane he gets in exchange three-quarters of a bag of sugar. This works out on a basis of Sh. 16 per ton for cane. Even in Kenya the Ramisi factory at the Coast pays at the rate of Sh. 10 per ton to native growers whereas in the sugar area of Nyanza Province the rate paid is Sh. 6 which is outrageous and, I think, scandalous treatment to the farming interests of the Indians in this country.

On this ground alone I should like to suggest that this justifies intervention by Government.

Coming to the question of the wheat industry, I have here a lot of figures which I should like to quote, but in view of what you have said, Sir, I do not like to take up the time

of the House. I would only mention in regard to the wheat pool that I have a right to speak, simply because Indians are large consumers of wheat flour, and the industry has been discussed in this Report. The question in regard to the wheat pool is that the agency is interested in wheat and therefore prices are controlled to an extent of which consumers have a great deal to complain. Even the millers are not satisfied with the arrangement in force; they are complaining that they are not getting fair play.

Wheat is sold at a price to which the cost of milling is added, but the price at which wheat flour is sold by millers is much lower than that price. My point is that the milling industry, being largely in the hands of growers interested in wheat, the consuming interests are not safeguarded, and they are therefore paying very high prices for the article.

In regard to advances to the maize and other industries, mentioned in paragraphs 33 to 35 of the Report, I wish to point out that the terms of repayment of those advances have not properly been foreseen by Government, in that they should have fixed it on the return to the grower, not necessarily based on export, but on local prices—anything by which they could get the higher prices. There is a suggestion in this Report about the maize pool. I am not going to take up the time of the House because the subject has been referred to a committee by Government, and that committee is now discussing it. But it is most amusing that maize growers, the European maize growers particularly, wish to call this a national effort and wish to take the benefit of the local prices. When maize was fetching a high price in the export markets deliberate steps were taken at the instance of the European growers and restrictions in the form of grading and such other rules were placed on exports of native maize, but now when the export market is not so good and remunerative they come back and wish to take advantage of the local market and call it a national effort and want to support the industry at the cost of the natives. I hope this Maize Committee will go carefully into this scheme and turn it down in the interests of natives. We have on every occasion supported native development in this country, and the increased efforts in this direction mentioned in this Report are praiseworthy and have our support.

There is a suggestion in this Report as to the appointment of a Standing Board on Economic Development, and the Government has accepted that recommendation. The point I wish to make is that on that Board the interests of the consumers and the vast interests of Indians also should be safeguarded, and I hope Government will bear that in mind and give the Indian community adequate representation when they appoint the Board.

Coming to the last point, the currency policy of the country, the suggestion made in the Minority Report in regard to the devaluation of currency has been considered by the majority as incapable of practical application. Government and the Secretary of State have also opposed the idea, but I do not think the European members have advocated or are committed to the devaluation proposals. What they really want was a reasoned reply from Government to those proposals. I should like to take this opportunity of congratulating the hon. the Treasurer on the reasoned and convincing reply and on the unanswerable case which he made out yesterday in this House. I do not therefore wish to take up the time of the House in this connection, except to take the opportunity to definitely associate myself with the views of Government, and I agree with Sir Philip Cunliffe-Lister when he said that "that way damnation lies".

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I had not intended to intervene in this debate, but the hon. mover has made certain statements in regard to native taxation and the native economic position which call for a reply. He has taken a number of isolated facts, detached them from their context, and drawn a gloomy picture of conditions in the reserves which, in view of the wide publicity which will be given to his speech, would cause considerable harm if the real facts were not disclosed. It is true that in many cases natives, like members of other communities, are worse off economically than they have been in the years preceding the depression. We deplore this fact, as we deplore it in the case of the non-native population, but it would be doing the greatest disservice to the general community if we allowed the suggestions to pass unchallenged that the situation is one of unrelieved gloom.

The hon. mover suggested that the increased amount obtained in native taxation during this year was due to unprecedented activity on the part of administrative officers. I do not know exactly what he meant by this. I hope he did not mean to suggest that it is not the duty of administrative officers to devote their best energies to the collection of badly needed revenue. What has actually happened is that the administrative staff, reduced by casualties, transfers and absences on leave, have been compelled to commence their tax collection earlier this year in order to ensure a full collection. In most cases they have been heavily overworked in the process. To the average administrative officer the duty of collecting tax from natives, especially in a time of depression like the present, is an unpalatable and soulless job, and if he works overtime in doing it it is not because he is consulting his own convenience and his own comfort.

He further suggested, and I hope I did not misunderstand what he said, that administrative officers had been severer and more drastic in their methods of collection during the present depression than they have been when times were better. The picture of a number of Administrative Shylocks exacting the last pound of flesh from the native is absolutely false, and I repudiate that with all the emphasis at my command. He also stated that cattle had been attached and as little as Sh. 3 per head obtained. There may be isolated cases of this, and no doubt there are occasional hardships, but actually what are the facts? The facts are that bullocks are selling for Sh. 30 to Sh. 40 in the Kamba districts, Sh. 40 to Sh. 50 in the Nandi district, Sh. 15 to Sh. 20 in Masai and Sh. 20 in the Kamasia district.

He also suggested that the greater part of the increased tax obtained during 1935 was due to arrears of tax from the previous year. This is perfectly true, and it is a fact that for the last few years, during the depression, substantial arrears have been collected at the beginning of the year, and this was also the case during 1934. Actually the arrears this year were mainly from the Nyanza, Coast and Central Province. In the Central Province some £11,000 of arrears were due, of which £5,000 have been collected. In the Coast Province the arrears were £6,540 and the amount collected £6,077. I am unable to quote the Nyanza figures, but the excellent cotton crop obtained in January this year enabled the Nyanza natives to pay not only the arrears for 1934 but also a considerable portion of the current year's tax. A further contributing factor in this case was the excellent wages obtained from labour on the mines.

The hon. member quoted the present low price of maize as being a hardship to the natives but this is not the first time that the price of maize has been low. Moreover, what may be a hardship in the one case may be a blessing in the other. For instance, during 1934 the Kitui Reserve suffered from food shortage. Owing to the increased cost of maize, the Local Native Council had to spend £5,000 to buy maize for distribution. This year, as the food shortage continues, they will have to pay considerably less for their food. As regards the provinces, natives are not dependent on the sale of maize or cereals for their tax money. In the Central Province they have wattle bark, which is a flourishing trade, and cotton has been successfully introduced; while in Nyanza Province the cotton crop totalled 10 million pounds of seed cotton and the Coast Province nearly 1½ millions. Nyanza also has a well developed trade in animal products. For instance, from the South Kavirondo district alone during 1934 £52,000 worth of animal products were exported. The total

He further suggested, and I hope I did not misunderstand what he said, that administrative officers had been severer and more drastic in their methods of collection during the present depression than they have been when times were better. The picture of a number of Administrative Shylocks exacting the last pound of flesh from the native is absolutely false, and I repudiate that with all the emphasis at my command. He also stated that cattle had been attached and as little as Sh. 3 per head obtained. There may be isolated cases of this, and no doubt there are occasional hardships, but actually what are the facts? The facts are that bullocks are selling for Sh. 30 to Sh. 40 in the Kamba districts, Sh. 40 to Sh. 50 in the Nandi district, Sh. 15 to Sh. 20 in Masai and Sh. 20 in the Kamasia district.

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export of hides and skins alone from the Nyanza Province in 1934 amounted to £51,560 in value. The total exports of hides from the Colony was 40,066 cwt. valued at £115,112 in 1930, valued at Sh. 49/98 per cwt. In 1934 they amounted to 100,832 cwt. valued at £168,498, the value per cwt. being Sh. 33/42. I might mention that the value per hundred-weight has gone up Sh. 5 in 1934 as against 1933. In view of these figures, which unfortunately I have not been able to make more comprehensive, I am surprised at the doubts thrown by the hon. mover on the advisability of intensifying native production.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : I never cast the slightest doubts on that.

THE HON. THE CHIEF NATIVE COMMISSIONER : I apologize for misinterpreting his statement, but I rather understood him to say that.

Lastly, the hon. mover expressed the opinion that the native population is grossly overtaxed. It is regrettable that before making this statement he did not inquire from Government or ascertain from the Gazette whether existing rates had been reduced. If he had done so he would have ascertained that the following reductions had been made from the legal rate of Sh. 12 :—

Duruma Tribe to Sh. 6	} Sh. 6
N. and S. Kamasia to Sh. 6	..	..	..
Turkana Tribe to Sh. 6	..	..	..
West Suk Tribe to Sh. 8	} Sh. 8
Elgeyo-Marakwet to Sh. 8	..	..	..
Meru Tribe to Sh. 8	..	..	..
Tharaka Tribe to Sh. 8	..	..	..
Embere Tribe to Sh. 8..	..	..	..
Girima (hinterland tribes) to Sh. 8	
Kamba Tribe, Kitui to Sh. 9	Sh. 9
Masai Tribe to Sh. 10	} Sh. 10
East Suk Tribe to Sh. 10	..	..	..
Njemps Tribe to Sh. 10	..	..	..
Digo Tribe to Sh. 10	..	..	..
Giriama (Coast Locations) to Sh. 10..	..	..	..
Native Tribes in Tana River District to Sh. 10	..	..	..
Native Tribes in Lamu District to Sh. 10	

In regard to the statement of the hon. Mr. Pandya that the development of native production on the Coast is being neglected, I would refer to section 399 of the Report in which

he will see that the Committee recommended the provision of two additional agricultural officers for the Coast Province; one for Digo and the other for Teita, with the sole object of encouraging development in those areas.

MAJOR THE HON. G. H. RIDDELL: Your Excellency, in supporting this motion before the House I have nothing to say on the question of European agriculture, because the case has already been made out by the hon. mover and by subsequent speakers more eloquently and more adequately than I could do it. My remarks, therefore, come under the one restricted heading of the Standing Board of Economic Development, which the hon. mover was not able to deal with in detail, and I propose to refer to it in detail very shortly.

Elected members are rather suspicious that this Standing Board will be used to usurp the functions that properly, in our opinion, belong to the committee recommended by the Kenya Land Commission in section 2040 of their Report. If that should happen to prove the case, elected members feel that with a question of such complexity and many native ramifications dealt with in that projected committee, they would feel that this highly specialized committee, the Standing Board of Economic Development, would not be a suitable body to deal with it. A question was asked in this House with regard to section 2040 of the Kenya Land Commission Report, and an answer was given, and it is the subject of a motion which will come before the House in due course. It is, however, relevant, I trust, Your Excellency, to mention it here, inasmuch as in the Economic Development Committee Report there is a specific recommendation to implement that particular section of the Land Commission Report. The reply which was given to the question as to whether Government would implement this recommendation, to appoint this committee, was in the negative, and they said in the same reply that they were satisfied that the examination of those recommendations would be adequately dealt with by the council of the Provincial Commissioners.

Elected members have a great deal more faith in the council of Provincial Commissioners than they have in most other departments of Government, but at the same time they feel that a proper body to examine those highly complex details as described in section 2040 of the Land Commission Report should be a council specially called to examine them. In passing, I should like to call the attention of the two gentlemen who represent, as they say they do, native affairs, to the fact that one of the signatories and one of the people who made this recommendation in section 2040 was one of their colleagues, Mr. Rupert Hemsted.

This is not a new question which is before the Council. The history of the development of the native reserves is a very long one which I do not propose to go into. I dealt with it fairly fully in a speech delivered to this House on the Kenya Land Commission Report last October. If hon. members are interested they can look up that speech, but in the course of my remarks I asked on behalf of the elected members that that particular committee should perform forthwith, and it has not been done. The committee which is examining the question is a council of the Provincial Commissioners. That is to say, that all participation as regards this intensely important native question, we ourselves, are definitely excluded. That, of course, is following the policy, the fixed policy, of this Government for the last four years, that whenever there is any important matter of policy Government demand the right to be the sole and only trustees of the native.

Now, if—and I say if—there is any truth in the statements that were made in the Sir Daniel Hall Report of 1929, which were completely ignored by Government, if—I say again—if there is truth in the statements that were made in the chapter which includes this section 2040 of the Kenya Land Commission Report, those trustees, if they were private individuals instead of being members of Government, would in my opinion be properly locked up for a long period of years.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE: Sir, I think one of the causes of discontent existing throughout this country at present is lack of action on the part of Government to try and save the situation, which is a very serious one, and the object of this motion is, I take it, to try and discover from Government what action they propose to take. We are fed up with kind words and promises with which we have been regaled for some time. There is an old saying. "Kind words butter no parsnips," and words without action are worthless. The situation has frequently been brought to the attention of Government by elected members, but I am sure that though they may be a very ornamental lot their usefulness is not appreciated as it should be.

Regarding the situation, a gentleman remarked yesterday that it was all rot to say the country was nearly broke seeing the success attending the race meetings held throughout the country. This gentleman, Sir, has a fat pension, so probably the situation does not mean so much to him as to others, but it would be a sad day for this country that will not realize the situation until the necessity exists for closing down those meetings.

We were told yesterday that one cause of want of action by Government was the delay in reports being submitted by

committees. Why do we have to wait so much for committees? Cannot Government act on its own? It is not very frequently that Government takes any notice of the recommendations made by committees, or they have had to refer them home to somebody else. I think Government should act on its own more without depending on advice which they will not accept.

One argument put forward many times is in regard to overhead charges. This has caused a good deal of feeling and a certain amount I fear of animosity, but we do not object or wish to reduce Government posts, though some of them may be considered redundant, but we do object to the cost of those posts. We consider we could get probably just as good service done for considerably less money, and that it is not necessary to only employ super-men to carry out the work.

THE VEN. ARCHDEACON THE HON. G. BURNS : Your Excellency, I do not want to keep the House very long, but yesterday there was one statement made which I should like to have a word to say about. That is, with regard to the devaluation of the shilling and the help it would be to the Africans. I have been thinking about it during the evening and part of last night, and I tried to find out how the devaluation of the shilling could possibly help the Africans. I should like to put the case something like this. Supposing an African got Sh. 12 a month, or whatever it may be, and he goes to pay his hut tax. The shilling has been devalued, and is now worth ninepence. He goes to pay his hut tax. Will Government accept from that man Sh. 9 instead of Sh. 12 in full demand of his tax? (Laughter.)

Then we are told that the native will benefit from his exports which he will send out of the Colony. I have had some experience of this sort of thing and have seen it work in Australia. The first point I should like to make is that natives are not exporters directly; they help to export, but they are not exporters as such. Therefore, if the shilling is devalued, when an African sent his produce home to England and got the full price there, and his cheque came back, if he were an exporter I should understand him getting £25 for £20. But he does not get that benefit. The benefit does not come to the native as such, it comes to the man who buys his produce, deals with it and sends it home, and he gets the extra money owing to the devaluation of the shilling.

I apologize to the House for speaking as a layman on this subject. I have been befogged absolutely as I read column after column in the *East African Standard* and did not know whether those trying to educate us are very much forward with regard to their own education on this matter!

(Laughter.) But that is how I feel about the devaluation of the shilling. I have been told by several members that it would be the other way about. That is my ignorance entirely in understanding the situation as I look upon it.

With regard to the desire and the intention of Government, and the Government is being pressed to get the native to produce more, there is one thing that has again and again been mentioned in this House; that is, the native producer can produce at a very much lower rate than the European producer. The reason given is because of his women producing the corn in the reserves, working on the farm. I would like to draw the attention of the House to the fact that with the spread of education and other influences at work the natives are no longer in possession of three, four or five wives as the case may be to send into the *shambas* to cultivate the ground. Many of them are monogamists, with only one wife, and the hon. the Director of Medical Services and others will tell you they are urging the women to attend to their homes, to keep them clean and sanitary, and to attend to their children, to wash and clothe them and send them to school, so that one poor woman would have to do her work in the home and at the same time produce in the *shambas* the Indian corn to be of any benefit for export. This seems to me to be expecting too much of them altogether.

With regard to produce for export after it has been produced, and here I am afraid that I am up against the hon. the Chief Native Commissioner with respect to this, until the native has some fixed price for his maize and knows that when he takes a bag or five bags of maize to some place that he will be sure of getting the fixed rate for it, or at least a fair price for it, I do not see what encouragement or how the African farmer can have very much enthusiasm for producing more crops. We were told just now by the hon. the Chief Native Commissioner that there might be isolated cases. I have made inquiries about this, and yesterday it was stated that I had said a bag of maize was sold for 50 cents. That was not quite correct. What I said was that the bag of maize was bought for a shilling, or was sold for a shilling, and if you take away the price of the bag, which I understand is 50 cents, the poor producer gets the large amount of 50 cents for his bag of maize. With regard to the sale of cattle and goats. In the Trans Tana country I know goats have sold for the purpose of paying the tax for Sh. 1 and Sh. 1/50 per head.

Taking all these things into consideration, we cannot understand how, unless the price of maize is fixed for the native producer and unless—and I hope the Marketing Bill will be a help in this respect—unless the native gets a fair

price for his produce and the cattle, that is the market price, how he can go on paying his taxes as they are now. We have heard with thankfulness that there are certain districts in which the taxes have been reduced but, Sir, there is a case which has been brought to my notice in the last three weeks of a man who was unable to pay his tax before the 30th of June. About a week after that he went with his tax to the person responsible for collecting it and offered Sh. 12. It was refused, and he was told that he must now bring Sh. 12 plus Sh. 2 cess plus Sh. 6 for the summons that had been issued, so that that person who should have got a receipt for his tax of Sh. 12 could not get it until he had paid Sh. 20. More than one person has come to me bringing such a case. I again say that I have the utmost sympathy with administrative officers who have to collect this tax, but there is one other aspect that I hope I am in order in mentioning. It is that when a man fails in paying his tax and is brought before the officer who has to deal with this matter, he is put in a detention camp for three months. I have asked the hon. the Attorney General if those three months work in the detention camp would justify or entitle the man getting his receipt for the money owing Government in lieu of the tax. Of course, I was told, not at all. He spends three months in the detention camp; his wife is at home, looking after the little garden, doing the best she can to provide for the children and dependents, perhaps two old people who are dependent on them. The man is in the camp working there is serving his time for three months for non-payment of tax, doing some work for which he receives no remuneration. At the end of the three months, that is a quarter of the time in which it would be possible for him to work for his tax, he is turned out of the camp and politely told that he can go and get the tax, because the three months mean nothing as far as providing money for the payment of the tax. If that is not a hardship for the African to undergo, then I do not know what hardship is, so that I hope Government in working out some means for the alleviation of those—I have no hesitation in saying it—overburdened with these taxes at the present time, and especially in the difficulty of their collection, will take such action as it is possible to take to alleviate the hardships on the natives.

There is nothing very much more that I have to say, Sir. I only wish to express my gratitude and that of my colleague to the hon. Member for Kiambu for his advice to us as representing native interests! I should like to remind the hon. member that when the Kenya Land Commission Report was being discussed, I was one who supported the idea of this committee with regard to dealing with over-stocking in native

reserves. I know as well as anybody the difficulties attached to such a step as that and I also know the difficulties there are with regard to over-stocking in the reserves.

I have nothing else to say regarding this matter but I want to stress this point very much: that unless a maximum price is fixed for maize and other products which Africans are producing in the reserves—(Members: Minimum price!) (Laughter.)—the devaluation of the shilling was in my mind—(Laughter.)—I do not see what is the good of urging the natives to produce more; I do not see what is the good of the Colony going to the expense of providing agricultural officers for the reserves, unless the native after he has produced, gets a reasonable price for his products which he has brought into the market.

Council adjourned for the usual interval.

On resuming.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, first and foremost I wish to congratulate the hon. mover, the Member for Nairobi North, on the excellent manner in which he has stated his case. I have no doubt that as he has shown his ability in attacking he will show his ability to defend in his reply, and that will save me a good deal of trouble in going over in detail the grounds for this motion. That I consider I can safely leave to him.

One would gather that this is something new which has arisen in the Colony which requires remedial measures. I should like to make the point that this is many years old, about eight, and I think a quotation from 1930, five years ago, would convince the House that the unofficial members have hammered at the subject for years and did not appear to have made any progress whatever. We are still hammering and asking Government to define their policy, if they have one. I will quote from *Hansard* of 1930, when Sir Edward Grigg was Governor. In his address from the chair at the July session he said:

“Honourable Members of Council,

We meet this morning, I fear, in circumstances of considerable doubt and depression. Since our last meeting, very few weeks ago, prices have fallen still further, and the depression in the Colony has increased. The plight of the grain-growers is, I think, the hardest, but all industries, except perhaps dairying, are feeling the effect of low prices and other conditions very seriously. There is not much sign of improvement yet, and I am afraid that many settlers, with whom I have the deepest sympathy, will have a hard struggle to pull through.”

I am aware, and so are you—or you should be—that these men to whom Sir Edward Grigg referred so sympathetically, have not pulled through, and the process of elimination is still going on and will continue to go on until some really long-range remedial measure is supplied by Government. That is what I want Government to realize.

One more quotation, and I am finished. Speaking in 1930, I said :

“It has been an outstanding year in history, and I suggest that it would be a brave man who dared to predict when prices will get back to where they were twelve months ago, or at what rate they will recover.”

Your Excellency, I submit those two quotations to prove beyond a shadow of doubt that conditions have been deplorable for a period of five years for the agricultural industry as well as others, and it is quite obvious that if agriculture does not progress the whole Colony must be failing to make progress.

It has been suggested, the hon. mover was twitted, with the fact that he did not make any constructive suggestions. I do not know what he is going to answer to that, but I would like to give my quota. I would suggest administrative reconstruction as one of the measures, the overhaul of the Colonial Civil Service with a view to reducing emoluments and pensions within the ability of the Colony to pay. The hon. the Colonial Secretary used these words this morning: “Contractual obligations over which the Colony has no control”. I think that shows clearly that it is admitted on the other side that we on this side have no control. Even the other side have little or no control, because everything has to be referred to the Secretary of State. I have quoted before in this House, the small matter of £39 due to a European settler who was maltreated by a Government official, to wit a native *askari* on duty. That amount was under consideration for some nine months. I am told that it was before Executive Council on two occasions, and was eventually referred to the Secretary of State and then sanctioned. It only shows how futile the Government of this Colony has come down to when it cannot sanction or refuse payment of an amount of £39 in payment of compensation in a case like that.

Another long-range measure, and one that could be taken immediately, and if this was self-governing Colony it would have been taken years ago, and that is in reference to loans. I suggest that a case can be put up and proved that even if we redeem our present loans at the market price on their standing to-day we can show a big profit. I would even go so far as to say that from figures I have seen that the 6 per cent loan issued at 95 and which now stands on the Stock Exchange

market at £124—I believe it the highest gilt-edged security which can be got to-day—could be even taken up at that price and show $1\frac{1}{2}$ per cent profit to this Colony. That would be without hardship to the holders of that loan. I leave it to Government. Those measures should have been taken long ago.

As regards the agricultural industry, I am very pleased to have listened to the hon. and rev. member representing native interests suggesting that there should be a stabilized price on maize of the natives, so that when they took a bag to market they would know what they would get for it. That is definitely correct. We have working in the Colony as regards the maize industry a co-operative company, the Kenya Farmers Association, which contains most, or 98 or 99 per cent, of the maize growers who market through that association. We have another organization, the Wheat Board, and as a wheat grower myself I can only sell my wheat through that Board. They market it for me and pay me out on their pool. That is a system of marketing which should be taken up by Government, and that would realize what the hon. and rev. member requires to fulfil his conditions as to stabilizing prices. When it comes to the question of foodstuffs, I maintain that prices should be stabilized at such prices as would cover the cost of production to the producer as the minimum. We have conditions pertaining to-day, as we have been told by the hon. member, that natives are getting 50 cents net for a bag of 203 lb. of maize. I think I am safe in saying that the quotation on the London market for K2 would work out somewhere, if exported to England on the world's market, to Sh. 2/50 a bag, whereas the cost of production is somewhere between Sh. 5 and Sh. 6.

Prices to-day are lower than they have ever been in my experience, and I have been in the Colony since 1920. I have been growing maize since then, among other things, and prices have never been lower. It might interest Your Excellency as well as the rest of the hon. members to realize the position. I can state from my own experience. My 1934 crop is still in my crib; my 1935 crop is now in cob, and I have not the crib to put it in. I have no doubt that I shall have to sacrifice last year's crop before the end of this year at whatever price I can get for it, and I shall probably by lucky if I make a shilling a bag. The other point is that I have had the whole of the expenses of last year's production as well as this year's production and have had no revenue.

It is very hard, I know, to get it across on the other side, to get them to realize the serious position of this Colony, and more especially the serious position of the agriculturists. If this is to go on, it is quite obvious that the agriculturist is

down and out, is financially finished. A great many are to-day, and there are always continual changes on the farms, and most every time that a farm changes hands somebody has got to look for a job at £15 a month at Kakamega. This is the question I should like to put to Government: What are you going to do about it? You have had committees, you have Board of Agriculture committees, at different times on wheat and maize, and now the question is, what are Government going to do? Are you going to make any endeavour to make it possible for farming interests in this Colony to continue? because unless action is taken, and quickly, it must be taken this year, there must be long-range measures, otherwise these farmers are going to go off the land.

It would be an honest policy if Government turned around to that particular agriculturist, the maize producer, and told him that in the serious view, the considered view, of Government, he should not grow maize. It is quite obvious to me that as far as maize growing is concerned it is finished as a possible industry for the producer. It would probably help if Government, through the hon. the Director of Agriculture, would tell them he considered they should no longer grow maize. He would probably be honest if he did that. It has been Government policy for many years to improve the type of maize growing in the reserves, its quality and quantity, and it has brought the Colony, as far the maize producer, both native and European, to a most pitiable condition. We have been told by the hon. member Mr. Pandya that the natives can produce all requirements. There is no doubt in my mind, he will not accept my opinion I know, that he has again raised the racial question in this Council. He has advocated that the native should grow maize, to grow other cereals and oust the European. That is what they want, and with the assistance of Government are gradually getting it. The sooner that is admitted the better.

That is the position the Colony is coming to. To-day the native cannot produce maize at a profit, the European cannot produce it at a profit. The hon. member suggested also that the price of wheat was too high. It is a pity that he does not grow maize, it is a pity that he does not grow wheat, and it is a pity that he does not advocate that his countrymen should become agriculturists. They would soon find it is not a profitable business to-day.

There is also the question, and a very big question, of railway rates. I maintain that they have a great bearing on this motion to-day, and if the hon. the General Manager can see his way when he is foreshadowing a reduction of £100,000 in rates next year to start at the bottom and work up he will be doing what we have been waiting for him to do for a very

long time, something to help Kenya. The rates have gone up time after time. The main line rate is Sh. 12/50 a ton for export. That has been put up to Sh. 13/50. The branch lines add another Sh. 2/75, so that the present rate per ton export is Sh. 13/50 main line plus Sh. 2/75 branch line, and maize is practically unsaleable.

I myself believe it would be the best policy for Government to try and depreciate the growing of maize by Europeans; it would be an honest policy. I am not criticising Government but giving advice to them which they should act on, to try and do all in their power to prevent Europeans as far as possible growing maize. As I see the picture, the natives are over-producing to such an extent that it often must be slavery for their women to produce at the price they are compelled to sell on the competitive market in Kenya to-day. To follow that up to the logical conclusion, you would then require to do something to help those maize producers, by ways and means, both by guidance and assistance, to turn over to some other form of farming. That cannot be done without money or guidance, neither can it be done in a day. I am speaking this morning because I feel very intensely about it, as I realize that unless Government does take action, and very serious action, there are many men whom we all greatly admire who will have to seek a living elsewhere than in Kenya. The first step to get them out is Kakamega at £15 a month, after which they will eventually be assisted out by Government. I think it is deplorable, but I am not trying to paint the lily. It is what I have had in mind for some time, and it is only after studying conditions in the Colony to-day I have spoken as I have this morning.

I implore Government to consider doing something and to do it quickly. If Government want advice, there is plenty outside this Council, of practical men who are only too willing to give it and put up schemes. Government might consider whether accepting them or not.

There is another, probably small, matter. I have spoken of myself and my own position as a maize producer. I am only giving my own personal experience because my position is that of practically every agriculturist in this Colony. Other things have happened. I have in mind the charge put up on certain plot holders by the hon. the Commissioner for Local Government. I am referring to the double rents which he has sanctioned because it was inadvisable for certain plot holders in different townships to erect buildings in this most serious depression that this Colony has ever had to face. You have had advice from this side of the House last year and before, and this Council has had it in the form of an appeal to Government not to unduly press for rents where it was

inadvisable for people to build on these plots, but I am sorry to see that the hon. the Commissioner for Local Government has sanctioned the policy of double rents. I am speaking from experience. I was threatened with double rent and confiscation unless I built by the end of 1935. Under these conditions, holding the opinions I hold and with my local knowledge, I returned my title deeds and asked for their cancellation. They have since been cancelled, and I have lost two plots for which Government received from me £250. Government is now losing approximately £16 a year. There must be others, so that Government is suffering this loss of rents, and the owners of the plots are suffering the loss of the money which they put into those plots. They were honestly and conscientiously carrying out their obligations until they were threatened with confiscation and double rents, when things were made impossible for them. That is simply deplorable in a Colony going through such a depression, that such action should be sanctioned by any responsible officer in this Government.

I am sorry to say that even the elected members have not made a fight for it. I am glad to be rid of the plots under present conditions, but I mention it because I am hoping that Government will stop it as regards other people who may wish to hang on to their property. I would like to get rid of all my property, but under the way that Government is being run it is impossible to get rid of anything.

I am going to quote further from my experience because it affects me and affects the Colony. If I am affected, the rest of the Europeans and the non-Europeans in the Colony are being affected, and it must affect Government. I have not been able to pay my graduated non-native poll tax. They asked for figures, and five years ago on the balance sheet I was estimated to be worth £50,000. This is not a joke, I am making a serious statement, most serious, and that is my position to-day. And I am only one. Is it unreasonable that I should appeal to you, and I have been asked by several of my friends to give my own case in this Council? I have been challenged to do so, otherwise I should not have done it, but that is the deplorable position. If I wanted to get out of the Colony to-morrow I could not do it unless somebody paid my passage. I have not been out of the Colony for eight years, I have made big sacrifices, and still am prepared to make them. I think I will leave it there, that you understand my feelings in the matter, that I have said this in order to try and put something across to the other side that things are serious in Kenya and that unless something is done to remedy them they will go from bad to worse.

One more quotation before I finish. I am quoting from Vol. 1A of *Hansard*, 1933, page 577, the conclusions of the

Hilton Young Commission Report. They originally appeared in *Hansard*, 1930, page 442 :

“(a) The right to effective representation on matters affecting their taxation, sufficient to give them power to check extravagance in Government expenditure.”

Even you admit, Sir, that we have not that power; although the Hilton Young Commission was not generally in favour of the European population of the country on the political side we have not been given even that consideration.

“(b) Protection against legislation or administrative policy which would fundamentally change the economic conditions on the basis of which they settled in the country.”

I maintain, rightly or wrongly, that the economic basis has been absolutely and fundamentally changed, and that that recommendation has not even been heard.

“(c) A right to have their representatives consulted on all questions affecting the government of the country (including native affairs and other matters reserved for control by a higher authority.”

All I say is that the best friends the natives have in the country are the Europeans in this Colony. We have stood up for them on every possible occasion when it could be done fairly and squarely, for the natives of Kenya generally, and I hope we shall continue to carry out that policy.

“(d) An opportunity for political self-expression, which will enable them to stimulate efficiency in the public services.”

Now, Your Excellency, having read that, there is only one conclusion to my mind, and there is only one solution for the difficulty in this Colony, and that is self-government. The sooner we get it the sooner the Colony will be saved from a bad and unworkable system, a Crown Colony government. It has been proved throughout the history of the Empire that there is always a stage in every Crown Colony when it is advisable to hand over to our own people and give them responsible government. It has worked in every colony, and it will have to work here, and the sooner it comes the better. For that, Sir, I am prepared to fight, and I am certain that a great majority in Kenya will be behind this opinion. I honestly consider that it is the only long-range solution that can be found to end all our troubles.

THE HON. ISHER DASS : In view of the statement made by the hon. Member for Aberdare on the occasion of the Njoro Settlers' Association meeting held on the 22nd of July,

1935, and a report of which appeared in the *East African Standard*, on the 26th of July, it seemed that this motion is brought with a view to completing the minimum period of incubation in order to produce some result to the satisfaction of those who were asking for it.

Many times we are accused of wasting the time of the House (hear, hear!) and the hon. Member for Aberdare suggested in that meeting, and accused us, that we did waste the time of the House. I think that those who live in glass houses have no business to throw stones at others!

Sir, the hon. mover very ably explained to us that a farming community of 2,000 Europeans only is in an absolutely destitute condition, every possible form of destitution as far as human beings are concerned. He says in his motion "this Council further considers that the gravity of the position disclosed by the above-mentioned Report . . ." Naturally Government having heard those statements and what was disclosed by the Report of the Economic Development Committee, has asked "What possible remedial measures they could adopt?" Those remedial measures that Government can adopt have been embodied in this Sessional Paper No. 1. Whatever Government can do under the direction of the Secretary of State for the Colonies, and taking into consideration the financial position of the Colony, has now been embodied in this Sessional Paper. But I should have thought that the Sessional Paper and the statement by the hon. the Colonial Secretary and others on behalf of Government would have satisfied the mover of the motion as to the measures he has asked for in the last three lines of his motion:

"and should further inform the Colony what adequate steps it proposes to take to alleviate the critical conditions affecting the farming community."

He should have been satisfied, but it is not so. After the Government member had replied, the debate was still carried on, and all sorts of suggestions have been made. Might I ask who on behalf of Government is going to reply to them? Nobody! Time is simply being wasted now, for they do not expect the hon. the Director of Medical Services or anybody else to reply to them. No.

Government has done its best, and what they could do they have embodied in this Sessional Paper. But, after all, it is our duty also. If we have anything to suggest as friends of the European settler community, we should be failing in our duty if we did not discharge that duty by suggesting a remedial or remedial measures to alleviate the unfortunate position of the farming community. Before I actually make

any suggestions, I will take the time of the House for just a few minutes to pass a few comments on measures mentioned in this Paper.

Government is always accused of being spineless, and my honest opinion is that they are spineless when it comes to certain grievances or things which want doing for the Indian community, but when it comes to the European elected members they are not spineless : they give sympathetic consideration to all that the European community asks.

I will now make my observations on the recommendations.

I refer first to paragraph 11 :

“The Committee has made certain recommendations regarding the dairy industry, notably for the enactment of legislation rendering co-operation among producers compulsory and for the establishment of a Control Board for the industry. Arising out of a draft Dairy Industry Control Bill, the whole position of the industry is at present under review by a Committee of the Board of Agriculture. That Committee has not yet reported.”

My observation on this is that Government would be well advised never to accept any such recommendation and never to enact any kind of legislation for the compulsory co-operation of the producers. If they do so it will be absolutely benefiting a few people interested in the industry at the cost of the consumer, for the simple reason that to-day in town those who are members of a co-operative society are selling their butter at Sh. 1/50 per lb., while those who are not in the association sell it for Sh. 1/25. If Government enacts legislation for co-operation, it means asking everyone to pay another 25 cents per lb. for the benefit of a few people.

With regard to the question of maize, the hon. member Mr. Pandya has already expressed his views, and he has also dealt with the wheat industry so that I need not take the time of the House.

I now draw attention to paragraph 19, where it is suggested :

“The Committee recommend the appointment of an agricultural officer, possibly from South Africa, for investigational work on fruit problems. This proposal will receive the consideration of Government in connection with the Draft Estimates for 1936.”

I personally feel that there is absolutely no necessity for getting an agricultural officer from South Africa for this purpose, when we have experts here, the settlers, in fruit growing. They are, I believe, doing very well, and it would be

better in the interests of economy if those gentlemen were asked to give their opinion and their experience so that it would be beneficial to the other settlers and people who are interesting themselves in fruit growing.

Paragraph 26 says :

“With reference to the Committee’s recommendation regarding the marketing of native produce, legislation on the lines suggested is being introduced at the present session of Legislative Council.”

I do not think I need hardly say anything as far as this is concerned, because our attitude on this matter is very clear.

In paragraph 28 it is suggested :

“The Committee stress the desirability of intensive exploitation of Eastern markets and, with that end in view, recommend the appointment of a trade representative in India and Ceylon for a period of, say, two years in the first instance. Government agrees in principle that definite measures should be taken to increase our trade with India and Ceylon and feels that as a first step a merchant, possibly accompanied by a suitably qualified agricultural officer, should proceed to India to make a preliminary survey of the market. Proposals for such a visit are under consideration at the present time.”

So far as this is concerned, it is a very good idea that a representative should be sent to India to inquire into the possibility of markets. But my feelings are that when a representative is selected from the European community in Kenya he must give an assurance, a definite one, that when he spends the taxpayers’ money he is not going to use any sort of propaganda for increasing white settlement but will confine his activities to the work for which he is sent to India ; that he will not indulge in any political propaganda at all on behalf of any institution such as the Kenya Association (1932) or any other.

I do not think I will take any more of the time of the House in commenting on the other recommendations. As I have promised, as a friend of the settler community, I think I would be failing in my duty if I did not suggest one or two things as well as one thing which I have been specially asked to suggest for the information of my hon. friends here.

With regard to the first thing which I am going to suggest. I do not doubt for one moment that whatever facts have been disclosed by the hon. mover of the motion are true, and that the 2,000 settlers who comprise the European farming community are in a hopeless plight and that Government has failed to satisfy them by giving them certain reliefs. Then,

Sir, the next best measure to be adopted is, in the words of the hon. Member for Trans Nzoia, that he would advise his community to throw open the Highlands for other people to buy so that all the land at present uncultivated shall be made use of in the interests of the Colony. The buying up of such land would bring in fresh capital which will go a long way to help the destitute farming community in Kenya. This is the first thing. Someone may ask, where are the people who are going to buy this land? because the people in possession are absolutely destitute and have no money. Sir, I can assure you that if that step is taken, and the farming community throw open the Highlands for cultivation by a non-European community, in Kenya to-day there is a syndicate of half a million pounds ready to buy up any amount of land which could be offered to a non-European community. So much for that.

The second thing which I have to inform the settler community is this. Day in and day out for the last two or three years they all along have been talking about their destitute condition and the hardships of living and that the country is not prosperous, this thing and that. In view of those statements and the agitation carried on in regard to devaluation, believe me honestly, you are doing no good to the Colony as a whole. You are trying to show the people in the outside world, people who might have some intention of putting capital into Kenya, that this country is not worth it. You are by your action doing more harm to the Colony than good to yourselves and the Colony as a whole. I think that the sooner you stop this harping on your destitute condition the better it will be, and it will not waste the time of the House as well, while the country will be given a good impression in the eyes of outsiders.

The third point which I have been asked to make is this. In the *East African Standard* of July 29th, was an account of the debate in the House of Commons on the Colonial Estimates, and it said :

“In winding up the debate Mr. Macdonald said the Colonial Development Fund had authorized a grant of £23,000 for Kenya. The Land Bank had advanced a sum approximately equal to £300 to each of the 2,000 settlers. At present, proposals were being considered for largely increasing the Land Bank funds.”

In spite of this and the other privileges granted to the settler community by Government, they have not been able to do anything or make the best of this business and, in the words of the hon. mover, the land is returning to bush. Then what is to be done? Something has got to be done, and this is the remedy which is suggested.

Here is a book written by a native of Kenya living in Fort Hall, which was published in London with a foreword by a very able man, an authority on natives, Professor Huxley. He recommended this book to everyone to read, and he has been absolutely impartial. With your permission, Sir, I will read one or two extracts.

In his foreword Professor Huxley said :

“However, a foreword must not anticipate too much, and I will end by commending the reading of the book to all those (luckily still numerous in this country) who like to hear both sides of a question. We have heard the views of the Kenya administrators, the settlers, the missionaries, the Hindu community, upon the colony and its government: we have not heard those of the native population, who outnumber the whites by nearly 200 to 1, and whites and browns together by 50 to 1: or at least we have only heard those views at second hand, filtered and inevitably distorted by passage through a white man’s mind. Here are those views unfiltered and undistorted. They will not, of course, necessarily be the views of Africans of other tribes, nor of all those of the same tribe: but they are authentic.”

It may be argued that some professional educators have written this book for the native, but that is not so; the Professor himself suggests that a few European friends in England have only corrected the English here and there but that actually the book is as it was written by the native.

THE HON. F. A. BEMISTER: On a point of order, Sir, which part of the motion does this refer to?

HIS EXCELLENCY: I understand that the hon. member is proposing some far-reaching remedial measure. He is now referring to an authority, and is endeavouring to establish his authority. That is the position as I see it.

THE HON. ISHER DASS: I was referring to the remedial measure suggested, and on page 88 of the book it is written:

“If indeed the land which was lying fallow and reserved for cattle grazing and fuel, etc., at the time was considered through the ignorance of the Administrators to be unoccupied land and therefore provided any justification for the same being given away to others, then carrying the same principle to its logical conclusion, we must respectfully submit that out of the five million acres which has been given away to less than 2,000 Europeans, the four and a half million acres which are lying uncultivated up to this day should revert to the natives of the soil.”

THE HON. SHAMSUD-DEEN : Your Excellency, I did not propose to take up the time of the House, but in view of the fact that this motion has been allowed and certain statements made, I think I ought to have the privilege of expressing my views on the whole matter.

Your Excellency, I think that after our *Hansard* is published containing the debates which have taken place in this House since the beginning of the life of the Council, to strangers reading them in any other country they would convey the impression that this Council is a very peculiar institution, because under the guise of various motions the same subject has been discussed over and over again. I have been listening to two motions in the last three days, and honestly I have not heard one single different word of argument in the case of both. One would fancy this was a budget session wherein we were allowed to discuss all sorts of extraneous matters which have a very far range, but in fact the real object of this and other motions which are going to be brought in this House is simply to have a continuous series of attacks on Government. I myself like to have an occasional go at Government. I consider that Government is a very popular target. But surely there must be some limit to such attacks. I think we have really reached the limit when I feel that the whole business is not quite honest.

The motion accuses Government of not having gone far enough. I personally feel, Your Excellency, that Government has really gone farther than it ought to have done, or any Government could have done. I am afraid that some members in this House develop the mentality of certain African tribes, who, when they do not get the rains or they get locusts, blame the white man or Government for it. We have been talking about the distress prevailing among the farming community. The extent to which they are actually suffering, I think, is explained by the speech of the hon. Member for Trans Nzoia when he put things at the lowest ebb by saying that some farmers will have to go to work for £15 a month elsewhere. That shows how little information he has got as to the distress that prevails in other sections of the European community in this Colony.

I do not think it is fair that we should all the time be harping on the distress that is prevailing in only one section of the community, but that we should also take cognizance of the distress prevailing in other sections. For this purpose I will not mention the Indian community because their misery and distress has reached such a limit that it cannot possibly be even appreciated or understood, especially by the unofficial European members of the House. I will only state that the

distress that prevails in the non-agricultural European community in the Colony is not at all realized by even the representatives of those people.

I know of cases where Europeans who are unemployed would have considered it a godsend, a windfall, to have got a job at £15 a month anywhere. They would consider it a real fortune if they could have got that. Only yesterday, an elderly European woman rushed into the Municipal Council hall and said she was in such a destitute condition that she had been compelled to drink the water from Nairobi River. She is by no means a solitary instance. Quite a large number of Europeans in this town have had their water supplies cut off and are without means to have the water reconnected. This woman said she was compelled to drink the water of Nairobi River; her husband had died, and her boys were in hospital through naturally the impurity of that water. There are conditions where European children—I will not mention Indian cases because they will not appeal to my hon. friends at all—who are without food; they hardly get one square meal a day. I also know that as a result of this extremity of destitution in the town that immorality among women is increasing, and will no doubt be followed by suicides.

It is unfair to mention all the time about one community when the fact is we are all suffering under universal conditions which, I think, can be described as the curse of God having descended on earth, and the Government of Kenya or of Great Britain or the governments in the world cannot help. What is the good of coming day after day and suggesting that this is the fault of Government? What can Government do? Government have already announced that in addition to another half a million loan they are going to let the farming community have another half a million. The previous half a million, according to the Secretary of State, amounted to an average of about £300 for every one of the 2,000 gentlemen farmers as I call them, because I do maintain that the European farmers in this Colony are gentlemen who never put their hand to the plough: they depend on the labour of the natives.

Suppose we give them another half a million, what will that mean? Probably another average of £300 per gentleman farmer. My friend Mr. Isher Dass under-estimated, I think, the assets of the land in the Highlands when he said that half a million pounds were available for purchases there. I have been long enough in the country to know that the gentleman farmer has brought into this Colony not one but many millions of pounds belonging to himself and his ancestors, and has sunk that money here; there is not the least doubt about it. Government proposes to give them another half a million, but I submit that unless the Almighty comes to our

rescue we shall find that these remedial measures or any amount of loans will not help the European farmers at all. The Railway have already expressed their intention of giving away £100,000 in reduction of rates next year. Government have given earnest proof of their desire to meet the unofficial community by appointing the Economy Committee, and I as a member of that Committee can only say that quite against my suspicions that Government did not mean to go about it seriously have done everything to help to bring down expenditure. That will be shown when the Report comes before the House. This Economic Development Committee was forced on Government against the announcement of the Secretary of State for the Colonies. The crux of the whole recommendations put simply is that the settlers shall have more loan and the Secretary of State said it was impossible, but the local Government having made the promise to appoint the Committee—they were previously averse to appointing it—and despite the fact that the unofficials were told that no useful purpose would be served in face of the statement of the Secretary of State Government did appoint it, and have given proof that they are going to put into force most of the recommendations which have been made.

Your Excellency, as I have already said, I am not any great lover of Government. As a matter of fact, when I came to this House this time I had my own dreams of being perpetually in opposition to Government, but it did not take me long before I was disillusioned altogether to find that the unofficial members on this side of the House have no time at all for any other community but the gentlemen farmers who, according to the Secretary of State himself, do not exceed in number 2,000. There is a lot of talk that is absolutely out of order, but as other people have talked about self-government I think I am also entitled to say something. I would gladly work loyally in co-operation with the unofficial members if they had shown a sense of responsibility for getting the control they are asking for of finances or of self-government by having due regard for all communities inhabiting the Colony. But what do I find? In the whole debate, with the exception of the hon. Member for Uasin Gishu, not one member has said anything which signifies that there is such a community in this Colony as the Indian community. I think the hon. member did take cognizance of the fact that an Indian community was living here. I wish to say that as a result of that experience I think our interests are far safer in the hands of Government rather than in the hands of a small section who want financial control and who want self-government, and that is the reason why I say we have reached the limit beyond which it is dishonest to keep attacking Government in and out of session by various tricks such as this motion.

As far as the devaluation of the currency is concerned, my reminiscences of the history of this changing and chopping of the currency of the country are not very happy ones. The origin of the whole change of currency was a popular cry when it was said "Let us get off everything Indian." We had Indian laws, an Indian currency system, and Indian administration system here. The laws were gradually changed, and it was then said that unless we got rid of this cursed Indian rupee we should never be on safe grounds. That was one of the popular arguments for getting rid of it. We got rid of it and introduced the florin. It was then found that that was not practicable and we changed it to shillings, and we are now asked that that shilling should be changed into a coin which would be between a *sumuni* and a shilling, or something of that sort. We cannot go on tinkering with the currency of the country indefinitely, and as one hon. member said—and I have also followed carefully a series of articles in the *East African Standard*—I am to-day absolutely convinced that nothing good will come out of this juggling of currency even if it is introduced. I do hope that Government will not yield to any agitation on this subject and this popular cry about devaluation of currency.

I quite appreciate that a Government which has the co-operation of the unofficial community is a good Government, but it ceases to be a government the moment it yields to threats and unreasonable agitation of people who are only out to represent a very limited section.

Now, Your Excellency, the hon. member Mr. Pandya spoke yesterday about going to the Secretary of State for a loan. The Secretary of State would not give a 20 shilling note out of his own pocket to this Colony. There is no money to be had from him. If we borrow money we pay interest on it, and it is merely getting money from one section of the taxpayers to pay to the other. It is merely a case of robbing Peter to pay Paul. The day before yesterday we were talking about the abolition of the graduated non-native poll tax; to-day we are asking that the Government should borrow a sum of money the interest on which even at 3 per cent will be equivalent to the total amount collected by Government from that poll tax. We cannot go on blowing hot and cold at the same time. One side would say "Let us have relief in taxation," and the other side would say "We should charge the revenue of the Colony without the recurrent interest charge which is equivalent to the amount of the graduated poll tax." Then again, we are told that this million pounds will be repaid and that it will be lent on security. Security of what? The security of land which has been given to gentlemen farmers absolutely free of charge. That is the security we are going to get; that is, the security of the land.

I personally, when I voted in favour of these loans to the agricultural community, never had a hope of ever getting anything back from them. Past conditions have already shown that we have already wiped off a considerable proportion of these loans, and if a further loan of £500,000 is given I know it will never come back.

I quite see that some European members get irritated when my friend Mr. Pandya even tried to show the plight of the Indian farmer. We are told that the whole object of the motion is to alleviate the conditions of the agricultural community. As a result of the racial and disastrous land policy adopted in this Colony, the Indians are confined to just one corner. When my friend (Mr. Pandya) was trying to show the hardships under which the Indian farmers laboured, I could see signs of irritation in all corners of the House, and some hon. members got up to a point of order. That shows what sort of sympathy we can get from the gentlemen who are asking for self-government and control of the finances of the Colony.

I could gather from the speeches of some hon. members that they are alarmed at the increased production by the natives. After all, what are we, Indians and Europeans? We are only newcomers to this Colony, the country belongs to the native, and Government are pursuing the right policy and course in doing all in their power to encourage native production. If I see that a bag of maize produced by a native at a lower cost and sold in the competitive market is good enough, there is no reason why a bag of maize produced by a European farmer should be expected to fetch any more. If they cannot grow potatoes economically, all I can tell them is not to grow them at all, because they do not grow produce simply for the sake of curiosity or fun or to say they have grown so much maize, tea or coffee and cannot sell it. The only thing is not to grow it. The hon. Member for Trans Nzoia said his 1934 maize was still in the crib and the 1935 was in cob and he had nowhere to put it because he could not sell the former. I say, why grow for 1936? Do not grow any more.

I know it has been said over and over again that other countries spend large sums of money to keep the farmer on the land. That certainly does not apply to this country. Those farmers in other countries have held their land for generations and developed it to an extent that it would really be the duty of Government to go to the last extreme to help to keep them on the land. Here, most of the land is held on speculation, not a fraction is developed, and if Government are going to keep that type of farmer on the land on the security of the land granted them free I do not think the same arguments for assistance can apply.

As regards the distress which it has been alleged prevails. Your Excellency, we read in the papers that farmers up country hold meetings and say that Government is ruining them, that their representatives are to do something, "We are all paupers, finished, insolvent, and something must be done." The same evening, we read in the papers, they have a sun-downer and dance and races and all sorts of luxuries. That does not seem to me a sign of a community having poverty. I am very glad to say that if Government gives them another £500,000, let it be said to the credit of that community that they do not hoard their money. That money will have plenty of circulation. There will be plenty of new motor cars bought, and the hon. the Commissioner of Customs will be able to give us the news that his revenue from import duties has increased! Probably the hon. the Director of Education will have more money at his disposal, because people will be drinking more whisky! That much can be said, that they do not allow money to remain in one place but circulate it as quickly as possible.

But there are other sections in this Colony who are suffering to such an extent that it is utterly indescribable. The Indian community, as I have said, their state is such that it is absolutely useless to try and convince Government because Government generally consists of the European officials who cannot possibly know of the conditions which exist among Indians. But if it is the duty of Government to help at all the gentlemen farmers, it is equally the duty of Government to help those poor people who are really dying by inches in poverty. I have seen the faces of certain people who were once prosperous, faces shrunk and shrivelled physically by sheer starvation, and there is nothing done by Government because they refuse to believe it. One hon. member said he had not been out of the country for eight years and thought that that was a great hardship . . .

LT.-COL. THE HON. J. G. KIRKWOOD: I never said it was a hardship. I shall probably be here for another eighteen years.

THE HON. SHAMSUD-DEEN: If a person considers it is a hardship not to get out for eight years he is asking for too much, because a lot of people are not able to get away for twenty years.

HIS EXCELLENCY: Order, order! The hon. Member for Trans Nzoia has never even suggested it was a hardship.

THE HON. SHAMSUD-DEEN: I beg your pardon, Sir.

Your Excellency, I can only say that unless I shut up very quickly hon. members will be getting exasperated. So I will simply say this: that Government, in order to show that it is not a spineless Government, ought not to yield to this sort of continuous agitation which is brought up in the shape of this motion. I do hope, unless another motion is going to be brought in, that some measures will be taken by which the repetition of some things over and over again will be stopped in order to save the valuable time of the House.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, I should like to preface my remarks by a quite uncontroversial matter, and that is to congratulate an hon. member of the House—I am referring to my friend the Acting Deputy Colonial Secretary—on his promotion to another Colony. (Applause.) I am sure the whole House will join with me in rejoicing that at long last we are repaying to some extent the debt we have owed so long to that oft-quoted colony. (Laughter.)

Sir, when this Committee was first appointed, I had the honour of being appointed a member of it. I sat through a great many meetings, during which the work was chiefly a collection of data and an exploration of all the various matters incidental thereto. Then, owing to urgent private affairs, I had to leave the Committee and go to England. This I hope the hon. member Mr. Pandya will not be too hard on me for, as he was on Mr. O'Shea! When I went away, the hon. mover of this motion took my place, and as he said it fell to his lot to deal with the draft of the actual recommendations. I should like to take this opportunity of paying tribute to the chairman of the Committee, Mr. Sandford, who, I think everyone will agree, displayed the most extraordinary industry and hard work and tact in the way he handled the meetings of that Committee. I do not think anyone could have given more time and trouble to it than he did.

I should also like to say that I am very glad the Committee recommended the increase in the funds of the Land Bank and that Government has supported that recommendation as strongly as they have. I have had the privilege of reading the memorandum sent home by Government, in which they have put the case as strongly as possible. On the question of these funds for the Land Bank, I think there is a slight misapprehension in many people's minds when they criticize it and oppose this expenditure. The interest on the money borrowed and the cost of administration of that fund are all paid for by the people who borrow from that fund, and the only part which this Government has to pay is the 1 per cent sinking fund which, of course, is not spent but

which remains actually invested in the funds of Government. Over and above that, I believe I am correct in saying that the Land Bank has accumulated a reserve of something like over £11,000 at the present moment. I think we ought to understand that point of view, because it is often said, in fact the hon. member Mr. Shamsud-Deen has just talked about it, that we give money to people. It is not giving it to them, they pay for it and all incidental expenses.

The next thing which I am very glad has been recommended and which Government has accepted is the recommendation for the appointment of the Standing Board of Economic Development. This has perhaps been a little hobby of mine, and I have always felt we needed something of the sort. I think it is generally accepted in most government circles—whether it is the bureaucratic form of Government as here or even in a democratic form as in England—that the ministers in England or the heads of departments here are so snowed under with the ordinary departmental work that nobody really has time and it is nobody's particular job to go into the more constructive ideas and proposals which are associated with the development of a country. I have had it stated to me by members of the Cabinet in England that that was so. I think that that is why the practice has grown up so much lately of appointing ministers without portfolios for that purpose. The same thing applies to the Government such as we have here, and I believe that when this Board is appointed—and I trust soon—it will be a method of dealing with any practical proposals which come up for the betterment of the country. But there is one thing which I think essential, and that is that there should be one person on that Board, whether the secretary or the chairman perhaps, whoever he is there should be one person who has a whole-time job and is able to devote all his energies to dealing with the different problems. The success of the Board depends enormously on the personality of that person. I will go a little further, and say it would be a great pity if just an ordinary departmental officer who has not had experience of outside matters was appointed to that post.

This debate, Sir, has wandered a great deal, and perhaps it was inevitable, but let us try and get back a little bit to what are the main issues. The main issue, as I see it, is that this country is an agricultural country, and we are dependent on world prices, and world prices for agricultural commodities have gone absolutely to blazes; at the present time, because of this condition on the world markets, it is impossible for farmers in this country to make a living out of their businesses. That, as I see it, is the fundamental question, and the next question is, how can that position be put right?

Now, Sir, it has been insinuated that this is a Kenya question, that it is because the Kenya farmers are, as one member said, gentlemen farmers. Sir, I deny that the farmers in Kenya are inefficient in their work. Many of them started no doubt as amateurs, and possibly because they were amateurs they expended more money in the early stages than they should have done. But they have all been through the stern experience of adversity, and I say to-day the farmer in this country is not inefficient and that the crops are produced at very reasonable cost. Nor is it Kenya conditions which brings this difficulty about. Let us admit that we have locusts, have had drought—but these are passing things. But are these world prices passing things? We must face the fact that they are likely to obtain for a considerable time.

I think the hon. mover said yesterday that it is rather the council of despair that we are dependent on a world war or a war in Abyssinia to put prices back, but failing any wars I think the probabilities are that prices are going to remain very low for some time.

I submit that Government has a duty to all the people in this country, people of all races, and the hon. member Mr. Shamsud-Deen is perhaps surprised to hear that I consider they have a duty to the Indians. But I do say this. Government are going what they consider the best way to help the agricultural industry in the native reserves, and in the same way it is Government's duty to do what they can to help the European producer as well.

To come back to this particular Report. I think the trouble is this. There are many recommendations in it which if carried out, as I hope they will be, will help the agricultural industry, but actually they are really only palliatives, and we consider they are not going sufficiently deeply into the whole question to put it entirely right. I am not one who despises palliatives, and if we cannot get anything better than a palliative is better than nothing, and I do suggest even other palliatives which Government might consider this time which are not in that particular Report.

One of those is the question of a general revision of agricultural rents. I think the time has come when that might be seriously considered, and instead of doing it piecemeal it should be considered on a more comprehensive basis. When Sir Philip Cunliffe-Lister was out here, he said that what struck him perhaps more than anything else was the way in which the various agricultural industries of the country had organized themselves and the way they were doing everything in their power to help themselves through better organization. And that is a fact. He said it was very remarkable that in

these difficult times when everyone was hard up that all the industries were taking so much trouble to get themselves properly organized. I submit that the European farming community of this country have done everything in their power to try and help themselves in that sort of way and in thus helping themselves to help the prosperity of the country.

I do not want to go deeply into the question of devaluation. My hon. friend the Colonial Secretary said he understood the chief attack on Government was that they had not adopted devaluation. I think he understands now that that is not actually the case. The point about devaluation is this. Having accepted the fact that the agricultural industry was in a very serious stage owing to outside circumstances over which the Colony had no control, that is world prices, it was considered that something pretty radical had got to be done to try and put the case right. Probably most of us were surprised to find how many economic experts were living in this country! But whether you accepted all of them or not it is a fact there have been a certain number of gentlemen in this country who devoted a tremendous lot of time and thought to these problems and do put forward definite proposals, whether you agree with them or not, for the rectification of the situation. Our point was this. That those gentlemen, having done this, and having done it I think everybody agrees purely because they believed it was the right thing to help the country, deserved to have a fuller and more detailed reply than they got as to why their proposals were not practicable in this country.

We heard yesterday from the hon. the Treasurer the reasons why in Government's opinion it was impracticable to apply any such theory. I think he carefully abstained from arguing the merits or demerits of it as a proposition. I must say, I have given a lot of thought to this myself, that one naturally, if there is some method which can put things right, is only too ready to support it, but one has always realized there are practical difficulties in the fact of this being a small country linked up with other countries on the same currency and so on. But while I agree it would be impossible to apply this to Kenya without the neighbouring territories I cannot admit his argument that it could not be applied to East Africa without being applied to all other parts of the Colonial Empire, because actually to-day it has been applied in various parts of the Empire, and, I believe, in at least one Crown Colony. Now Government say this is not a practical proposition.

What we ask is, has Government got any alternative practical proposition? Government of course will reply why do we want this if we have something practical to put up?

I submit that whether we put up anything practical or not, Government cannot overlook their responsibility. The Government of a country is responsible for the people of the country and their welfare. I do not think that anyone would suggest that Mr. Walter Elliott, when he produced all sorts of new methods to help the British farmer should have waited until he had had all those suggestions put to him, and I say that Government cannot overlook its responsibilities. We on our side are only too ready to discuss any methods which may be possible of adoption. It is not an easy matter; I know Government cannot produce rabbits out of a hat as was once said in the House of Commons and put everything right easily; it is not an easy matter; but I do say that every other country in the world with the possible exception of the Crown colonies have adopted some method or other to keep the farmer on the land. We are not unique in having prices which do not pay for the cost of production; it is the same everywhere. England to-day is subsidizing her sugar beet industry to the tune of at least seven millions a year; she has also adopted methods to protect her milk industry, the meat industry, the wheat industry, everything. South Africa, we were told the other day by Mr. Reitz, has spent something like twenty millions subsidizing her farmers in the last two years. In this country we have no money to subsidize.

I am not one who thinks the word subsidy is a terrible thing, not to be mentioned. I even believe that direct subsidy is the best way of helping the agricultural industry, but the fact is that we have not got the money so that the question of subsidy does not arise. At the same time, I deny absolutely what the hon. member Mr. Pandya said that the European agriculturalist is being subsidized to-day. He also suggested that it was time, at least I gathered that was what he meant, all the Europeans got out of farming and made way for people of other races to take their place . . .

THE HON. J. B. PANDYA : I never said that.

LT.-COL. THE HON. LORD FRANCIS SCOTT : I beg your pardon, the hon. member Mr. Shamsud-Deen said it.

THE HON. SHAMSUD-DEEN : No, Sir.

THE HON. ISHER DASS : I said that, Sir. (Laughter.)

LT.-COL. THE HON. LORD FRANCIS SCOTT : Anyhow Sir, the gist of the Indian members' arguments is always this, to attack the British farmers in this country and try and make out we are not pulling our weight, are no good to the country, and that we should make way for others.

Now, Sir, I am going to make an appeal to Government. I think it is time, if it is only to save a lot of time in this House, for Government to once more reiterate its policy, which I understand has never been altered, the policy known as the dual policy, which is the encouragement and production of farming by Europeans and natives side by side in this country, and I ask further, Sir, that Government will make a definite declaration once more that they do believe in white settlement and that they do mean to support white settlement in every way they can. (Applause.)

I get rather tired sometimes, it is difficult to keep one's temper, when these perpetual pin pricks come from hon. members on that side of the House, and if I may just reply to a few remarks of the hon. member Mr. Pandya it is this. If there is one thing on which all economic experts practically agree with each other, the one basic opinion I think shared by everybody at least in which I read, is that the first thing to put the economic position of the world right is a higher price for primary products. That I believe is accepted by everybody. If there are higher prices for primary products somebody has got to pay them, and it is quite obvious that in the course of the year the consumer will have to pay a little more and, frankly speaking as a producer, it is time he did. It was the hon. member Mr. Pandya who brought in the question of protection and quoted flour. I think you will agree with me that before we had this wheat industry established in this country and made the excellent flour we make to-day and which supplies the want of the country, we were completely at the mercy of the Indian flour which sold at a much higher price than flour sells to-day.

There was another remark which the hon. member made which I could not understand. He said that when the price of maize was high, Government introduced restrictions on the export of native maize. I do not honestly know to what he was referring, and the only thing I can think of was when, owing to drought conditions, the price of maize went high, and this House brought in restrictions on the price the producer of maize was to receive. That is the only restriction I have ever heard of.

The hon. member Mr. Isher Dass quoted with great glee from a book by Professor Huxley . . .

THE HON. ISHER DASS : On a point of information, the book is written by a native.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Oh, by a native? I beg your pardon, I thought you quoted Huxley.

THE HON. ISHER DASS : The preface is by him.

LT.-COL. THE HON. LORD FRANCIS SCOTT : I have only one other remark to make, Sir, that I should like very much to support the appeal made by the hon. member for Kiambu that Government will not omit to appoint this Committee so strongly recommended to deal with the question of overstocking in the native reserves. I do not think it is sufficient to leave it to the Provincial Commissioners' meetings and so on. We on this side of the House are deeply interested in this question, and feel it is one of the most important main questions before the country, so that I hope Government will reconsider its decision and appoint such a Committee which, I think, may be of the greatest value possible both to natives themselves and the country at large.

The debate was adjourned.

*Council adjourned till 10 a.m. on Thursday,
the 1st August, 1935.*

THURSDAY, 1st AUGUST, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, the 1st August, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, ESQ., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 31st July, 1935, were confirmed.

ORAL ANSWERS TO QUESTIONS.

TRAINED AFRICANS, PUBLIC WORKS DEPARTMENT.

No. 44.—THE HON. F. A. BEMISTER asked :

“1. How many Africans trained at the N.I.T.D., Kabete, are employed by the Public Works Department?”

2. How many by the Kenya and Uganda Railways and Harbours?”

THE HON. THE DIRECTOR OF EDUCATION : The answer to the first part of the question is “one”.

The answer to the second part of the question is “sixty-eight.”

LT.-COL. THE HON. LORD FRANCIS SCOTT : Arising out of that answer, might we be informed why the Public Works Department decline to employ these natives?

THE HON. THE DIRECTOR OF PUBLIC WORKS : There are fifty-nine African artisans employed by the Department of Public Works, and practically all were trained under the system for training Africans by the Department some years ago. No new African artisans have been taken on recently.

MOTION.

ECONOMIC DEVELOPMENT COMMITTEE REPORT.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK having moved :

“This Council, having considered the Report of the Economic Development Committee and Sessional Paper No. 1 of 1935, is of opinion that the measures proposed in no way rectify the existing situation.

This Council further considers that the gravity of the position disclosed by the above-mentioned Report, calls for the immediate introduction by Government of far-reaching remedial measures, and that Government, having seen fit definitely to negative in advance the method of relief subsequently suggested in the Minority Report, and to do so in spite of the terms of reference provided and whilst the Committee was sitting, should inform the Colony of the reasons for such refusal, and should further inform the Colony what adequate steps it proposes to take to alleviate the critical conditions affecting the farming community."

THE HON. H. E. WRIGHT having seconded.

The debate having been adjourned.

The debate continued.

THE HON. THE COMMISSIONER OF CUSTOMS : Your Excellency, I am intervening in the debate only for a few minutes, because I feel that the hon. mover's analysis of the trade and revenue figures for 1934 as reflecting the current position of the Colony cannot go unchallenged.

I regret that in his investigations the hon. mover was in any way inconvenienced by the modifications introduced in the design of the 1934 Trade Report. In certain respects these modifications were introduced to meet the wishes of the agricultural and commercial interests and, generally, for the purpose of clarity. The revised form has received favourable comment from many quarters, both local and overseas, the only adverse criticism reaching my ears being that voiced by the hon. member in the course of his opening speech.

Turning to the causes alleged by the hon. member as having given rise to the increased yield of customs revenue towards the end of 1934, he singled out, I think, the following factors as having been mainly contributory to that result : firstly, increased importation of mining machinery, motor vehicles and petrol ; secondly, replenishment of stocks owing to the Uganda demand ; thirdly, Japanese dumping.

To begin with, the Japanese dumping theory is entirely mythical. The increased volume of Japanese imports during 1934 was due to the displacement of imports from elsewhere and to business resulting from orders placed from this Colony in the usual way and financed in the usual way.

I will now refer to the theory about the replenishment of depleted stocks in anticipation of the Uganda demand. There was, of course, a seasonal restocking by Kenya merchants, and the position of the Uganda market naturally

influenced the extent of the buying, but I am sure I am correct in saying that the potential demand from Uganda was not over-estimated but under-estimated and that the movement of goods to Uganda was so accelerated as to leave Kenya's share of the joint revenue entirely undisturbed by seasonal restocking operations, a view which has been substantiated by subsequent events.

With regard to the increased importations of machinery and lorries for the mining industry, the hon. member Mr. Pandya has already pointed out that these commodities are exempt from duty and do not affect receipts. Mining activity did, of course, stimulate the importation of motor cars, petrol, and other dutiable articles, but that factor was certainly in the minds of Government when the revised estimate of customs revenue for 1934 was framed, and it was also in the minds of hon. members opposite when that estimate was subjected to very severe criticism. To suggest to-day that such a factor introduced an extraneous and unforeseen influence upon the revenue yield for 1934 is, I submit, an indefensible proposition. There was never any question when the customs revenue position sagged between 1929 and 1933 that the movement reflected a decrease of purchasing power. During that period, revenue returns were regarded as a true barometer and an index of the general economic position. Now the movement has been substantially reversed, we are asked to believe that the change is due to fortuitous circumstances and that the revenue returns have lost their former significance. I submit that we are asked to accept this thesis on entirely untenable grounds.

The hon. mover has made the maximum amount of capital out of the export figures. As he is well aware, however, the calendar year, which is the basis of the figures in the annual Trade Report, cuts through the crop year. He is also, I imagine, aware that the figures for the crop year of 1934-35 are better than the trade returns for the year 1934 indicate. I will put the position in this way. According to the calendar year returns, the domestic exports for 1934 were £337,000 less than the domestic exports for the calendar year 1933. But during the first six months of 1935, which fell within the crop year 1934-35, domestic exports showed an increase of £394,000 as compared with the first six months of 1934, which fell within the crop year 1933-34. I suggest, Sir, that the hon. mover painted the export position in the darkest possible colours, especially having regard to the cessation of drought and locust conditions.

I have no wish to minimize the difficulties which beset the agricultural industries in this Colony, but I do believe that any improvement in the economic condition of the country

as a whole is bound, directly and indirectly, to work to the benefit of agriculture, and that natural forces working towards local recovery are infinitely more potent than local political expedients. In common with a great many unbiased observers, I believe there is an appreciable improvement in general economic conditions, and that improvement is by no means without substantial elements of stability. To belittle that improvement and to attribute it mainly to evanescent and even imaginary causes cannot serve the true interests of agriculture but can only damage further the Colony's reputation and retard progress.

CAPT. THE HON. H. E. SCHWARTZE: Your Excellency, I will not preface such remarks as I have to make by assuring the House that I do not propose to keep them for any length of time, because that would be the prelude to a speech of half an hour in length, an amount of time I do not propose to take. The chief reason for my intervention in the debate is to put forward what is merely a suggestion, but I hope a suggestion at least worthy of consideration, with regard to a possible scheme of conversion of some at least of the most onerous loans of the Colony.

Before dealing with that point, however, there have been certain remarks made in the course of the debate to which I would like to refer briefly.

The first of those remarks was made earlier in the speech of the hon. Colonial Secretary and has been lightly touched on by the Noble Lord in his speech. That was the remark made by the hon. the Colonial Secretary that the gravamen of this motion appeared to be a protest against Government's refusal to accept the suggestion and recommendation made by two members in the Minority Report of the Committee with regard to the devaluation of the East African shilling. I wish to make it quite clear that that was not the gravamen of the motion, and I think the speeches made by hon. members on this side of the House would have made it clear that the object of this motion has not been to discuss the merits or demerits of devaluation or to give any opinion as to the advantages or disadvantages of that proposal as it was thought, and rightly thought, that the terms of the motion were not such as would justify any detailed discussion of that proposal.

As far as I know, the views of elected members are proportionately no different to the views of the country on this subject, and I believe the country can be said to be divided into three classes. There are those, perhaps the most vocal, who are definite supporters of the proposition. There are those who definitely believe with the Secretary of State that that way damnation lies. There is the third class—and

in my belief that third class in twice both of the other two classes—who find the problem exceedingly complex and difficult, following the hon. and ven. member for native interests (laughter), and who are anxious to be educated in the pros and cons of this proposal. They have only heard one side of the discussion, and they would have liked to have heard the other. That is the only reason I rather regret the hon. the Treasurer, when dealing with the impracticability of the proposal, did not at least put forward some of the disadvantages, without in any way weighing those advantages and disadvantages and entering into a long debate as to whether the advantages outweighed the disadvantages, or vice versa. There is no proposal, whether of currency or anything else, which has not advantages and disadvantages, and naturally the supporters of any proposition put forward the advantages, leaving it to the opponents to put forward the disadvantages, and for that reason I rather regret some of the admitted disadvantages were not put forward.

I do not propose to deal further with this question or to discuss its merits or demerits. But there is one thing which would happen if the East African shilling were devalued. I will quote an example, to show one thing which would happen, and I will leave it to hon. members on this and the other side of the House to decide whether the result would be advantageous or disadvantageous. The direct cost to the Colony as a result of this debate is Sh. 1,800, which at present is £90. If the East African shilling were devaluated, the direct sterling cost to the Colony would be £60, which would of course have the result that every member on both sides of the House could take 50 per cent longer without extra cost to Government. (Laughter.) That Sir, I see terrifies you (laughter), but as some possible solatium it may be of interest in inform you that your predecessor as Colonial Secretary and Acting Governor, Sir Edward Denham, commenced a session of Legislative Council in Jamaica in February and has sat five hours a day for three weeks and is still at it. (Laughter.)

The hon. the Colonial Secretary also quoted that well-informed publication *East Africa* as proof apparently that we had turned the corner and were now on the high road to prosperity. Now, Sir, I quite agree that it is the worst possible thing to cry "Stinking fish"; it must necessarily have a bad effect on the wares you have to sell. But it is equally foolish to cry "Roast beef" if you have not the roast beef to sell. I personally want to make it quite clear that, while I do not agree with *East Africa* and I am left completely unpersuaded by that leading article that this country has turned the corner in the accepted sense or that we have left the depression behind and are steadily mounting towards prosperity, it does not mean that my faith in white settlement and the future of

agriculture in this Colony has diminished one iota. I have never wavered in my belief in the Colony, and the results of the past four years have not altered my opinion in the least, and in my view what we have got to do, whether on this side or the other side of the House, whether engaged in agriculture, trade, commerce, or professions, we have got to try and face the facts and face realities, never wavering in our ultimate belief of success, but to take all such steps to show that when prosperity returns we are in a position to take advantage of prosperity and to go ahead, as I am sure we shall go ahead.

The hon. member Mr. Shamsud-Deen in his speech yesterday seemed to complain that Government and the elected members—and he was kind enough to bracket them together—apparently had no desire to help and show sympathy for any people who were suffering except the European gentlemen farmers as he called them. That, Sir, is obviously not so. Clearly, whether we are Government or individuals, we naturally must have the most intense feeling of sympathy for everyone suffering as a result of this depression, whether a farmer on the land, whether he is a European who has lost his job through the cutting down of the staff in the town, or whether he is an Indian *fundi* out of work, or whoever he may be. But I ask him to realize, and I believe he will, that if you want to do away with the general poverty to which he has referred, if you want to see everyone happily and decently employed, whatever nationality or creed he belongs to, the only way to bring that result about is by doing everything in your power to increase the agricultural prosperity of the Colony on which everyone, whether engaged in agriculture or not, depends solely. (Hear, hear.)

The hon. member said "If you cannot sell your crops, why grow them? why not go out of agriculture altogether?" And he quoted the case of the hon. member who referred to the 1934 maize in his crib. Is that an argument that is really worth listening to? Is it to be an economic proposition that as soon as a business—whether a farming or commercial business—has losses, that it has to close its doors? If so, nine-tenths of the businesses of the world would close their doors to-day. Have you not to go on and keep your losses down as far as possible, waiting until the tide turns, as inevitably it must, and then making up for what you have lost in the bad times? Millions of businesses have been losing money not only in this Colony but throughout the world for years past, but they still go on, and obviously must go on, and to suggest that having had losses for two, three or four years they must close down and lose the whole of the capital invested and having nothing left to live on is a proposition which I think the hon. member must agree is a ridiculous and fallacious one if he considers it.

Before I actually come on to the last question, I did not quite understand what the hon. and ven. member was referring to when he spoke of the number of wives natives have. I am not quite certain whether he was suggesting by implication that possibly a method of alleviation would be to introduce compulsory polygamy among the Europeans of the Colony! With the significant exception of my hon. and learned friend the Solicitor General, that suggestion makes members on the other side flinch (laughter), but they need not really worry as, of course, no such compulsion would be applied to them as they are not producers; at all events of marketable produce. (Laughter.)

It may be that this suggestion with regard to the possible conversion of the first three Kenya loans will be found on examination to have flaws which will make it impracticable. I do not put this scheme forward with any suggestion that I am a great financial expert or that the matter is as easy as some hon. members still appear to think. But I do feel that at times like this we cannot be blamed—further, it is one's duty—if one has the temerity to evolve a scheme which, *prima facie*, is not without certain advantages, if one puts it forward for examination by those in London more qualified to judge. It is for that reason that I have taken the liberty of handing a copy of my memorandum to the hon. the Treasurer, who has promised to send it home to the Deputy Treasurer. At least that promise will avoid it being shelved in the dusty pigeon holes of Government or, I should say, dovecotes—because that is where I understand most of the fluttering takes place!

I quite realize the possible difficulties of conversion, and they appear to be three. First of all, it is almost unprecedented, if not entirely so, for a conversion of a loan to take place before the first date of redemption. It does not follow that because a thing is unprecedented it is not possible, because most of the financial dealings of the world during the last four or five years have been quite unprecedented and new methods have been discovered and are being sought for to meet the extraordinary position which no economist ever believed could have occurred.

The second difficulty is that with regard to any conversion of loan a place like Kenya cannot depend on the patriotic impulse which influenced the people of Great Britain and the Empire with regard to the great English conversion loan. Many people say there was no patriotic impulse behind that at all; I prefer to believe there was considerable. But whether or not we cannot rely on any such patriotic impulse, what we have got to do is to offer the bond holders something sufficiently attractive to make them accept and to make them

at the same time sufficiently sound from our point of view to effect a saving with regard to the interest burden at present oppressing this Colony and the Railway.

The third disadvantage is that with regard to any scheme for raising a new loan to enable old loans to be paid off, if such a scheme includes a provision for paying the bond holders at market prices—which this scheme does—you are immediately faced, unless these matters are done very quickly, with the necessity of the market price of these loans rising, because if people know they are going to be given the market price they will take care, if they can, to see that it is as high as it can be at the date they are to be paid off.

Those are definite difficulties, but not difficulties which I think are insurmountable.

Hon. members may have read the suggestion put forward, and I believe also handed to the Treasury, by Mr. Hansard, for the conversion of the three first loans, and Mr. Hansard has been kind enough to come and discuss this thing with the elected members, and I am grateful to him for the information he gave us.

The basis of his suggestion was that the loan to be raised to pay off the three first Kenya loans was to be a short term loan repayable in 1949; the basis of my suggestion is that any such loan should be a long term loan payable at not less than forty years hence, as I believe not only is there a greater margin of safety and a greater insurance from the point of view of this Colony in a long term loan, but I am rather inclined to the view that it will be more satisfactory and more attractive to the bond holders.

In short, the suggestion is this. There are three loans: the £5,000,000 loan at 6 per cent repayable 1946/55; the £5,000,000 loan at 5 per cent repayable 1948/58; and the £3,500,000 loan at 4½ per cent repayable 1950. In brief, the suggestion is that a loan should be raised sufficient to pay off the three loans in question at their present market rate and to offer the bond holders reinvestment in a new Kenya loan at 3 per cent for a period of forty years. That 3 per cent I will show is in fact a good deal more than 3 per cent, as far as the bond holders are concerned, because they would be paid off at a premium, and the actual figures work out as follows.

With regard to the 5 million loan, that is standing at 124½ or 125 on the London market. To pay that off you would have to pay £6,250,000. If you pay the bond holders 3 per cent on that figure plus 1 per cent for sinking fund, it comes to £250,000. We are paying on this loan at present

6 per cent interest plus 1 per cent sinking fund, a total of 7 per cent, which is costing the Colony £350,000 a year. Hence there will be a saving here of £100,000 per annum to the Colony.

The second loan of 5 millions is standing at 120 at present. We are paying 5 per cent interest plus 1 per cent sinking fund, a total of 6 per cent, making an annual charge of £300,000. If you pay off the bond holders at the present market price, it would cost £6,000,000 and the annual charge to the Colony would be 3 per cent plus 1 per cent for sinking fund, a total of 4 per cent, or £240,000, which is equivalent to an annual saving of £60,000.

The third loan is £3,500,000 at $4\frac{1}{2}$ per cent which, plus 1 per cent for sinking fund, costs the Colony an annual charge of £192,500. If you pay off the bond holders at the present market price of £115 it would cost £4,025,000, and the annual charge to the Colony would be 3 per cent interest and 1 per cent sinking fund, or £161,000, equivalent to an annual saving of £31,500.

It would make on these three loans a total annual saving in interest of £191,500.

The next thing is to examine the proposal and see whether such an offer would really be attractive to the bond holders, and I have the temerity to suggest that it would.

The interest that the bond holders of the first loan would get would be $3\frac{3}{4}$ per cent, because they would get 3 per cent on £6,250,000 which is equivalent to $3\frac{3}{4}$ per cent on £5,000,000. It has also to be borne in mind that this stock was originally purchased at 95 when the loan was issued. Quite apart from that, in addition to getting $3\frac{3}{4}$ per cent over a period of years, at the end of the time they would retain their 25 per cent premium on the loan. On the second loan the interest which the bond holders would get would be $3\frac{3}{5}$ per cent, because it would be 3 per cent on the £6,000,000, which is $3\frac{3}{5}$ per cent on £5,000,000. On the third loan the interest would be $3\frac{9}{20}$ per cent by the same reasoning.

It is common knowledge that people are falling over each other at home to get gilt-edged securities at between $2\frac{1}{2}$ per cent and 3 per cent. I think the last loan issue was the Indian loan at 3 per cent, and it was over-subscribed six times in the first fifteen minutes. I would suggest that a bond holder owning £100 stock in Kenya loan would be mad not to accept £125 worth of stock in new Kenya loan at 3 per cent. He would be getting $3\frac{3}{4}$ per cent on his original capital for a period of forty years and £125 as against his original

capital of £100. If you work it out in plain figures, disregarding technical details such as reinvestment, interest, etc., and quoting one example—for the same would apply *mutatis mutandis* to the other loans—on this £5,000,000 loan a bond holder would have for just over ten years 6 per cent on his original stock, which is 60 per cent, and if he invest the money in another loan at the end of that time for a period of thirty years he would be extremely well off if he gets more than 3 per cent. Mr. J. M. Keynes considers the probability is that rates of interest ought to decline, although slightly, over the next period of years, but that must be guesswork, because wars, anything, may happen. But let us put it at 3 per cent. If for the next thirty years he gets 3 per cent, it will make a total of 90 per cent, which is 150 per cent on his money at the end of forty years. If he accepts the conversion scheme now proposed, he will for forty years be getting 3½ per cent, which again is 150 per cent, but the advantage to him is that at the end of the time he has the same amount of interest and still his capital will be 25 per cent more, if he converts, a proposition which I again suggest must be considered to be, put at the lowest, not unattractive.

It may be stated that that is all very well if the argument is sound with regard to attractiveness to the bond holder, but must it not have an obverse effect on appreciation from the point of view of the Kenya Government? I submit it does not, because it is true that the capital charges at the end of forty years to the Colony will be greater than they will be if these loans are eventually paid off at par, but you will in one case for a period of ten years, then thirteen, then fifteen years, this enormous annual saving in the payment of interest, and will have that saving at a time when it is so vitally important that you should have it, and I suggest that it is common economics that if you can get this big saving to help you at the time you need it so you will be in a better position in twenty or twenty-five years time if you have any belief in the Colony at all to meet the final extra capital charge. To be able to save £100 out of your income or to be given a present of £100 at one period of your life may be worth much more than if you were given a present of £500 at another period. Everyone here is striving to relieve the burden which is pressing so heavily on this Colony when the Colony is faced with unprecedented world conditions, and I believe it is sound economics, if you can get that saving now, even though it means that in the comparatively distant future you eventually increase the capital liability.

I must apologise—I should have made that preliminary announcement when I began my speech! But I do not really

apologise, because even though the scheme comes to nothing and is found impracticable for this or that reason in the City of London, I think it is one's duty to put any suggestion that may possibly be put forward to help, and the time taken, even if wasted, is not unreasonably wasted. (Applause.)

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, my intrusion into this debate is warranted by two points made by the Noble Lord yesterday in his speech. He suggested that one of the remedial measures that the country might take would be a general examination into the incidence of rents on farm lands in the country. While agreeing that an examination was recently made by the Advisory Land Board in certain districts, he thought that a more comprehensive inquiry should be made.

Members are aware that land in this country is held on three forms of title: freehold title, 99 years title under the Crown Lands Ordinance of 1902, and 999 years title under the 1915 Crown Lands Ordinance. The Crown Lands Ordinance of 1902 contains no statutory provision for rents, and varying rents are provided for in different titles varying from 6 to 12 cents per acre per annum. The 1915 Ordinance did provide for statutory rental first for a period of thirty years, or up to 1945, and then for rent revision on a basis familiar to all members of the House. I shall not be misunderstood if I say that in 1915 when the 20 cents rental was fixed, that figure was regarded as a nominal figure. In 1926, however, after the Soldier Settlement Scheme, particularly in Laikipia, had been going for a matter of six or seven years, it was found that a case existed for special alleviation to be granted to pastoralists in that area, and the Laikipia Land Extension Scheme was launched which not only increased the holdings of individuals to a larger unit but also provided for rent reductions for two periods of ten years to 5 and 10 cents per acre per annum respectively.

During the last few months the Advisory Land Board has visited these areas and has made further proposals for temporary alleviation to pastoralists there to help them to tide over their present difficulties. The recommendations concerning the western part of the area have already been accepted by Government, and the recommendations regarding the eastern area are at the moment under consideration by Government. I have also received representations from the Machakos district and an invitation to the Board to discuss conditions there, and when we receive a statement from them of the grounds of their case and the alleviation they suggest we shall give that case the same very careful consideration which, I hope, it will be agreed we have given to the case of the Laikipia and

Nanyuki areas. A resolution in rather general terms in regard to the reduction of land rents has also been received from the Songhor and Kipkarren Farmers' Associations.

No one will suggest, I think, that conditions in each of the settled areas are identical, nor will it be claimed that at this time Government is in a position light-heartedly or without the most careful examination to reduce or remit all land rents. The rent roll from the farming areas in settled areas amounts in round figures to £40,000 a year, and in these times therefore the position of the Colony's general revenue must remain one of the important factors to be considered. For those reasons it has seemed to me that there is much to be said in favour of taking individual cases on their merits. If we were going to make a general survey of the position we could hardly do so without going carefully into the facts as they existed in each district and the procedure of dealing with cases on their merits has the advantage that one area has not got to wait until a comprehensive survey of the whole position has been made and recommendations of general application submitted.

Government, however, is not averse to a general examination of the position, and two lines of review suggest themselves to me in that respect. One, a clear-cut solution which has been advocated from many quarters, and that is, freeholding of land. That was a recommendation made in 1924 by the Land Tenure Commission, and in answer to a question put by the hon. member Capt. Schwartz in 1932 I said that Government was agreeable to an investigation into that position, particularly in regard to townships, at some convenient time. That being so, it is not, I think, for me at the present time to express any view in the matter except, perhaps, to say that in any proposals for freeholding I presume there must be some proposal for redemption payments, and at this time it occurs to me that it may not be practicable for farmers to avail themselves of freeholding proposals when they find it so difficult to meet their annual rent commitments.

Another line might be to anticipate in respect of the 1915 titles the 1945 revaluation date and embark on revaluation now. The argument for that would have to be based on the fact that at the moment where you have 20 cent rentals it is considered that no agricultural land in this country would carry a capital valuation on unimproved value of more than Sh. 20 an acre, calculating interest at 5 per cent. I have no evidence that that is the case, and I rather doubt whether the Land Bank Board valuers would support that view, but if it were the case it is a matter for further consideration whether the State would be justified in taking so low a capital valuation as the basis of rental for so long a period as another period of thirty years.

These things presuppose a lengthy and important inquiry, and therefore it has seemed rather better and more to the advantage of farmers for the time being to give them temporary help provided that help can be rendered expeditiously, and I suggest that in the examinations they have been making and will make the Land Board are not only attaining that object but are also laying the foundations of knowledge for dealing with general proposals in the future.

The hon. Member for Trans Nzoia raised two points of rather less general importance in regard to the imposition of double penalty rents in respect of township plots. Members are generally aware no doubt that in the sale of township plots a condition is imposed that buildings of a certain quality or value are to be built upon them in varying periods of two, three or five years, as the case may be, and that if this condition is not fulfilled the plot is liable to forfeiture. Purchasers are perfectly well aware of the conditions when buying, but of recent years, rather than go to the extreme limit of forfeiting plots in respect of which conditions have not been fulfilled, we in some cases allow lessees by paying a second rent to retain their holding.

When the hon. member spoke on the subject I listened to him very carefully, but I listened in vain to any reference to the fact that in this particular matter I had acted on the advice of the Kitale Township Committee. These things are matters of local concern, matters on which I take local advice, and I think that was a rather foolish omission on the part of the hon. member, because he must have known that I knew that he knew the facts! He could hardly suppose that I would allow him to get away with that little piece of *suppressio veri*! The fact is that in pursuance of that ideal so near to the hon. member's heart, I allow full self government in this particular matter, and I am guided by the wishes and the views of the local authorities. I am sorry to see that the hon. gentleman is so much at variance with his ideal in practice!

That brings me, Sir, to a remark which he also made, that in his view the only remedial measure worth pursuing in connection with the subject we have been debating during the last few days is the policy of complete self-government. During the course of his remarks from time to time he emphasized and reiterated that whatever help was to be given must be given quickly. Yet knowing full well, as I think he must, that his ideal, to say the least of it, can hardly be of early application he suggests it as the sole remedy which this Government need consider! He has, however, suggested it, and I on my side must state that in connection with this motion it is a measure which Government cannot consider for a moment.

I might recall to him and to the House the various pronouncements which have been made by His Majesty's Government during the last twelve years on this subject, from the White Paper of 1923 to the memorandum on the Closer Union Report issued in 1930, the general tenor of which is that, while responsible Government is an ideal at which we should aim, it is an ideal the consummation of which is so remote in time that it need not for some years be considered to be in the field of practical politics.

In the meantime, all communities in this Colony have been urged to promote local government and to use that system as a training ground for the exercise at a later date of the greater responsibilities of self-government, and I do suggest to the hon. member that he has rendered a distinct disservice to the advance and progress of local government by making use of his position as a member of this House to stand up and air his grievances on matters of local concern in which his views had already been rejected by the local authority of the home town from which he comes.

Now, Sir, I pass to the more important point, and the second point, made by the Noble Lord. I allude to his reference to white settlement and the dual policy.

The Noble Lord and the hon. mover of the motion are colleagues of mine on the Kenya Advisory Committee which Government set up to superintend and control propaganda and publicity in regard to settlement in Kenya, and I hope the Noble Lord does not think that in our efforts on that Committee we beat our fists against the empty air of Government apathy. He will recall last year when you yourself, Sir, were presiding over the Select Committee on the Budget, you very readily accepted the recommendations from that Committee for an increase in the provision hitherto made both for propaganda at home and to assist the work of the Kenya Association in Nairobi. I further trust that he knows how heartily I share the view so widely held in the Colony, that the efforts which the mover of the motion has made towards the establishment and maintenance of the Kenya Association, 1932, form a most valuable piece of constructive and administrative work. (Hear, hear.)

Your Excellency, this Government has given substantial pledges of its belief in white settlement. It has built branch railways to various hitherto remote parts of the settled areas; it has created a network of excellent road communications throughout the Colony; and it has provided less visible but equally effective and expensive services in other directions, and it yields to none in its desire to see the empty spaces filled by happy, smiling, prosperous new settlers. (Hear, hear.)

Last year, this Government made a contribution towards the cost of a special East African number of the London *Financial Times*, and to the Kenya section of that number His Excellency Sir Joseph Byrne wrote a foreword, in which he warmly commended the action taken by the whole of the community here to adjust itself to the set of circumstances by which it was being beset at the time, and he expressed his confidence in the recuperative power of all sections of the farming and planting community to be able to take advantage of the gentler breezes of prosperity when they begin to blow again. I myself wrote an article in that issue in which I made two points: one was, that the future of closer settlement in this country lies more in the hands of the settlers themselves by means of the subdivision of their farms than it does with Government by means of grants of Crown lands, and in this connection I hope I shall not be misunderstood if I express the hope that land owners will not jeopardise the future of settlement by asking too high prices for their land; the second point I made then was that Government concentrated more particularly on advertising the attractions of residential settlement, and in that connection hon. members are aware that on Saturday an officer from the headquarters of the Indian Army will be visiting this Colony for a period of three weeks to see conditions and report back to those officers of the Indian Army and others in India who may be contemplating settlement here.

Now, Sir, having said so much, it might be thought that perhaps I need say no more, but the Noble Lord as the responsible leader of the European elected members has asked for a definite statement from Government on the question of the dual policy. It is therefore perhaps fitting that I, as the officer of Government entrusted especially with the care of local government, lands and settlement, should state quite categorically to him and this House and the country at large, that the dual policy is a policy initiated by this Government twelve years ago, it is a policy which during the intervening time this Government has faithfully pursued, and it is a policy to which for the future this Government is irrevocably committed. (Applause.)

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, on a point of explanation. I did not wish to interrupt the hon. member while he was speaking. He definitely stated that he had listened very carefully to my speech and that I had only made one suggestion, a long range suggestion. I deny that: I made several.

He also twitted me with bringing up a personal *shauri* and using my position as a member of the Council to do this.

I definitely stated, in reference to those subjects, that I was doing so to give concrete instances of what was happening to other people in this Colony.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I carefully avoided using the word "personal". I said that the hon. member had brought up a matter of local concern, and my point was that it does not help the advancement of local government, if an individual member, dissatisfied with the decision of his local authority, comes and airs the matter in this House.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I am extremely grateful to the hon. Member for Nairobi South for allowing a little ray of sunshine to come into the gloomiest debate I have ever had the honour of listening to in this House! I do not know that I am alone in that feeling, and I do not wish to attach any blame to the hon. mover or seconder of the motion, in that I have every confidence that they were as surprised as I am at the rambling which the motion has promoted, over the course of the world. We went from Kitale to Mauritius, we discussed whiskey, and we discussed almost every point which is permitted in a debate and which could not be ruled out under the particular terms of this motion.

To deal with the proposal made by the hon. Member for Nairobi South at once. I feel sure that he is the first to realize that it is not a question upon which Government can give him an answer at this moment. It is a very serious, wide range suggestion which I can promise him will receive the greatest consideration of Government from every point of view, not only in this House but also overseas from where eventually we should have to get the money.

I have referred to the unutterable gloom of this debate, and it was for that reason that I decided yesterday to intervene and try and convince not only this House, but the Colony in general, that however much there may be in a great many statements that have been made by hon. members, really things are not quite so bad as they are painted. At the same time, I had one other reason for wishing to speak in this debate, and that is because in the last few days I have been very much impressed with at least two speeches delivered by hon. members on the other side of the House, speeches, if I may say so, Sir, which appear to me not to be debating points but speeches which came from the heart rather than from the head, and I was anxious to say to members on the other side that Government is equally sincere in the matter which is being discussed to-day.

If I may say so, I think one of the great mistakes that we make in this country—and I am not blaming any particular member on one side of the House or the other—is that we have been brought up, most of us, under the aegis so to speak of Westminster, where we have been used to reading in the papers of the party in power backed by one or two newspapers subsidised to print only that side of politics, seeing that everything possible is done to detract from the value of the other party, while the other party which is in opposition is doing the same thing with their newspapers. If you were a Conservative in England you would read Conservative newspapers, and would say that the others were telling nothing but lies, and vice versa. That is not the position here. As you know, in the Imperial Parliament the party in power has its Cabinet, consisting of its members alone. When I say its members, I mean the members of that Party, and the last person who would be allowed into that Cabinet would be a member in opposition. Why I am stressing that point is this, that in this Colony I will not accept for one moment that we have ruled as a party in power. In every single thing put up by Executive Council, by any board or by any single committee hon. members like to mention, Government has seized the opportunity of putting the best men they can possibly find on the other side to assist them, and I feel that in a debate such as we have been listening to, those who are not used to debating, those who only have the opportunity perhaps of reading the paper once a week out on their farms, eking out such a sad existence as we have heard, strangers listening to the debate for the first time perhaps in the gallery of this House, would really imagine that this country was being run by a bureaucracy—I think they term us alien mercenaries who take no thought whatever of the people of this country.

As an example of what I mean, I will just take two instances which have happened within my knowledge. The first example I will refer to was the Expenditure Advisory Committee of 1933, and the Report of which was laid on the table just before I arrived in this country. One of the first things I can remember ever reading or hearing was the Acting Leader of the European Elected Members who got up and congratulated Government on the steps it had taken to carry out the recommendations of that Committee, a Committee not composed of Government alone, but of unofficials as well. That is the first.

Only a few days ago we had the Economic Development Committee Report, and we hear that 26 out of the 29 recommendations which it made have been accepted by Government.

Can that really and seriously be considered by anyone in this House to be bureaucratic government? What is the reward that Government gets for this? First we have the hon. and gallant Member for the Coast getting up and saying: "Why does Government refer everything to committees?" while realizing that taking evidence in committee is the only way Government can feel the pulse of the public and can hear the views of the man outside. He is followed by the hon. and gallant Member for Trans Nzoia who says that as a result of all these committees he is convinced that the only salvation of the country is self-government. Lastly, we have an hon. member getting up and saying he very much regrets that the feeling between the settlers and Government is at such a low ebb at the present moment.

I feel, Sir, that there is a great deal of ingratitude in that attitude, because hon. members on the other side know perfectly well that from first to last, on every single specific subject, they are consulted, and consulted liberally.

The hon. and gallant Member for Trans Nzoia has said that salvation lies in self-government. I am not going to refer to the incident we have been hearing about this morning, but I think we are all agreed on one point: that the cause of this depression at the present moment is world prices. But if it is world prices, how in the name of heaven, if we had self-government to-morrow, could the unfortunate Government raise world prices? I know that the hon. member will tell us what South Africa has done. I know that South Africa has done an enormous amount for its primary producers. And why, and how? It does not require a genius to discover. South Africa, in addition to being an agricultural country, is in the happy position of having established gold fields, and while the price of cereals was going down that of gold was going up, and by a simple process of mathematics they robbed Peter to pay Paul. And I say that in no derogatory sense. If we were in that happy position here we should be the first to do it, as hon. members well know, and to quote that as an argument against this Government I think is a little bit unfair. What I want him to tell me is not how South Africa would do it, but how to rob Peter to pay Peter, not Paul?

Other hon. members have referred to Government's inability to realize the serious state of farming in this country. They accuse us on this side of the House of being stupid, blind and deaf—blind because apparently we are unable to read the papers and see the dreadful prices ruling at the moment; deaf because we are unable to hear the voices on the other side of the House day after day in every debate; and stupid because we are solemnly being held up to people as being so insane as to try and kill the goose which lays the

golden eggs. Government has just as much confidence in agriculture in this country as any of you, and why you should imagine Government should deliberately pursue a policy with the sole idea apparently—I can think of no other—of driving the unfortunate settler, the producer, out of this country, is beyond all comprehension, unless we are anxious to be handed down to posterity as traitors, not only to our trust to the natives—because I do not admit that we only have a trust to the native; Government has just as much a trust to the Europeans, the Indians, as to the natives—why should we wish to be traitors to all three, because it will be damnation to all three in my opinion—is certainly beyond me.

I am extremely sorry that this debate was really ever raised. At the beginning of the week I was considerably impressed with the debate that took place. I am not going into the merits or demerits of what hon. members on the other side were arguing for one moment, but they gave it as their considered opinion that the first thing Government should do would be to remove the non-native poll tax and revise the Licensing Ordinance, a sum of £50,000 shall we say? Two days later we are told this terrible story, and to a great extent true, of the unfortunate plight of the farmers in this country, and we are told that they should have immediate relief. My difficulty is this. If hon. members had said that the £50,000 by way of the non-native poll tax and so on should be diverted in some way to assist the farmers, I would have been able to understand it. But to solemnly put up these propositions one after the other, with no connecting link, knowing full well that Government, and the country generally, is just seeing its way through the wood, is to my mind illogical.

The next reason why I deplore this debate is because hon. members on the other side are fully aware that at this very moment we are seeking to raise a sum of £500,000 for the Land Bank for and to help the farmers of whom we have heard so much and of whom we all think so much. At the very moment we are trying to put this business proposition before the people in London—and it is a business proposition, we on the Government side believe truthfully and honestly that this money can be invested fairly and safely in Kenya agricultural security—at the same time we have the gloomiest picture painted by gentlemen on the opposite side of the House, with one or two exceptions, with regard to the very land which we are trying to convince people can stand this extra loan. With all seriousness, I do submit that this policy is making the path of Government a little hard.

But it does not end here. We have had, Sir, I hope a sound proposition put up by the hon. and learned member for Nairobi South. Naturally Government has had something of

this description in view for a considerable time, and if the hon. member will forgive me, I think that one possible flaw which I can see at the moment in his argument is: will investors be prepared to take up this new loan? That is the basis on which we must stand or fall, and I suggest to members of this House that the only possible way of getting them to take it up is if instead of crying: "Poverty, we are broke, the land is no good, the farmers are no good, Government is chasing us out of the country"; we stand to our guns and say: "This is a good country, you can safely invest in it." Then you are more likely to convince the money market of London than if you take up your present attitude. Exaggerated statements are double-edged swords: they may be excellent from the point of view of debate, but they may be very bad for the country.

Government has been saying that we have turned the corner. We have said: "You can lend us money or advance us money because we balanced our budget last year and we are going (I hope) to balance the budget (the fraudulent budget should I say?) this year with a big surplus we hope." Yet certain hon. members on the other side seek to belittle Government's efforts. We are told that prices will never be up again and for goodness sake don't bank on it, so that the whole field of what we are putting up as assets on this side is being belittled by people on the other side who are pressing us to get this money. What we want is help in the matter.

The same remark should apply to the goldfields. Even those in a sense have been belittled, for we are told that they will not be a Rand, and this and that, although we believe in them to a certain extent.

Be that as it may, I trust that hon. members realize that Government has done its utmost to assist and help the farmers in the only way that was possible, and gibes such as those remarks, speeches such as those which have been made by hon. members on the other side, are really not helpful, and I am glad to see in reading the paper this morning that the gloomy prognostications of certain members are not carried out in the report of the Kenya Association of which we have heard so much, for I see that in the second paragraph Kenya is described as "Kenya, the land where life is still worth living."

That in a nutshell is the view of Government. This is followed up in the last paragraph in the same article wherein this Association, referring to certain conditions, says:—

"With the general improvement in the situation it is hoped, however, that this state of things will be, to some extent, remedied."

That again appears to be exactly what Government thinks, namely, that we have turned the corner and that we shall go forward.

To turn for one moment to something in lighter strain, I want to refer to the inflation story which we heard from the hon. and venerable Member for Native Interests yesterday. I am interested in the currency difficulties which he suffers from and I suffer from also, but he painted a very gloomy picture of a certain law case, and if I heard him correctly it was this. In July of this year, an unfortunate native went along to pay his hut and poll tax of Sh. 12, and when he got there three or four days after the due date of payment he was greeted with the news that a summons had been taken out; he had to pay the cost of the summons, Sh. 6, and another Sh. 2 cess, which is the Local Native Council levy of its own, and we were told that the alternative was three months detention for the non-payment of that Sh. 18. I can cheer the hon. and venerable member up at once by telling him that if it were correct it was an illegal sentence, and that the native may appeal and get off forthwith; if he has not already appealed you can take it that when the case comes up for revision before the Supreme Court they will not hesitate to put it right. Sh. 18 will not carry a term of three months.

The second thing is, the hon. and venerable member is a little bit wrong in thinking the native was only three or four days late when on the 4th July he went to pay his tax, because the due date was the 1st of January, so that in effect he was six months and four days late.

The next point that I should like to make is a practical point, a point of which I know something, and that is, the hardship which he tells us of having to pay this Sh. 6. The answer to that is that unless that summons were taken out he would never have paid the Sh. 12, and I will give him two examples from my own experience.

In my official capacity I am a sort of legal court of appeal for native tribunals, and in a fit of enthusiasm a few months ago I visited one of these courts about forty or fifty miles away. Among many other cases tried were two cases of non-payment of native hut and poll tax. I will not tire you with the procedure adopted, but the net result was that the first delinquent was asked why it had not been paid and he replied that he was sorry, he had been sick. One of the elders of the tribunal asked him what doctor he went to. "None", was the reply. "What medicine did you take?" Actually he said he had not taken any. The sentence of the court was that the native should pay up forthwith the Sh. 18 or go to prison for the proper term. His answer was "Please may I go and get the money?" and he went away and got it!

This was followed immediately by another case of the same sort. The man this time pleaded that he had no work, that he could not get any. The headman asked: "Well, did you try Bwana So-and-So who has wanted men these last few months?" "No", was the reply. "Well, you pay Sh. 18 or go to gaol." The man at once said: "Please can I go and get the money? I left it at home!" Lastly, I can tell you that in the returns which come into my office I think from the Machakos district in January, when the great drive was supposed to be taking place, there were twenty-seven cases of defaulters of hut and poll tax. They were ordered to pay Sh. 18 each or go to gaol for a month or whatever it was, and before the rising of the court twenty of them paid; how many soon afterwards I do not know. I think you will agree with me that I am justified in saying that at the present stage of development of the native a penalty for non-payment is necessary—and I am not blaming him for this for I know perfectly well that Europeans try to dodge taxes as much as they can! which is why in any non-native or European legislation we also have a pecuniary penalty for those who fail to pay their taxes at the proper time—this is no innovation in these particular cases.

That, Sir, is all I have to say with regard to the general debate.

There is one point I should like to make with regard to, I think it was a question by the Noble Lord, the appointment of a qualified secretary of the Standing Board of Economics. I can assure him that it is the intention of Government to endeavour to get a qualified and experienced economist, and not just appoint someone who happens to be in the Service at the present moment.

In conclusion, I should like once more to impress on hon. members that Government does realize and recognize the difficulty in which the farming community finds themselves to-day. But what we do not admit is that the position is quite as hopeless as is pointed out by certain hon. members on the other side of the House. I do think, Sir, if at the back of the minds of one or two members—by no means all, extremely few I trust—this perpetual criticism of Government is merely an endeavour to further the idea of self-government in the near future, they are doing Kenya, at the moment at any rate, a great deal of harm, and that the only way that we will ever get over the difficulties which face us at the moment is if members on both sides, instead of attempting to score a point in debate, endeavour to get together and find some solution and assist us over here who, however stupidly we may be doing it, are making an honest endeavour to do the best we can for Kenya. (Applause.)

Council adjourned for the usual interval.

On resuming.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK: Your Excellency, it has been pointed out that this has been a very long debate indeed, probably one of the longest ever held in this House, and we have been favoured by the intervention, which is unusual, in the motion we bring forward of no less than five members on the other side. Therefore, I am afraid there are a great many points that I wish to reply to and that I shall take a certain amount of time.

Dealing with this morning's debate to start with. I should like to commence by referring to the remarks made by the hon. the Commissioner of Customs, who started by suggesting that the modifications in the form of the Trade Report which had been recently introduced had been adversely criticized by me. If that is the impression I have given the House I wish to withdraw it entirely. I never criticized that Report or the way in which it had been drawn up this year, and I think the Report for a number of years has been one of the best and most valuable submitted in this Colony. What I did say was, it would be a great help if these Reports now drawn up on good lines could be continued year after year on the same lines. Then one could follow through lines of inquiry year after year with greater ease.

On the question of deductions which I made from various returns, I do not think he really very seriously upset those deductions. He made one point, that machinery, lorries and other things did not pay Customs duty. I did not say they did. I got certain figures showing the values of those things which were being imported from a table on page 33 and quoted them as an instance of who was buying certain sorts of things and who could thereby afford to buy. I was trying to prove that there was only one industry at the present moment which could afford to buy things in large quantities, and that is why I gave those figures.

He then criticized my export figures, and said that the calendar year cuts through the crop year. I never said it did not. I gave a series of figures extending over a number of years and naturally in every case it cuts through the crop year, but on average over a long series surely there must be some value in the figures I produced.

Lastly, he said that that the causes when Government does get more revenue that the improvements were for the most part attributed entirely to fortuitous circumstances and were imaginary. I never, as far as I know, made that point at all. On the contrary, I showed where those improvements were

taking place in order to show there was another section of the community in which possibly, owing to these improvements, were being overlooked.

I now come to the remarks of the hon. the Commissioner for Local Government.

I should like just to thank him for what he said about the Kenya Association. But, very much more than that, I should like to say that if this debate has done no other good—and I think it has done a lot of good—it has done this: it has achieved what has not been done for some time, a definite statement from Government of their attitude towards white settlement. (Hear, hear.)

I now come to the Hon. the Attorney General, and I should like to start by congratulating him on one of the cleverest speeches I have heard in that it entirely diverted the main issue. He said that this had been a gloomy debate. I admit it has been a gloomy debate. Some of us are not putting forward the picture we see because we think it clever or to score a point or to make political propoganda for ourselves in the country. Some of us really believe what we are saying. The hon. and learned member said that self-government would not affect world prices. Whoever said it would? What we do say is that self-government might help us to get a move on and do something to counteract the effects of the low world prices.

He then talked about our having put forward a motion to begin with about the reduction of taxation, and the next day we paint a black picture and say how bad things are, and that that was quite illogical. I should not have thought so. In other countries, when things are bad, they do the very best they can to reduce taxation. I have here a cutting which I happened to pick up from the *Financial Times* banking supplement. What is Australia doing to-day? The first thing is to remit taxes as far as ever they possibly can, and that is part of a suggestion for recovery. In the 1932-3 budget taxation remission amounted to £2,100,000; in 1933-4 to £7,000,000. That is what other countries do.

Then he said that I was doing the country a lot of harm by decrying the goldmining industry. I happen myself to be interested in it and have taken some part in trying to help to build it up. Why should I decry it? I have never decried it at all. I want to face the truth when one is going to deal with the economic position of the country, and it is not decrying an industry to say we have not got so far the biggest supply of gold in the world.

He then attempted tactics which have been attempted before in this House, and got at me through the Kenya Association or some article appearing in favour of it. He quoted from an article which appeared in to-day's paper which actually I had not seen. We have heard of *suppressio veri* from the other side of the House; I suggest that if ever there was a case of *suppressio veri* it is the case from the deductions which the hon. and learned member made from this article. He twitted the saying "Kenya the land where life is still worth living," and in what connection did that come into this article? It came in showing we were unfortunately running short of certain booklets, and that booklet was entirely exhausted, so that there is not much fear of that going out and giving a wrong impression. Then he quoted the last paragraph, and talked about a general improvement in the situation. We never said one word about the general improvement in the situation in the country. What we referred to was that the membership of the Association is steadily increasing and, further on, that unfortunately the funds at the disposal of the Association are extremely limited, which prevents doing as much good as we should like. The general improvement in the situation refers of course to the finances, a difficulty which we hope will be remedied. Is that a case of *suppressio veri* or is it not?

Now, Sir, I would like to deal with some of the remarks made yesterday, and I would like first of all to deal with those made by the hon. the Chief Native Commissioner. The hon. gentleman attacked me on the plea that I might do a lot of harm by having taken a few isolated instances, strung them together, and given an entirely false impression. I admit that the instances I quoted may possibly to some extent be isolated ones, but when a series of such instances are found to be taking place throughout the country it is not unreasonable that you can make some deduction as to the general state of affairs. He said he hoped I did not mean that the administrative officers should not be reasonably assiduous in the collection of revenues or that they had been more drastic in the past. Now, Sir, I happen to know administrative officers for many years, and knowing them I know full well that they would not be more drastic than they could help, but sympathetic, very sympathetic, to the native. I have never attacked the administration. But what I do say is that they have undoubtedly had orders to put on the screw a good deal better than before, since about October of last year.

We were given a lot of figures to disprove my deductions of figures of production from various native reserves and prices which were being paid for cattle—bullocks, and so on. I am

glad to hear that information that in certain districts things are not so bad, but I do not think it in any way shook the picture I was trying to paint, which was not the picture of what is happening in certain native reserves but what is happening in this country as a whole. He challenged certain figures I gave, I think in connection with tax collections, the prices natives were getting. I really might have been saved the trouble of replying at any length to-day, because shortly after he spoke the hon. and venerable member representing native interests got up and defended me in far better manner than I could defend myself.

THE HON. THE CHIEF NATIVE COMMISSIONER : On a point of explanation, I should like to say that the prices I quoted and referred to, which the hon. mover had quoted himself, were isolated cases and not of general application.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : I think I have more or less accepted that, that I did quote isolated cases, but one could make deductions.

The worst charge made was that I was not particularly in favour of native production. If I gave that impression or any member on this side of the House gave that impression, I can state on his behalf that that is the very last idea we have in our heads. (Hear, hear.) I may even say that a few years ago I took quite a leading part in endeavouring to assist Government with suggestions through the medium of the Chamber of Commerce with this very end in view, to increase native production.

Lastly, the hon. member said it was a pity that before I talked about natives being overtaxed I did not take the trouble to ascertain my facts by asking Government or looking up these matters in the Gazette. I was fully aware of the fact that taxes have been reduced in certain districts, and I got my information from the hon. gentleman himself, because I asked him about two months ago. I had not, when I made that remark, forgotten his reply. I made the statement, and again, with the full knowledge that Government has reduced taxation in a great many districts.

I propose to say very little about the remarks of the hon. and venerable Member representing Native Interests, beyond thanking him for supporting at least some of my contentions. I would, however, like to tell him that those who have spoken about a change of some sort in our currency never for one moment suggested that the native who to-day pays Sh. 12 would find if such a project were adopted that he would only be paying

Sh. 9 and would be asked for more. Naturally he pays his poll tax in the currency of the country, and it would still be in East African shillings.

The hon. member Mr. Shamsud-Deen started by sternly rebuking me for painting the picture black, and in the same breath proceeded to paint an infinitely blacker picture of destitution and starvation among all communities. At the end, as far as I could gather from his speech, his remedy for the state of affairs apparently lay in resignation to the inevitable. Before passing on and commenting on his remarks I should like to tell him that I trust I never showed any annoyance when an attempt was being made to show the hardships which the Indian farmers were suffering under. On the contrary, as I have already said, I tried to paint a picture of the state of affairs in this Colony as a whole and the agricultural industry in particular, and naturally I included the Indian farmers in the picture.

We now come, Sir, to the remarks of the hon. the Colonial Secretary.

He began by saying that the intention of the motion, a point already taken up this morning, was to censor Government for not adopting the Minority Report. I cannot remember having said anything of the kind. I certainly did not. Our grievance against Government and the reason we put forward the motion is that to the minds of some of us at least they do not show any signs of appreciating the picture which was delineated chiefly, I admit, in the Minority Report but also in the Majority Report.

The hon. member then expressed his astonishment at our finding any fault with Government in that they are now fully considering the recommendations of the Committee and had accepted twenty-six of the twenty-nine recommendations we made, and he gave perfectly good reasons for Government's refusal to accept the remaining three which deal with a Statistical Department, the Standing Shipping Committee and additional foresters. Personally, I did not agree with the recommendations made by the Expenditure Advisory Committee with regard to the abolition of the Statistical Department. My note of dissent will be found in that Report, but that has nothing to do with it and does not prevent me from realizing that Government's action with regard to this Department was perfectly reasonable, but equally so when it comes to the other two recommendations which have not been adopted and when it comes to the question of the action which it proposed to take by Government on the remaining twenty-six recommendations, I must submit that in spite of the

hon. the Colonial Secretary's surprise I think the suggestions we made and the attitude we have adopted was absolutely justified.

The first and foremost ground for our dissatisfaction lies, as I have said, in the very major factor that the White Paper at least reflects in no way any appreciation whatever of the true position of affairs, and when one comes down to details, what is the effect of Government's acceptance of these twenty-six proposals? Nine months after the Report has been published, which must be a pretty long period for consideration in view of the circumstances, we hear that the recommendations regarding the maize industry are to be referred to a resuscitated committee which has not sat since 1933; that the vital question of Railway rates is referred to the hon. the General Manager on the plea that this is nothing to do with Government; that the problems of the mining industry are to be referred to the Standing Board of Economic Development; that the problems of the wheat industry are to be referred back to the industry itself; that the refunds of duty on kerosene used in the preparation of insecticides is not desirable, naturally so, because it might mean loss of revenue; that a re-organization of the hide and skin industry is to await results of further investigations in England; that over-stocking problems which as shown by Sir Daniel Hall and by the Carter Commission Report have been seriously mishandled in the past, are still to be dealt with as in the past by Provincial Commissioners. We covered all this ground yesterday.

The hon. member then retaliated, as was only to be expected, by saying he had listened to me in vain for any constructive suggestions. Well, Your Excellency, I thought I had mentioned quite a number, all of which had been adopted in other countries. I mentioned loan conversion, suspension of sinking fund, dealing with the position of mortgages on farms, Railway concessions, reductions in the exchange value of our monetary unit, and others. I have also some recollection of a recent motion in this House dealing with reductions in Railway freights! I also come back to the question of taxation, and have a recollection of a suggestion which might help the country if some taxes were taken off. I also referred to the Report of the Economy Committee. In that Report a few major suggestions will be found which might help the economic position of the country. Anyway, Sir, the responsibility for devising methods of relief must rest on Government in that I think it has always been understood that Government is responsible for the welfare of the citizens. We are quite ready to take our share in that responsibility if we are given the chance.

The hon. member then claimed that Government have removed one obstruction towards helping the agriculturalists by balancing its own budget, as without this no increase in the capital of the Land Bank could possibly be obtained. I am afraid I do not quite agree with that contention, because the security for the loan does not rest on Government's budget. I admit it helps, but does not rest on it. It rests, after the money has been lent out, on the land and improvements therein. Anyway, glad as we shall be to get it, I hope it is realized it will only bring a measure of relief to certain farmers, that it will not alter the basic problem which faces Government, which is to restore farming to a profitable basis.

The hon. member went on to say that it was ridiculous to accuse Government of being responsible for world conditions. I do not think I ever made such an accusation. The suggestion I did make was to the effect that Government has not really been active in endeavouring to devise measures to remedy the effects of world conditions and that is a rather different contention. The hon. member also added that the critical conditions affecting certain industries could not be helped, nothing Government could do would alter them. All I say is that other countries and other Governments have had to do something pretty drastic.

In conclusion, in order to prove that we were barking up the wrong tree, that conditions were not so bad as we made out, he quoted from an editorial appearing in *East Africa*, written by a gentleman who has not been in this country for a very long period of years. Why a newspaper published and printed 6,000 miles away and edited by a gentleman who cannot have any recent experience of this country, should be supposed to be an authority on Kenya economics, I am at a loss to understand. (Hear, hear.)

That, Your Excellency, was the reply made to this motion on behalf of Government. Could it from our point of view by any stretch of imagination be called satisfactory?

The hon. Mr. Pandya started his remarks with what I suppose I might term an inexpensive gibe, which gave enormous and audible pleasure to many members, including certainly two on this side of the House. He began by stating that only new money would help, and suggested that we were asking the Secretary of State for monetary assistance, in the form, I presume, of another loan. I never said anything of the kind when speaking to the motion; on the contrary, I stated my personal objections to resorting to this method of so-called relief at the present time in that I feared the aftermath of interest and loan obligations which we might not be able to meet. He mocked at us for one moment abusing the Secretary

of State and the next moment asking him for more money. Does the hon. gentleman really believe that the Home Government is as altruistic as he makes out? What it has done in the past is to lend us money at usurious rates of interest, and we are now struggling to get out of the mess that their past generosity has got us into.

I will now, Your Excellency, deal with the statement which was made by the hon. the Treasurer on behalf of Government and in justification of the attitude Government has taken up on the subject of a proposal for the reduction of the sterling exchange value of the East African shilling.

I am afraid, I think—and the hon. Member for Nairobi South this morning showed that to some extent he shared my idea—that this statement was singularly unconvincing. It certainly never gave any adequate reasons for Government's negating the proposal offhand. I agree with the hon. member that we do not want to be drawn into elaborate arguments on this subject, but as I said his statement was unconvincing I must touch on one or two points he himself brought into this debate.

He started by saying that the subject was nubulous and that no useful purpose could be served in arguing for or against it as it was a subject on which world authorities disagreed. Well, all I can say is that when there are two sides to a case it is very hard to stop an argument. I will also add that in spite of this disagreement among authorities, is there one country apart from India and the Colonial Empire, which has not in some way or another altered the exchange value of their currency? If you are to take the theorists who disagree, then you should explain why every *de facto* Government responsible for monetary policy has endeavoured to bring relief to their countries by this method. In the same sentence, the hon. member talked about "manipulation". We have heard an awful lot about manipulation, monkeying with our currency, and things of that kind, and I always wonder exactly what is meant by it. If any artificial interference with exchange laws is to be termed "currency manipulation", surely that which fixes an exchange without regard to economic factors must be considered as "currency manipulation", which is, of course, at present the case with our currency at the present time in that our exchange is fixed at a £, which is foreign to our currency, which is not even legal tender in this country and over which we have no legal control. Would it be held that the British Government by going off gold has "manipulated" its currency in disagreement with the authorities mentioned in that statement?

He criticized the proposal as "nebulous". To criticize a proposal as nebulous is to fail to recognize that the monetary controlling authority is alone in a position to measure the correct rate of exchange. The proposal is therefore bound to be somewhat nebulous until this has been done. The hon. member also stated that in East Africa three or four territories would be involved and that serious consideration of any such proposal would raise the question all over the Colonial Empire, the whole of which was suffering from the same disabilities as ourselves. I agree, the same question would be raised sooner or later by the whole Colonial Empire, but is that an excuse for the Secretary of State allowing us all to sink?

The hon. gentleman as an example of its impracticability asked "how would it be pegged"? I would ask him, how is it pegged now? It is pegged purely and simply by an Order in Council which came into operation on the 1st January, 1932, and is still in force, and that Order in Council could be amended if it were advisable by a stroke of the pen at any moment.

Reference was next made to our accusation that this measure of relief was negatived in advance, and in connection with this reference he read the Secretary of State's statement made when he visited Kenya early in 1934. As his statement was held to be a complete justification of all that has been done, or has not been done, in connection with this question, I think I must refer to it.

The Secretary of State started by referring to representations which had been made to him in Uganda. I thought it was rather refreshing in view of our experience to see that a Secretary of State should admit that he ever paid any attention to any representations made by the inhabitants of these colonies. I do not remember his paying the same attention to the same representations also put forward by Uganda in regard to income tax. The Secretary of State then stated that any such course would completely destroy our credit. I should have thought a statement of that sort needed proof. I cannot understand how he came to make such a categorical statement, considering that in other countries it has had precisely the opposite effect. It is not worth quoting further figures which I have supplied myself with, because anybody can see them for themselves.

He then said that it would not affect world prices at which we sold our produce by one single farthing and, in this remark, I venture to say the right hon. gentleman displayed some lack of knowledge of the subject. How could such a measure affect world prices? The basic intention underlying any such proposal was not to affect world prices, it is to affect

internal prices, and I should have thought he would have known that. The Secretary of State confessed to a deputation which was sent to see him in London that he was not a monetary authority; so I am at a loss to know how he came to make the statement he did on such an obtruse question, or why he paid such meticulous attention to the advice of persons who obviously were not really qualified to give an opinion.

In my addendum to the Economic Development Committee Report I emphasized that I hoped the matter would be considered by economic experts. I know perfectly well that I am no monetary authority, and even to-day I would not venture without a great deal more information to give any opinion as to the advisability or otherwise of this country adopting such a policy. I have, however, made some effort to study this subject and the effects of that policy on other countries, and I am putting forward this reply to Government's statement made the day before yesterday, merely to show that really adequate reasons have not been put forward in that statement to justify definitely negating this particular method of relief before it has really and profoundly been examined by economic experts who have had some opportunity of studying the local conditions in this country.

The hon. member, in reply to the motion, stated that this method of relief was not negated during the Committee's deliberations by this Government, at least I understood him to say that, but that it was the Secretary of State's statement which was briefly recapitulated while the Committee was sitting. I should have said this was very much the same thing, more especially as at least one of the members of that Committee specifically asked the then Colonial Secretary whether an examination of this problem came within their terms of reference, and the reply was in the affirmative. Therefore, presumably, it was with Government's full knowledge that that inquiry was being made, and it was pointed out that six of the nine members came to the conclusion that monetary devaluation would not afford relief but that it was completely outside the scope of practical politics, and it was mentioned that I would not commit myself. I have already explained that I would not and will not now commit myself. I only want the project properly examined by real authorities. I understand, however, that it was five and not six who came to the conclusion to which I have referred. Four were representatives of the Government, the fifth only attended the opening meeting which discussed procedure, and one meeting after the Report had been completed, and the sixth, Mr. Puri, refused to sign either Report, I believe.

The hon. member then went on to say that if such a project was seriously considered, which it is not going to be,

the first step would be to prohibit or at least drastically to restrict remittances out of the Colony. This is, of course, actually the last thing that would be done because if the matter were being seriously considered, this should take place behind closed doors and the decision would be made by a stroke of the pen without anybody outside being any the wiser. After that, or simultaneously, they would have to do something about keeping money in the country, which was one of the last remarks made by the hon. member. I am afraid I was rather dense and did not quite understand.

The hon. member said that, as far as he understood, the proposal of the advocates of this policy was to borrow £500,000 for the Land Bank, convert it into ten million shillings, then lend it at Sh. 20 to the pound sterling, and then arrange that the sterling security covering the loan should subsequently be reduced by one-third, which seemed to him an odd way of putting up a case for a loan to the Home Government. I must say I might have misunderstood him, but that is what I understood him to say. What is the sterling security covering the loan? If the money is obtained the money will be lent out and once it has been lent out there cannot surely be any sterling security. The loan becomes a sterling obligation repayable in sterling. The security is the land and improvements thereon, coupled with some reliance on the business acumen of the Directors of the Land Bank. As I have pointed out, the only proper way to make the security absolute is to restore farming to a profitable basis, and thus restore the economic position of the whole country.

THE HON. THE TREASURER: On a point of explanation, Sir, what I intended to say was the security in terms of sterling would be reduced by a third. Possibly the hon. member could see the point if I put a concrete case. Sh. 30,000 would be borrowed in London, which would be £1,500 sterling; Sh. 30,000 would be lent, the depreciation of currency would take place. If that mortgage were called in, 30,000 new shillings, not old, would be repaid. That is what I intended.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK: I appreciate that would be the case, that expected loss, but it would be avoided because the money would be lent out in East African shillings.

Lastly, Your Excellency, as far as the statement made by Government is concerned, I want to allude to the hon. the Treasurer's words, when he said: "I have attempted to show that a decision on this matter must of necessity rest with His Majesty's Government and I should have thought that this fact would have been recognized and accepted." This

is the kernel of the whole debate, and it is this sort of reasoning which provides one of the major causes of my antagonism to the Local Government, in that in many cases, whether it might have been difficult or came up against the opinion of the Secretary of State, they have made but little attempt to study such problems for themselves or the country at large. Surely in their responsibility to the economic position of the country, every proposal should be studied very profoundly, and surely, Sir, the Local Government's job is to advise the Secretary of State and not to follow his orders blindly. The Secretary of State has no less than forty-nine colonies to look after, and surely no one but a super-man can be expected to have everything referred to him from forty-nine dependencies. I must confess that when I hear this kind of reasoning—that because the Secretary of State has said something it must be final—I really begin to despair! Surely we must know more about our own conditions than the Home Government. Surely if this country is ever going to progress, as I am sure it will, we must one day achieve a Government that will take initiative on its own, will take responsibility without always fearing that they might find themselves at cross purposes with the Colonial Office.

This debate, to my mind at any rate, has clearly shown either that members on the other side of the House, although they may have some inkling, have not, in my opinion at any rate, a true conception of the real state of affairs. The basic trouble, I am afraid, lies in this: that the security of tenure for officers, however willing they are, of Colonial Governments lies on the whole in inaction, whereas our security of tenure, and our very existence, depends on some definite action being taken quickly.

It is this basic difference between the two points of view which has led to the unfortunate clash which has been taking place during the last year or so, and is taking place even more violently to-day between members on this side of the House and members on the other side. The question really arises, what can be elected members do? We have been told this morning that the sensible thing for us to do is not to shout from the house-tops we want this or the other done, or this or that is the position, but by co-operation with Government try and do the best we can for the country as a whole. That sounds a very right and proper sentiment when it is uttered in that way from this House.

Sir, we do not find it quite so easy. Our constituents have sent us here on the assumption that as this Colony has been given some kind of constitution, it must necessarily follow that we have some power in Legislative Council. Some of

out constituents are so misguided as to imagine that it is only lack of energy and lack of push on the part of elected members that causes so little to be done. I have been connected with the Elected Members' Organization and been an Elected Representative a short time compared to other members. I must confess that in spite of the extremely interesting and clever speeches from the other side of the House I sometimes feel quite despairing. I can only admire the wonderful patience and perseverance that has been shown by those members who have done their utmost on this side of the House in this atmosphere for many years.

This debate has reflected, in that it has wandered very widely, the history of the past few years. I will just mention one or two subjects, every one of which has been mentioned in this debate.

I would like to draw attention to the efforts made on this side of the House to get expenditure reduced, and more especially the efforts made by the commercial community. I would like members to read up those old debates, they are very interesting, and see Government's replies. Now, after it has been done, when it is too late, Government crow over the efforts they have made. I admit those efforts were good, but they were too late.

I would draw attention again to Mr. O'Shea's efforts in this House to secure the appointment of this Committee to inquire into the basic position and, as I have said, the answer was "No". Eventually Government was forced into it.

I would next refer to the interview which took place with the Secretary of State mentioned in the Economic Development Committee's Report, an interview at which I personally had the honour of being present. When I try to describe that interview words fail me. We were treated with scant politeness as though we were a lot of little school boys. The Secretary of State was supplied with a memorandum which had been most carefully drawn up and prepared at the cost of a great deal of work by the elected members of this Colony. He picked it up and banged it on the table and said: "I am going to answer this paragraph by paragraph," and then never answered a single word of it. (Laughter.)

After that interview we tried to get through a Mortgagees Relief Bill adequate to the situation, and all that happened was the Bill we got through was so emasculated that I do not think it helped anybody very much. Again and again we have tried to get Government and the Secretary of State to force through some relief measures in connection with our loan commitments, and again we were told: "It is very

difficult, we don't see how we can do it." This morning we have been given an undertaking that it will at least get as far as the Deputy Treasurer in England.

We have had a most important full-dress debate on the Carter Commission Report, all of whose recommendations have been referred to in this debate. And what happened? In that important debate Government saw fit to allow one officer, as far as I can remember, to intervene on their behalf, and that not even the Colonial Secretary. And what did that member say? He said just absolutely nothing. Our references to paragraph 2040 and other matters were treated with disdain. I ask you, Sir, could not one almost say that was an insult to members on this side of the House?

Coming to last year's Budget, and the stubbornness of Government forced the elected members to walk out of the Standing Finance Committee. It was only the fear that there might be disturbances throughout the country that caused Government to give in and appoint an Economy Committee. Then for six long months in spite of the importance of taking some action in connection with the Economic Development Committee's Report, we were without a session of Legislative Council, in the hopes I suppose, that things would simmer down or the position might improve.

We now come to this session, at which we have been told that in due course something may be done to secure the White Highlands, that something is going to be done to preserve the land in the Colony, but nothing is done beyond the holding of Provincial Commissioners' Conferences. We have had the incredible spectacle of Government members solemnly voting as one man against the birthright of our children to have positions in the Civil Service.

THE HON. SHAMSUD-DEEN : On a point of order, is the hon. member replying to the debate or is this an original speech?

HIS EXCELLENCY : The hon. member is perfectly in order up to the present, I have heard nothing not strictly relevant to the remarks made in the course of debate.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : We are told while departmental estimates are already in draft that Government has not made up its mind that they can relieve the economic position by taking off the taxes we have asked them to, although in saying so it is broadly hinted that methods of avoiding doing it in the way promised are being discussed.

Lastly, we come to the one fundamental issue which really matters, the basic economic position of this country, and what are we told? Boiled down, we are told that Government cannot alter world conditions, and that very little can be done beyond a few petty palliative measures and that all will be well if we only wait, if we survive. No policy, no real policy, whatever, as far as I can see, to try and save the people who are going under every day, and they are going under despite what Government say, and here we elected members have to sit and listen to such remarks as "let them go under" from hon. Indian members, and apparently are supposed to rest content knowing that in this House we can do absolutely nothing.

Your Excellency, during this debate the hon. Member for the Uasin Gishu has made two statements in his remarks. Yesterday, he said :—

"Unless the form of Government was so modified as to give the people a very much greater say in their affairs things could not improve."

And he added :—

"I deliberately say that we on this side of the House are wasting our time."

Your Excellency, I feel very strongly on this subject. After the war this country was given a constitution which we felt would enable us to interfere in such vital matters as the economic position of the country. But what has happened? As far as I can see our efforts to do something for our constituents have been turned into the almost traditional harlequinade. The main part of the performance, Government steamrolling through its Bills, comes first. Then, after the Bills are through and the main part of the performance has terminated, Government sits back and watches, rather superciliously and with amusement, the antics of us on this side of the House. The constitution we have been given has to my mind been turned into an obstruction machine.

Sir, it is obvious to me that little or nothing can be achieved in this House so long as the present state of affairs continues. We have reached the position that lots of other colonies have reached; when we must be given a greater measure of control of our own affairs. (Hear, hear.)

Certainly nothing can be done as we have been told several times recently until His Excellency The Governor comes back or until the Secretary of State, the new one, has read up some handbook about Kenya. Sir, I really am in despair and I cannot tolerate this position any longer. If nothing can be done to try and perforate this wall of

opposition, I think we have the right to see if something cannot be done to attack it from the flank, with the help of people outside. And, Your Excellency, in view of the conclusions I have come to—and I have come to them after giving them very serious consideration indeed—I personally do not propose to waste my time by taking any further part in this session. I shall wait until it may be possible to do some good for the people who have sent me here, when there is somebody here who can answer and can act.

Therefore, I beg leave to withdraw this motion, which I know will only waste the time of the House to put, and also beg leave to withdraw any further motions that may be standing in my name. (Applause.)

(The hon. member then withdrew.)

HIS EXCELLENCY : With the leave of the House the motion is withdrawn.

*Council adjourned till 10 a.m. on Friday, the
2nd August, 1935.*

FRIDAY, 2nd AUGUST, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m., on Friday, the 2nd August, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, ESQ., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

HIS EXCELLENCY: Have any amendments to the minutes of the meeting of the 1st of August been notified?

THE HON. E. H. WRIGHT: I beg to challenge the accuracy of the minutes Sir, in that while the motion of yesterday (on the Report of the Economic Development Committee) was withdrawn I, as seconder, was not asked to give my consent.

I would, however, only add that I wish, in saying this, to agree with the action taken and to associate myself entirely with the views expressed by the hon. Member for Nairobi North, and for the same reason I would now leave this Council.

HIS EXCELLENCY: On the point of the minutes, the record is in my opinion entirely correct. The record reads "The motion was by leave withdrawn." I am perfectly certain that I said "With the leave of this Council this motion is withdrawn." There was no dissenting voice raised by the seconder or any other member. I looked on it therefore as being withdrawn with the tacit consent of the whole Council.

MAJOR THE HON. G. H. RIDDELL: If I may say so, Sir, I have no doubt your statement was correct, but quite inadvertently the speed with which you adjourned Council made it impossible for us to rise and speak at the time. Personally, I am in favour of the action taken by the hon. proposer and seconder of the motion, and beg leave to withdraw from the Council.

HIS EXCELLENCY: I cannot accept the hon. member's contention that I was too quick in that particular matter. I was perfectly plain, because I still thought it possible that some hon. member might protest. (Hear, hear.)

(The hon. E. H. Wright and Major the hon. G. H. Riddell withdrew from the deliberations of Council).

The minutes of the meeting of 1st August, 1935, were confirmed.

NOTICE OF MOTION.

Notice of the following motion was given by Capt. the hon. H. E. Schwartzé :

“In the opinion of this Council Government would be well advised to appoint a Committee, either Select or otherwise, to consider and report on the possibility of evolving a scheme for the redemption of mortgages by the issue of the Government bonds.”

CAPT. THE HON. H. E. SCHWARTZE : Your Excellency, may I say that I regret giving notice of a motion so late in the session as this, and if it should mean that its hearing would necessitate Council reassembling on a day when otherwise it would not, I should be prepared to agree to the motion standing over. If it does not mean that, and the motion will take but a short space of time to discuss, I should like if possible to have it taken this session.

ORAL ANSWERS TO QUESTIONS.

CARE OF CATTLE ON RAILWAY.

No. 48.—CAPT. THE HON. H. E. SCHWARTZE asked :

“Is it a fact that 500 head of cattle recently entrained from Nakuru to Mombasa en route for Italian Somaliland were kept without water or food for a period of two days?

If so, will steps be taken to see that there is no recurrence of such a happening?”

THE HON. THE ACTING COLONIAL SECRETARY : The answer to the first part of this question is in the negative, and the second part of the question does not therefore arise.

I may add that the Stockbreeders' Association have asked the Director of Agriculture to express their gratitude to the Transport Administration for the arrangements made during the transit of the stock in question.”

CAPT. THE HON. H. E. SCHWARTZE : Arising out of that reply, Sir, I should like to explain that the question was put down in order that an opportunity should be given for Government to dispose of rumours which are very rife and which I had no reason to believe were accurate.

HIS EXCELLENCY : I am grateful to the hon. member.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Is it not a fact that every precaution was taken to see that the cattle should have food on the way down and that the dealings with them were actually very satisfactory? Further, is it not a fact that they all arrived intact at Mogadiscio?

THE HON. THE ACTING COLONIAL SECRETARY : May I read an extract from a report, Sir, on the subject?

HIS EXCELLENCY : Yes, I think it would be helpful if you did.

THE HON. THE COLONIAL SECRETARY : "Two consignments of 250 cattle were trucked at Naivasha and Gilgil on a Wednesday evening and arrived in Nairobi on Thursday morning. The stock were in charge of an experienced stockman with sixteen native boys. A special truck supplied free by the Kenya and Uganda Railways and Harbours was used for carrying fodder. The stock were fed with freshly cut green grass and mealy stalks three times during their journey to Mombasa and offered water which was refused. . . It is not expected that cattle reared and bred under ranching conditions would take any drinking water from receptacles in enclosed trucks and further, if the cattle were fed on fresh food, they could carry through the journey without suffering from Wednesday night until Friday morning without water."

This is possibly the origin of the rumour.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Would you answer the second part of my question, that the cattle arrived safely?

THE HON. THE ACTING COLONIAL SECRETARY : I can definitely give that assurance.

MOTION WITHDRAWN.

LT.-COL. THE HON. J. G. KIRKWOOD : May I take the opportunity, with the permission of the House, to withdraw the following motion standing in my name this session?—

"Be it resolved that this Council sympathises with the agricultural producers in their protest against the increased price of power kerosene and urges Government to consider sympathetically the granting of a rebate on power kerosene used for the transport of agricultural produce."

As a matter of explanation I should say that I agree with the hon. Member for Nairobi North and my colleagues, and I propose to leave the Council during this session.

HIS EXCELLENCY : The motion standing in the name of the hon. Member for Trans Nzoia is with the leave of the House withdrawn.

(Lt.-Col the hon. J. G. Kirkwood then withdrew from the deliberations of the Council.)

MOTION.

SAMBURU TRIBE, INQUIRY INTO SPEAR MURDERS.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Your Excellency, some short while back I asked a series of questions with regard to happenings in the northern part of the country in the vicinity of where the Samburu tribe are located. The reply by Government disclosed the fact that in the opinion of Government there had been thirty-three murders committed in the neighbourhood of this tribe and that of those thirty-three murders in only four cases had convictions been obtained, which resulted in the legal death of six people implicated. Further, Sir, in reply to another part of my question, I asked if Government was aware of certain statements made corroborating the statement of Kiberenge, Government replied that they had no knowledge.

I wish, therefore, to bring forward a motion asking for an inquiry to be held into the state of affairs in connection with that part of the world, the happenings which have taken place there during recent years, because they have caused very great anxiety of feeling among a large proportion of the population of this country.

The motion is in the following words :

“In view of Government’s reply disclosing such a serious situation—in that of the thirty-three spear murders in the neighbourhood of the Samburu tribe, in only four cases have the murderers been convicted—this Council considers an inquiry should be held into the administration of that tribe during the years 1930 to 1933 and all matters relevant thereto.”

Now, Sir, all these murders were perpetrated in the same way, which is by the butt end of a spear, which I believe is accepted as more or less a definite indication that they were committed by members of the Samburu tribe. Can you imagine a situation in Great Britain, where a certain section of the community who are known to have committed thirty-three murders of harmless citizens, and in only four cases convictions were obtained? I suggest, Sir, if such a thing did happen you would have the whole of the Rothermere-Beaverbrook Press in hot cry, the head of the Commissioner of Police demanded on a charger, and it is likely that the Government would fall.

Here, Sir, that is not the case at all. Apparently Government do not consider that the large number of murders of admittedly completely harmless native people, is a matter of very serious importance, because when the Carter Commission were hearing evidence the officer in charge of the Northern Frontier District gave evidence to say that the only two tribes

in that part of the world who had never given any trouble to Government were the Rendile and the Samburu. But it was apparent at the time he made that statement that he must have known there had been several serious murders committed, so that one can only imagine they had given no trouble to Government because Government had taken no trouble to find out who committed those murders.

The reason I have brought forward this motion is that the public are very seriously dissatisfied with the state of affairs which has been disclosed, and it is very generally felt that the cause of it is the mal-administration of that part of the country by certainly one administrative officer.

Now, Sir, the great difficulty in all these cases is to obtain satisfactory native evidence. The natives, especially the rather unsophisticated native living in that part of the world, are very frightened of getting implicated in any case of this sort which brings them into contact with the police and Government of the country. It depends entirely on the action taken by Government as to whether any evidence is forthcoming or not. In this case, evidence has not been forthcoming sufficiently to achieve what was required. I submit, Sir, that that is due to the action of the officer in charge of that part of the world at that time.

The natives think to themselves, "What does Government want?" and if they think Government does not want their evidence they will not give it. You may say, why should any officer of Government wish to suppress evidence or not bring murderers to book? I say that there is definite reason in this case, and the reason was this. For many years there has been trouble going on as to who should occupy the Leroghi Plateau. The officers of the administration of that part of the country have fought strenuously for the Samburu to occupy it. The settlers have equally strenuously maintained that it was a part of the country which should be in the white settled areas. In this particular case, their point of view was strongly supported by administrative officers at Rumuruti.

I submit that the underlying reason why the natives were not encouraged to bring forward evidence was that they did not wish the Samburu to have these murders brought to book against them, and especially they did not wish them to be convicted of having murdered a white man.

I will come to that now, Sir, because I take it that Mr. Powys' death was not included among the thirty-three murders. In anything I have to say with regard to Mr. Powys' death, which occurred in October, 1931, I wish to make it quite clear that I am in no way making any reflection whatever on the

conduct of the trial of those Samburu who were acquitted of his murder by the impartial judge who tried the case. Everybody who was present at that trial, including those who felt strongly on the subject, unanimously agreed that no judge could have tried that case more fairly and efficiently than the learned judge who did, and the way the evidence was put forward that there was no other verdict which could be brought in. At the same time, I think I am correct in saying this : that the verdict was not one that Mr. Powys was not murdered ; it was a verdict that the five Samburu who were tried were acquitted because there was not sufficient evidence to convict them. In other words, if the case had been tried in my native country the verdict would probably have been one of "Not proven." While absolutely upholding, if it is not presumptuous, the action of the learned judge, I do consider that the prosecution was not conducted in as thorough a way as it should have been, and I will come back to that question later on.

I presume that Government themselves were thoroughly satisfied that when they brought these cases against these people, that murder had been committed, or else naturally they would not have brought the case. I should like to say that, of course, it is ludicrous to suppose that Government deliberately wished to get an acquittal. I do not think that even the Government of Kenya could be accused of being quite so stupid as that, and I do not think it was quite a fair thing to do in that Paper, which I shall call the "Whitewashing Paper", which was laid in the House of Commons, that the question was brought in that certain people had made that accusation. What in effect did happen was that some people said the prosecution was so badly conducted that it looked as though Government must have wanted an acquittal. Of course, nobody seriously considered that Government could be so grossly stupid as to try for an acquittal in such a case as it was bound to undermine the prestige of Government to the great benefit of the witch doctor so much concerned with the case.

Apart from these murders, and apart from the death of Mr. Powys, these tribes had also been in a state of—insubordination is a strong word—but had definitely been giving a great deal of trouble, whatever the officer in charge may have said before the Carter Commission. They had been giving a lot of trouble with regard to their grazing boundaries, trespassing beyond them. There had been increasing stock thefts, and there was one case which was perhaps definitely of insubordination, when a certain Government headman named Legoben refused to hand over some men wanted in connection with murder on Mr. Armstrong's farm to the police and threatened to turn out his moran to drive off the *askaris*. That happened

in 1931, and I believe I am correct in saying it was not until the administration was taken over by the Rift Valley Province that Legoben was dismissed from his position.

I think we must all agree that to say this tribe had never given any trouble to Government was a certain distortion of fact, and I am very sorry, nothing is more distasteful, to have to bring in the names of certain officers who are not here to defend themselves, but as the name of this officer, Mr. Cornell, has already appeared in the White Paper it is impossible to avoid bringing in his name. Mr. Cornell was out of the country at the time Mr. Powys met his death, and in the meantime a verdict of accidental death was brought in, that he probably met his death from lions. Naturally, Mr. Cornell was not, perhaps, too anxious to have the whole case brought up again when he had the convenient method of an inquest which had decided that death was accidental.

I am going to support what I have said this morning, if the House will bear with me, by a certain number of quotations from definite statements made by natives and certified as true statements by a justice of the peace, who is Mr. Gilbert Colville, of Nakuru, who knows these native peoples well, if not better than any other people living in this country. He has lived among them for a very long time, especially the pastoral tribes, talks their language like themselves, and has their confidence. It may be said that no native evidence is really reliable, and that the native will say what he is wanted to say. We all know there is a good deal in that, but I do submit that when you hear what I have quoted from these natives you will admit that their story hangs together and that there is a great air of truth running through it all. Apart from that, the argument that the native will say what he is wanted to say is one of the great reasons why I consider the action of the administrative officer was so reprehensible, because on the evidence of these natives they got the impression that he did not wish them to bring further evidence before him.

Now, Sir, apart from this question of getting evidence about these murders, there are two other actions of this administrative officer which I consider were very reprehensible. One has been admitted already in the Whitewashing Paper, in that he beat, quite illegally, in a fit of temper, two natives. The other is that he tried five Dorobos for hanging their honey-pots there and gave them the maximum penalty, although I will endeavour to show you they had always had permission to have their pots in that place from another administrative officer of Government.

I am going to ask you to bear with me while I make a good many quotations, because these are germane to the whole question, and it shows what the natives, anyhow in that part

of the world, believe. I may say that what I quote here are all "Certified as true copies of statements taken by me. Signed Gilbert Colvile, J.P. Nakuru."

The first one, Sir, is signed by Mamunum ole Barsogota :

"I am head of all the Samburu moran. I am afraid of Ole Adoma, but not so frightened of him as I am of Government."

I only quote that statement for one purpose, and that is that naturally the natives are frightened of Government, and if Government through their administrative officers administered these native areas properly there is no trouble, but as soon as the officers in charge deviate from the high standards of all the Government service then you find that things go wrong.

I am going to divide what I am going to quote into three categories. The first deals with the death of Mr. Powys, the second will deal with the action of Mr. Cornell, and the third part will deal with the case of Kiberenge.

The next quotation is from Kushina ole Ketachara (Pusigishu) :

"We fought the Lerogishu when Mr. Bader was the District Commissioner at Isiolo, and we beat them and killed five of them. The Logumai girls told us that at a dance at a Logumai village the Lerogishu moran came to dance and the Logumai girls said to them, You are cowards you ran away from the Pugishu, why then come here and dance? Twenty moran got very excited and went home. The next rains we heard that a white man had been killed on the Pingwan and we also heard that Kiberenge had come to give it away later. The Lerogishu said, do you still say that we are cowards now that we have killed a white M'sungu. We all know that the moran of the Lerogishu killed the white man.

We have all heard that Lerono and Lesoiba killed Powys."

The next is by a Dorobo, Mesachi ole Mangorusa :

"I have been to several Samburu dances and have heard the Samburu sing that the vultures dropped on the Pingwan to eat one loved by the people of Nairobi. Dargetti accompanied me when I went to the dance."

The next one is by Legada's older brother (Legada is the one who was beaten) :

"I was told that the European had been killed by the Samburu, and that Kiberengi had said so. I heard

the song of the vultures on the Pingwan being sung at a Lerogishu dance about three months ago. We have all heard that Legoben has hidden Kiberenge."

This is the Legada who was beaten :

"I was at a dance called the M'barangoi at my *boma* which is with Le bareyo's. Le bareyo heard the Lerogishu moran singing the song of the vultures dropping on the Pingwan and he told them not to sing the song in his *boma* but to go back to their own. Le bareyo did not want us, his own moran, to hear this song because he was afraid that it would excite us and encourage us to go and kill a white man too. Le bareyo would not tell you anything if you went up there for fear of Ole Odoma. If Ole Odoma was moved away out of the reserve as Senden was there would be no difficulty in getting evidence. When I go back to Samburu I shall go and live a long way off in the low country."

Here is another statement by the native Kotolian ole Lebere :

"Four months ago I was talking to Ole Naimputari on Mr. Tucker's farm. I said I was going down to try and make friends between Lesemeto moran and ours. He said I won't have anything to do with you, we are apart from you, we are one with the Samburu. Before you came down we had a *kiama* together with the Samburu. Now you have spoilt things by getting us into trouble with the Samburu. We know all the Samburu secrets, we know that the Samburu killed Powys but I won't tell you who did so, or that the Lerogishu clan did it. My moran saw the moran who killed him."

This is evidence when there were several natives together, by one called Ole Omai :

"I was asking Getaiger what he had said to Juma in the afternoon and he replied 'Oh, that was nothing'. Ole Naimputari then started to talk about it, and it came out that it was to do with Powys' murder, when Ole Naimputari said that of course the Government were very stupid not to ask them, the Dorobo about it, as they could finish the whole case at once. 'Two of my moran, who were out on Cole's met five Samburu carrying a European head. They spoke to two of them while the other three stood about 60 yards away. They then parted and the Dorobo went to the corpse which was all cut up so as the birds could finish it quickly.' I asked Ole Naimputari the names of his moran and he said go and catch a star and I will tell you.

About a week later some of these same people were present, and Juma, who worked for the police said :

“I was trying to get out of Ole Naimputari the names of the moran who had seen the Powys murderers and he said ‘I know but I am not going to say, but am going to wait and hear what the Government wants.’ ”

Diamitte ole Niamputari states :

“About three years ago I was looking for my lost sheep at a place called Loberik. I saw five Samburu people and spoke to two, the other three stood by a tree about 500 yards away. I first saw all five standing under a tree. Two of them came up and asked what I was looking for. I told them that I was a Dorobo and was looking for my lost sheep. They looked to me as though they were frightened and I was frightened of them, I was afraid they might kill me. They were not wearing their *shukas* hanging down but rolled up round their waists. Each had two spears. One spear of one man the man nearest to me had blood on it. About two foot of the blade and shank were blood stained. I did not ask them about the blood as I was very frightened. I thought that they had killed a man as they seemed very nervous and kept on looking all around. It was not until the following day but one that I heard a white man was lost. As soon as I heard that he was dead, I thought to myself those Samburu killed him. When I got back with the sheep I told Ole Kerura les Kebogen what I had seen. I have often heard the Samburu sing about one white man being killed on the Pingwan and we all know it referred to ‘Cole’s manager, Powys’. I know the two Samburu that I met. I had seen them before several times. I have not seen them since.”

Another one, the man referred to in the last quotation, Lol Kerura les Kebogen :

“I remember Cole’s manager was found dead. I was living at Loberik with a Dorobo. I know Diamitte. We were talking about Powys for whom Diamitte had worked. We had just heard of his death. We were talking about Powys because two months before Powys and Katrono (Rawson Shaw) came to our village and wrote on Lererch. We went back with them part of the way towards the Pingwan and Powys shot a zebra for us. It was while we were talking about this that Diamitte said ‘I saw five Samburu when I was looking for my lost sheep. Two of them came up and spoke to me and three others remained some way off. The three who were standing some way off had the white man’s head.’ There was with me

at the time of this conversation, Londwala Ole Moti, he will bear out what I say. This conversation took place about a week after Diamitte came back with his sheep. I did not hear Kiberenge's story until much later."

This is corroborated by another man with him, Ereri ole Naimputari :

"I worked for Cole both before and after Powys' death. I was first taken on in my own village at Loberik. Two Europeans came to our village, one Mr. Powys and one called Katrono, he had left the Pingwan not long ago and I hear gone to Solai. When they gave me work, myself, Lol Kerura, les Leshaw, and the two Europeans went part of the way towards the Pingwan, and Powys shot a zebra for us. Lol Kerura and les Leshaw stopped to cut it up and the Europeans and myself went back to the Pingwan in their car. I was on leave when Powys was killed and returned to work for one month. I had not then Diamitte's story about the five Samburu. About ten days after I had returned Diamitte told me he had seen five Samburu and thought that they had killed Powys because one of them had blood on his spear and he saw them at the time of Powys' death. About a month after I left work I went to Samburu Morigith above Sugota Marsar, and heard the Narok gishu moran at a dance singing the song of the vulture. I said to myself then that they had killed Powys. As far as I can remember Powys when we went out in the car had a rifle in the car and when he rode he generally had a rhino *kiboko*."

Now, Sir, this is all I am going to say on the subject of Mr. Powys' death. I think it does show, if you put any credence at all in these statements—which in my opinion ring true—that there is not a shadow of doubt that Powys was murdered by the Samburu.

I will come to the next question, which is that of Mr. Cornell, in connection with these matters.

The first person I am going to quote you may say is not a very reliable witness, because he is the man Legobin whom I have already mentioned. This is a true copy of his statement by Mr. Colvile :

"Mr. Cornell said 'I don't want to hear about the white man's murder, as I was in England. I don't want your news because Bwana Colvile and Bwana Trafford want to take away Lergohi from the Samburu.'

I don't want to know whether you have killed Cornell's father or mother or whether Bwana Trafford has, and I don't know why Mr. Cornell hates you so, but I

do know that he has destroyed Samburu country. I have never been told about this European murder and now Bwana kidogo has gone on safari and has been told all this it is very bad and my country has been spoilt. It was because of what Mr. Cornell said that we gave no more evidence either about the Kikuyu or the Powys murders.

At the time Legada and Lesoni were beaten Mr. Cornell told the baraza 'what has made things bad for your country are the lies that these men have told the Europeans at Rumuruti.' "

This is a further statement made by him :

"The Dorobo were tried one or two days before Legada was flogged."

That is the question of the honey pots which I will come to later.

"I was at the baraza at Nam (?) when the District Commissioner from Isiolo with one arm (that is Mr. Clive) told us that the Dorobo had permission to go to their honey pots on Leroghi. The Dorobo also went to Leroghi quite openly and slept in the same boma with the askaris on their way there. All of us Samburu knew that they were allowed to go there. I am a Government headman and neither Mr. Cornell or anyone else has ever told me that the Dorobo were not allowed to go to their honey boxes over the boundary. I was very surprised when Mr. Cornell imprisoned these five Dorobo. He did not tell me but I think he imprisoned them because he did not want the Dorobo to come over and hear our news and take it back to Rumuruti. I went up to tell him that these Dorobo had always had permission to go to Leroghi but he would not listen to me and told me to go away. The Dorobo had no weapons such as Dorobo use to hunt big game, no elephant or rhino spears, they only had the ordinary arms that old men usually carry and their ropes and leather bags for honey. I am quite certain that they were going to get honey from their honey boxes and not to hunt. Mr. Cornell was in a furious temper during the whole time he was at Sugota Marmar."

This is the evidence of another man, named Samanga :

"I was at the Barsaloi crossing baraza and Mr. Cornell said 'I was in England when the European died and I do not want to hear anything about it.' I was present when Legada and Lasoni were flogged; Mr. Cornell was in a rage and shouted out in English 'Bloody

fool.' We all went away and said 'If Government flogs the people who try to give it information let us go away and say nothing.'"

Ngaria Oiya said :

"I went to the Seya River near Kelele and there saw Legad with other Samburu moran where he was eating a bullock and I spoke to him. He told me that after he had been in the Samburu country he was called to the camp of the District Commissioner, Isiolo, situated at Marmar and went there immediately. The District Commissioner asked him why he had been spreading reports about the murders in Laikipia to the District Commissioner, Rumuruti, and then told his askari to beat him, and he gave him twelve strokes with a kiboko. I saw his buttocks and they bore the marks thereon. When he was beaten he returned at once to his kraal. I understand that the Samburu old men do not like Legada now, except those of his family. Legada states that he is willing to come in here to give this evidence himself if he is given escort, or if he is fetched from, say, Marmar."

This is a statement on the same subject by Loniyan ole Marimbe :

"I told the District Commissioner from Isiolo, the one with one arm (that is Mr. Clive), at a baraza at Nabile, that some of my people had been arrested by the police for going to their honey boxes on Leroghi. He asked me up to what place my people's boxes were and I told him as far as the precipice. He told Legoben that we, the Dorobo, had permission to go to our boxes and were not to be molested. And that if the Samburu stole our honey we were to report it to Government. We have never been told that we were not to go to Leroghi, and the first we have heard was when the five old men were arrested while drinking at Marmar."

Now we come to the very unfortunate story of Kiberenge. As I think most hon. members of the House know, Kiberenge came in and gave evidence that he knew that Mr. Powys had been murdered by certain Samburu. Afterwards the police were doubtful of some of his statements, and eventually he was made to withdraw them. He was then tried for perjury to which he pleaded guilty, and was sentenced to a long term of imprisonment. It is a very curious fact, Sir, that the people who Kiberenge had said had murdered Mr. Powys were the same people whom Government afterwards prosecuted for the murder, and it does seem extraordinarily hard that when a man came in to try and give evidence to help Government that he should have been sent to prison for perjury. I also

wish to give evidence here to show that the Samburu had corroborated his statement and that that corroboration was not produced at the time Kiberenge was tried for making false statements. Further, I think there is no question about it, that as a result of all this the unfortunate Kiberenge has been murdered.

This is a statement by a man called Leratia, on November 29th, 1933 :

“I just heard of Powys’ death when we were moving Cunningham’s Dorobo. At a Samburu dance called M’baringoi to which Laidashi and myself went we heard the moran singing ‘The vultures are dropping the Pingwan to eat one well liked by the people of Nairobi’. (Ole Keroch.) I said to Laidashi if Juma or Mr. Colville heard this they would know it referred to Powys being killed. I was called out one night to the police station at Rumuruti to act as interpreter to two Samburu elders. The two elders stated that they know Powys had been killed by six moran and one older man. Acton (the police officer) took down the statement, when he had finished Inspector Ash came over from his house and was very angry about it. I then left the station. We Dorobo all knew that Powys was killed by Samburu, but after what happened to Kiberenge we were afraid to talk about it. I don’t mind telling you because I know you well and you can understand.”

This is the statement by Juma, who has been quoted already :

“The first time I saw Kiberenge was when he brought a letter from the locust officer to Mr. Carver. He then told me that the Samburu had killed the European, they speared him on his horse. I told him that his evidence alone was not enough and to go out and get more evidence.

Nearly two months later I saw Kiberenge at Mugie. There were present : Wakupa, Juma ara Maswai, Kigaru. The sergeant then wrote down the names of the Samburu Kiberenge gave, and also what he said.”

I will give the evidence of the sergeant presently.

“When we were talking news came in that three Samburu were at Loitigon with a rein to catch and take back Kiberenge. Kiblangat was sent to arrest them and they were brought before the sergeant. One of the elders said that Kiberenge’s statement was true and the sergeant wrote this down. Next morning the prisoners were sent in with Kiblangat and myself with the two statements. We got into Rumuruti at 7.30 p.m. and handed over to

Mr. Acton. Next morning two of the elders agreed that the moran had killed Powys. That evening Leratia was sent for as interpreter and they again made the same statements. Mr. Ash came in at the end and cursed me and said this is all lies (*fitina.*)”

2nd-Sergeant Ochieng, on 19th April, 1934, said :

I went to Mugie to investigate the murder of a herd of Mr. Armstrong's, December 10th, 1931. I there found Juma K. and Mr. Armstrong's Juma Wakupa, and an askari Kiblangat. They were all sitting under a bush with a Samburu by name Kiberenge. Juma K. told me that he had heard news of Powys murder from Kiberenge. I told him to bring Kiberenge before me and I questioned him. He told me that he knew who had killed Mr. Powys and I wrote his statement down. While we were sitting there a Turkana of Mr. Armstrong's came in and said that there were three Samburu in one of his sheep camps. I sent Kiblangat and two Kangas to go and arrest the Samburu and bring them to me. This they did and when the Samburu were brought before me I asked them what they were doing and they said 'We have come to catch and to take back Kiberenge.' I told my men to take them away separately and question them, after some time one of the Samburu agreed that Kiberenge's story was true and that he had been murdered by Samburu moran. I took down this man's statement. Next day, December 11th, I sent in the three prisoners, Kiblangat and Juma, and an askari Kanga, and Kiberenge. And the two statements, Kiberenge's and the Samburu elder's, which were both on one sheet of paper, I gave to Kiblangat to hand over to the officer in charge at Rumuruti. I remained at Mugie until December 25th.”

This is followed up with evidence of Kiblangat, 22nd April, 1934 :

I was on Mr. Armstrong's farm at Mugie late in 1931. A Samburu by name Kiberenge came into camp. He spoke to Juma and told him that he knew that seven Samburu had killed Powys. While we were talking the sergeant (Ochieng) came up and took down Kiberenge's statement. A Turkana came up to us from Loitigon and told us that there were three Samburu there looking for Kiberenge. The sergeant sent me and Kakwashi and Mwai to Loitigon to arrest these Samburu. I found the Samburu in a sheep camp at Loitigon with a rope, I arrested them and brought them to Mugie. The sergeant separated them and questioned them individually. After some time one of the Samburu who was being questioned

by Juma, admitted that he knew that their moran had killed Powys. The sergeant then took down this man's statement. There were present Juma arap Kisirgoi, Juma (Mr. Armstrong's), Wakupa, Kigaru. Next morning we, that is Kagwashi and Juma, with Kiberenge and the three prisoners, started for Rumuruti. The sergeant gave me the statements he had made out and told me to hand them into the police station. On the way in all three Samburu pointed out to us the Pingwan plain where he had been murdered. We got into Rumuruti about 7 p.m. and saw Ash and Acton. I handed over the sergeant's statement to Mr. Acton. He told me to take the prisoners over to the police station. We put them in the cells and I went away to the lines."

Well, Sir, the police deny they knew anything about this statement.

This is the last quotation I am going to read. It is made by Juma arap Kimasoy, Wakupa of Lesopia, and Kigaru ole Karralich :

"We were at Juma's hut when a Samburu Kiberenge by name came up to us. There were also present Juma arap Kisirgoi and Kiblangat, an askari. Kiberenge started to talk to Kuma K. and said he had information he wanted to give regarding the Lumbwa of Bwana Kongoni's who had been murdered a few days before. Juma K. asked who had murdered him and Kiberenge said the Samburu, whom he knew and whose names he also knew and gave us these names but we do not now remember them. Juma K. asked him what else he wanted to say and Kiberenge said that the M'sungu on the Pingwan had been killed by Samburu. Juma arap Kimasoy remained in his hut and Wakupa, Kigaru, Juma K. and Kiblangat went with Kiberenge a little way off and sat under a tree. Juma K. asked him, Kiberenge, about Powys' death and Kiberenge said 'seven moran killed him' and he knew their names and that they took his head back to show the girls. And the next day they shaved their heads. While we were talking to Kiberenge the sergeant came up and Juma arap Kimasoy also returned. Juma K. told the sergeant that Kiberenge had an important statement to make and the sergeant took out some paper and took down Kiberenge's statement as already set down above. About this time one of our Turkana, Iyengan, came in from Loitigon and reported that three Samburu elders were looking for Kiberenge. The sergeant sent off Kiblangat, one other askari and two Kangas to bring in the Samburu elders. They got back with the three Samburu just after midday. The sergeant asked them what they wanted and they said

that they had been sent by the District Commissioner and Legoben to fetch Kiberenge back. The sergeant asked for their pass and as they had none he arrested them. Juma K. questioned them on Kiberenge's statement. At first they denied all knowledge. We then divided them up and questioned them singly, when one of the elders agreed that Kiberenge's statement regarding both the Lumbwa murder and Powys' were true, but he told Juma K. not to tell the other Samburu elders that he had spoken as they wanted to take Kiberenge back and that the moran would kill him. We all then went to the sergeant who took down the Samburu's statement as above."

I am sorry to have had to take up the time of the House reading out so many statements, but to my mind, and I believe to everybody's impartial mind, there has been very gross mismanagement of all the affairs in that part of the country. And, Sir, in the case of this last part, this unfortunate Kiberenge, as a result of Government inaction has undoubtedly resulted in his murder.

I think if you believe the statements I have put before you, and I say that in my opinion they ring true, the officer in charge did not carry out his duty in the way one expects an officer of the Kenya administration to do so, and that his action did lead to very much greater difficulties on the part of Government in bringing to book those who committed these various murders, in addition to which it made the case of the prosecution in the Powys case very much more difficult.

Sir, I do feel that I have made some grave accusations to-day, and that if only for the sake of the officers concerned and also to give a reassurance to the public, Government would be very wise to accept my motion and to institute an inquiry. Further, Sir, if they do institute an inquiry I do trust that it will be thorough, not a whitewashing inquiry, but one which really will go to the bottom of everything for the honour of the administration, the honour of the police, and for the honour of the whole country.

I do not wish to labour the point more. I have, I trust, given Government a sufficiently *prima facie* case to justify myself in having brought this motion before the Council.

THE HON. A. C. HOEY: Your Excellency, I have been unexpectedly asked to second the motion, due to the absence from the House of the hon. Member for Aberdare who was to have undertaken this.

I am going to second the motion formally, and briefly.

Sir, after listening to the Noble Lord and all he has to say on this subject, I would simply say this: Is there any member of this House who considers the position is satisfactory as it stands to-day?

I maintain that the facts that have been brought to light here show quite definitely that it is necessary in the interests of this country, the settlers, and the Government that there should be a further inquiry into this matter. There has been a White Paper issued on this subject, and it may mean on Government's part that it is the last word. It will never be the last word as far as the people of this country are concerned, because they think, and rightly so, I contend, that this thing was so badly mismanaged as to leave an entirely unsatisfactory position which has given rise to doubts concerning the integrity of the administrative officers during that period and, what is more, the prestige of Government. That, Sir, is undesirable from every point of view. It is essential that the position should be cleared up, and I say that if Government have nothing whatever to hide over this matter they cannot possibly object to this inquiry which the Noble Lord has asked for.

I do urge, from everybody's point of view, the whole Colony's point of view, that this inquiry should take place, because as I repeat anyone who has heard this morning the facts can come to no other conclusion that this inquiry is an absolute necessity, and I urge Government to accept the motion.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I must say at the outset that Government is unable to accept the motion before the House for an inquiry into the administration of the Samburu tribe during the period from 1930 to 1933, as it considers that such an inquiry is not justified by the situation in the Samburu during the period in question and that it would serve no useful object.

I would state in advance that this motion by the Noble Lord has nothing to do with the rights or wrongs of the Powys case. Government has already said in a White Paper all that it had to say on that case, and as the Secretary of State has said all reasonable men will agree that the administration could not be blamed for the Powys case.

The arguments which the Noble Lord and the hon. Member for Uasin Gishu have put forward have nothing to do with the question of the administration of the Samburu. The expenditure of the time and money involved would only be justified if there were facts which this inquiry could bring to light, and which would help the administration of the tribe during the present time. But there are no such facts as I think hon. members will agree when they have heard what I have to say.

I will begin by analysing the murder cases that occurred between 1928 and 1934. I take this period because it was the period mentioned by the Noble Lord in the original question he put to the House and because the answer to that question apparently caused the anxiety which is alleged to be behind this motion, and because though the period named in the motion is limited to the years 1930 to 1933, it is very relevant to our discussion to examine the longer period. The number of persons who were murdered in respect of whom Samburu were either charged or suspected was twenty-eight and not thirty-three as originally stated in the reply to the question of the Noble Lord. The original figure had been obtained by telegram, and included murders in which tribes other than Samburu were concerned. I admit that twenty-eight murders is a formidable number, and if they had been proved to have been committed by Samburu, it would have been really serious.

Actually the murders are spread over a period of seven years. Only four Samburu were convicted of murder; twelve were prosecuted but not convicted. Of the murders in which there were no prosecutions or convictions, fourteen Samburu were suspected of having committed murders during the period of seven years. I suggest that suspicion is hardly a sound basis on which to base an inquiry of this important nature.

Taking the number of years into account, the inevitable amount of lawlessness in the Northern Frontier Province, of which the Samburu district formed a part during the period, and the other factors which I shall mention later on, I do not think the number of murders provides the slightest justification for an inquiry.

To take the years separately :—

In 1928 there were three murders and three victims. There were no prosecutions but Samburu were suspected.

In 1929 there were three murders, seven victims, and two prosecutions and two convictions. The accused were all Samburu.

In 1930 there were no murders at all.

In 1931 there were four murders and six victims. Eight Samburu were prosecuted but no convictions resulted—two other murders occurred in the North Nyeri district but the accused were not members of the Samburu tribe.

In 1932, the year before the bad year, there were no murders committed by Samburu at all.

We now come to 1933. This is the year when the murders were more numerous than in previous years, the number of murders which occurred in the Laikipia district

being five and the victims ten. The accused were all Samburu or were suspected of being Samburu. Two prosecutions were undertaken but no convictions resulted as insufficient evidence was forthcoming. Strenuous steps were taken by the officers concerned to bring the offenders to book, but their efforts failed.

I would, however, emphasize that it was only in 1933 that the murders assumed such serious proportions as to necessitate action by other than the ordinary judicial methods. It was only in 1933 that evidence was obtained pointing to the possibility that the manner of the death of Mr. Powys was not in accordance with the finding at the inquest. The conviction of Kiberenge was the act of the magistrate at Runuruti. It was a judicial act which had nothing to do with the administration of the tribe and the policy followed in regard to them. It therefore does not appertain to this discussion at all, and I ask the House to consider the difficulties which attended the administration of the Samburu tribe during recent years.

The Samburu are of Nilotic-Hamitic origin, closely akin to the Masai, and similar to them in language, customs and habits. They own about 252,000 cattle, and as they are bound to follow the grazing in accordance with the seasons, they are perforce nomadic and rooted to no permanent home. The area over which the tribe is scattered is 7,400 square miles in extent, separate from district headquarters at Isiolo by a large stretch of country to which access is very difficult owing to imperfect roads. Like all primitive Nilotic-Hamitic tribes their young warriors are initiated during early manhood and spear blooding in order to win the admiration of the young girls, and often on direct feminine instigation, has been prevalent from the earliest times and is a traditional custom. It is a custom found in many other parts of the world.

I have no wish to condone this custom or to suggest that Government is not determined to stamp it out with all the means at its disposal. I am merely stating facts which many hon. members on the other side of the House are aware of, to show that this series of murders, execrated as they are by all civilized men, has its roots in native custom.

I would remind hon. members that the ordinary processes of criminal law are only effective when the will of the people is on the side of that law which these processes are designed to enforce. A conviction can only be obtained when evidence is forthcoming, and evidence is not forthcoming if people are unwilling to come forward and give it. In England convictions for murder and burglary would not result if the man in the street were not on the side of that law which prohibits murder and burglary and were not prepared to come forward and give evidence which might result in conviction.

Among the Samburu the general public, so far from being on the side of law and order, is definitely antagonistic to it in so far as murders of members of tribes other than their own are concerned. As I have stated, their own law and traditional custom requires that murders shall be committed at certain times, and then murder in certain circumstances is not a crime but a duty. It is the very fact which has made it so difficult for the murders to be traced. Evidence of these matters was not forthcoming because, although evidence might have been in existence, those in possession of that evidence were unwilling to come forward and give it.

In these circumstances, the discovery of the perpetrators of crimes which were winked at by the old men, who did the same in their youth, and applauded by the young women because in their eyes the reputation of the young men was enhanced as warriors, was a matter of the extremest difficulty.

It was to meet a situation of this kind that the Collective Punishments Ordinance was largely designed. The application of this Ordinance is in itself a confession of failure; or rather, a confession that the ordinary processes of criminal law have failed to detect the individual criminal. It is an Ordinance that is applied when the guilt of a community has been established or when it has been established that a community is hiding the criminal. When it became apparent that the Samburu community was guilty or was hiding the criminal, the provisions of that Ordinance were enforced, the collective punishment of £900 was inflicted on the guilty sections of the tribe, and the young men subjected to disgrace by being deprived of their spears.

I ask this House to put itself in the position of the administrative officer in charge of this tribe during recent years. He was first of all separated from the Samburu area by a large tract of practically roadless country. The Isiolo district, of which the Samburu area formed part, stretches to Habaswein on the north east and to the shores of Lake Rudolf on the north west, a total area of about 200,000 square miles.

Secondly, to show the lawless tendencies of some of the tribes on the Northern Frontier Province, I will quote two passages from the Native Affairs Department Annual Report for 1931 :

“The great majority of the people are nomads who spend their lives following or searching for water and grazing. It is a common fallacy that pastoral tribes lead an easy life; but nothing could be further from the truth in the northern Provinces of Kenya, and it is doubtful if any native would willingly exchange the security of a settled home for the life of the nomad. The protection,

pasturing and watering of the stock presents daily work and anxiety : the stock sometimes has to be guarded night and day from the attacks of either human or animal enemies : there are the long waterless marches in search of grazing : and at some wells a human ladder of not less than fifteen men and women is necessary to lift water in small skin buckets by hand to hand from the bottom to the top of the well."

"The difficulty of maintaining law and order in this Province is one that has existed and will continue to exist for many years. There is little regard for the sanctity of human life and the tribesmen look upon the safeguarding of their rights and the redress of their wrongs as their own privilege and duty. During the year 117 persons, so far as is known, met violent death at the hands of their fellows."

Thirdly, as I mentioned just now, administration of the native tribes of the country is based on the rules of law, and unless or until that law has proved ineffective, the officer in charge was compelled to abide by these rules. It must also be remembered that the Special Districts Ordinance, which provides the Officer in Charge of the Northern Frontier with special powers, did not come into force until the middle of last year.

Fourthly, the officer in charge of the Samburu station, then at Isiolo, owing to the frequent absences of the Provincial Commissioner on tour, was compelled to remain at Isiolo and represent him and deal with the ordinary routine and correspondence.

All these difficulties have now been resolved by the establishment of a station at Maralal in the heart of the Samburu tribe, but they were very real indeed, and it is remarkable, I think, that until 1933 lawlessness was kept within such reasonable limits.

The Noble Lord has referred in his speech to Mr. Cornell, who was in charge of the Samburu district during a portion of the period we are discussing. He came to the district in 1931, after the death of Mr. Powys, and was in the district during 1932 and 1933. He has the reputation of being a keen and efficient officer. His main fault in the eyes of his critics is that in the administration of the Samburu and in his devotion to their interests he showed an enthusiasm which in their eyes was excessive; but I have no hesitation in saying that in championing them, whatever his faults or whatever his mistakes, he was following the best traditions of the Service.

The Noble Lord made the suggestion that this officer was influenced by his views in regard to the question of Leroghi Plateau in the action he took and in his administration of the tribe during the years he was there. That, Sir, is a suggestion which cannot be entertained for a moment. It is a reflection on the integrity of that officer for which there is no evidence or foundation and which his previous record certainly does not bear out.

The Noble Lord has quoted a number of statements recorded by Mr. Colville. I say that those statements have reference to the prosecution in regard to the case of Mr. Powys, but they do not concern the motion before the House.

Lastly, the Noble Lord referred to certain statements made by Dorobo in regard to their treatment by Mr. Cornell during the time he was at Samburu. Those statements were reported to the Secretariat, and we referred them to the High Court, together with the case file of the case which Mr. Cornell had tried. The High Court decided that there was no occasion for any revision of the case.

That, Sir, is all I have to say in the matter.

Council adjourned for the usual interval.

On resuming.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I listened to this debate in what I hope was a completely impartial manner. I had little or no knowledge of the facts which the Noble Lord has put up or of the reply Government would make. I listened to the debate with the deliberate intention of keeping an open mind and trying to form an opinion on the weight of the arguments that were adduced. No person could honestly say that the result of listening this morning has not had the effect of demonstrating quite clearly, to put it at its worst, that a very strong prima facie case for an inquiry has been made by the Noble Lord.

I paid equal attention, I assure you, to the remarks in answer by the hon. the Chief Native Commissioner. He will not think me uncivil if I state that to an impartial observer that answer was most unconvincing. First of all, it is obvious that the answer had been prepared prior to the remarks made by the Noble Lord being heard and the reply, except in very small details, did not meet or attempt to meet the case put up by the Noble Lord.

Now, it may be that Government seeing this motion, knowing that this motion was coming up, discussed the matter and came to the conclusion that it did not feel there was sufficient justification for accepting it and agreeing to an

inquiry but, after all, I do suggest that serious motions put up in this House should not be turned down in advance without hearing the arguments for the motion.

I honestly believe, I am making no attack on anyone, that a strong prima facie case has been made out, and I can see no possible harm in the inquiry being instituted; I believe it is not only in the interests of the country but in the interests of the gentleman whose name has been mentioned. What would be the result of any impartial person reading this debate? They must come to the conclusion that accusations have been made against an officer of Government. The defence on his behalf has been entirely inadequate, and, rightly or wrongly, that gentleman in the eyes of impartial people will continue under a stigma which for all I know may not be deserved.

The object of my intervening, which I had not intended to do, is because as a result of listening, and listening without my mind being made up, I do make an appeal to Government not to stick to their preconceived idea of turning down this motion irrespective of the arguments put up in support, but will at least consider the matter to-morrow and see if they cannot agree to this inquiry which, in the interests of all concerned, is only fair and just. (Hear, hear.)

THE HON. SHAMSUD-DEEN : Your Excellency, my latest acquisition of knowledge and wisdom in this House is that I must never get up to raise a point of order, especially when any of the gentlemen on my left are speaking. But, Your Excellency, with all the patience in the world one cannot sit and listen to a speech by an hon. member who starts by saying that the 1933 murders mentioned in this motion have nothing do with the Powys case, and he goes on to read a series of statements which all concern the Powys case.

LT.-COL. THE HON. LORD FRANCIS SCOTT : On a point of order, I did not say that—I do not quite understand?

THE HON. SHAMSUD-DEEN : Your Excellency, my impression is that the hon. mover said that the thirty-three cases mentioned in the motion did not include the Powys case at all. I may be wrong.

LT.-COL. THE HON. LORD FRANCIS SCOTT : That is correct.

THE HON. SHAMSUD-DEEN : And he goes on to mention all the statements and even to read the evidence given in the case of Powys' death.

LT.-COL. THE HON. LORD FRANCIS SCOTT : On a point of explanation, if the hon. member would read the last line of my motion it says : "and all matters relevant thereto."

THE HON. SHAMSUD-DEEN : I am not going to argue that point any further, Your Excellency, but to hear the statements which have been made in this House this morning one would think, anyone listening to the debate, that the whole machinery of the administration and the Government has gone out of gear : that not only has the officer in charge of the administrative district not carried out his duties properly, but the Attorney General has not conducted the case in its proper manner, Mr. Ash, the Inspector of Police, has been telling witnesses that all they say are lies and discouraging them from bringing forward any proofs ; and, last of all, to hear that Mr. Cornell, the European administrator of that district, not only suppressed but discouraged any evidence in the case of the Powys murder simply because the Europeans wanted Leroghi Plateau is a sort of story I think it difficult to discover even in "The Arabian Nights," and I submit that even with the intention of keeping clear of a motion like this it requires almost superhuman patience to do so when such things are mentioned.

And we have heard some very extraordinary statements read out by the hon. mover this morning. I am not quite clear as to whether he said this evidence was before the court or was in the possession of the police or the Attorney General at the time of the trial, but if it were not, why in the name of all which is bad was this damning evidence against the accused persons not brought out during the trial of the case one fails to understand. We hear that Kiberenge was sentenced to a term of imprisonment on a charge of perjury, though evidently telling the truth. Then we hear he has been murdered, and yet the murderer of that person has not been brought to justice even to this date. The whole machinery of administration and justice in the Colony has simply gone wrong !

We cannot possibly listen to statements of this nature. The Powys murder case has been the subject of an inquest and many inquiries and an elaborate trial in the highest court of the Colony, and if we are going to use the powers that are given us in this House for the purpose of challenging the integrity of all the law officers, courts, administrative officers, police, everybody, then, I think to say the least it is not the proper thing to do. I do not think that the prestige of the Government or the white man has been harmed by this case of the Powys murder. In my opinion, the prestige of Government has been very very considerably enhanced in the eyes of the natives, who have been convinced that, even in a case of the murder of a European who belongs to the same caste as the administrative officers themselves, a person, no matter who he may be, is not liable to be convicted because that

murdered person is a white man and that British justice is like the scales : if there is not enough evidence no person is liable to be convicted.

As far as the Powys case is concerned, I have read the reports of the trial and the White Paper with an entirely disinterested mind and all that a person who is not biased one way or the other concludes after reading everything is that there was undoubtedly a temporary wave of insanity in this district, which is really the ramifications of the old customs as explained by the hon. the Chief Native Commissioner, and that Powys, as the court found, met his death through the misadventure of those fellows who, wanting to appear brave in the eyes of the young women, simply came, cut off the head and certain parts to take and show them to these young women and prove that they were great heroes.

I do think there is some occasion for a new law to be framed to deal with offences of that type, but at the present there is nothing in the laws of the country to deal except with those people who have been convicted of murder.

As regards the other murders, we have seen only recently in the Masai reserve that there have been cases of a similar nature, and there will be until the British administration has remained in this country long enough to bring about a state of law and order.

I am the last person to encourage any kind of lawlessness among natives, but I do think the present case has been exaggerated to an extent that no useful purpose will be served by any inquiry especially after a White Paper has been issued and there have been so many inquiries, and to expect Government at this stage, merely in order to placate the opinion of a certain section of the community, should go to the extent of having an inquiry into this matter, would be sheer waste of time and money.

MAJOR THE HON. SIR ROBERT SHAW : Your Excellency, I had no intention whatever of intervening in this debate, even for a moment, and I do not rise for the pleasure of hearing my own views or to justify myself for the attitude I propose to take in strongly supporting the motion. I rise only because the last hon. member gave me my cue. I will take one point only.

He stated that from what had been said on this motion it would appear that the administration of this country was useless and inefficient. It is nothing of the kind, we have no feeling of that sort. As the Noble Lord and his seconder, and the hon. Member for Nairobi South pointed out, it is in support of that administration that we wish the inquiry to

take place. I say without hesitation that we have the greatest faith in our administration, and I personally consider the standard they set themselves is magnificent. It is because in the most unfortunate history of this particular tribe it would appear there is a very bad blot on the fair name of our administration over those appalling series of murders over a considerable time, and it is in the interests of that administration and because we do not wish the public of this or any other country to think those fine standards have fallen off in the slightest degree that we ask for an inquiry, in order that it may be shown to be an exceptionally unfortunate case and one which the public of the country may suppose will never recur. That is why I am rising and those are my views.

THE VEN. ARCHDEACON THE HON. G. BURNS : Your Excellency, at the expense or cost of being thought, as we have been accused already during this session, antagonistic to the European interests, I want briefly to say a few words with regard to the impression that has been left on my mind by the facts as read out by the Noble Lord when moving his motion.

They have been a startling array of facts, I admit at once, and if they were brought forward in a court of law and if my hon. and learned friend the Member for Nairobi South was conducting the case, and there was no evidence to be brought on the other side to disprove one thing or the other, I for one would be compelled to vote with those who ask for this inquiry. But it is a fact that we have this morning only heard one side of the question. I am not going to mention, because the Noble Lord has not mentioned in his motion, the name of Powys—although he has in his speech—but what strikes me is this : to send a responsible officer into a district such as the district occupied by the Samburu and such tribes, to administer that district, to try and bring into being law and order in the face of established customs, customs which we all know and deplore—and I should like to say here that from my knowledge of Government's attitude to such customs no one is more determined than His Excellency the Governor in putting a stop to these customs which we deplore so much, I am referring to the bleeding of spears—to think that during five years in such a country, separated as these officers are from the centres of administration, that in such a vast area as 20,000 square miles there should have occurred during five years, as stated by the hon. the Chief Native Commissioner this morning, in that district only twenty-eight murders. . .

THE HON. THE CHIEF NATIVE COMMISSIONER : On a point of order, the period was seven years.

VEN. ARCHDEACON THE HON. G. BUENS : I thought the hon. member mentioned from 1928 to 1933?

THE HON. THE CHIEF NATIVE COMMISSIONER : 1934.

VEN. ARCHDEACON THE HON. G. BURNS : That makes my case all the stronger—that during those seven years there were twenty-eight murders committed by a people that are only being brought under the administration of justice and fair play as we understand it, seems to me—I may be wrong—to be one up for the administrative officers who have had the onerous duty of administering these tribes during that term of years. Four murders a year, it works out according to the hon. member's statement.

CAPT. THE HON. H. E. SCHWARTZE : One a quarter! (Laughter.)

VEN. ARCHDEACON THE HON. G. BURNS : The hon. Member for Nairobi South is very strong on figures, so that I have to work it out. (Laughter.)

CAPT. THE HON. H. E. SCHWARTZE : Each quarter one, I said! (Laughter.)

VEN. ARCHDEACON THE HON. G. BURNS : Well, even each quarter one under such conditions and among such people is to my mind an astonishing fact, and compares to the credit of the administrative officers who have to administer and to bring that tribe into submission.

One other thought struck me as I listened—and I listened patiently, because I was asked by an hon. member "Do you represent these people or not?" Well, I try to, but it is not always easy when I am up against certain elements in this House, but I do try to as far as I can. But that any responsible officer, or an officer thought by Government to be responsible enough to be sent into that position to administer that district, should during the carrying out of his duties undertake such a dastardly thing—excuse the strong word!—as the suppression of evidence from natives where human life is concerned, seems to me to be an entirely unacceptable thing. I cannot understand a responsible officer or officers deliberately doing such a thing as that for any purpose whatsoever.

Then I had to ask myself the question, what would they have gained by the suppression of that evidence? What was their objective? Was it that they wanted the Samburu to gain something by the suppression of that evidence? or was it that they wanted to hide from the general public concerning

inefficiency in the administration of that tribe? Again I am entirely unconvinced that such officers responsible to His Majesty's Government and your Government in this Colony would be capable of doing such a thing as that, as repressing evidence which may bring heathen people who are only emerging, and have not yet emerged very far, out of the awful chaos of the heathenism so that they are not brought to justice for the crimes committed. I cannot understand any responsible officer doing a thing like that.

I should like to say here that the Noble Lord or any member of this House is no more anxious and keen than I am to see this sort of thing suppressed, but having read this White Paper—and I have from cover to cover—I believe myself frankly that everything that could be done to bring these people under the most difficult circumstances to justice for the crimes they have committed has been done by the Government of this Colony. They make mistakes. Who does not? The members on this side of the House make mistakes sometimes. They say I have made them, that I have made some bad blunders too during this session. (Laughter.) But that does not affect the case one bit. I do not see—although I would vote for the motion if I honestly saw it—what is to be gained by appointing such a committee of inquiry into the whole matter which has been gone over again and again, both by the officers of the law and by administrative officers, an inquiry into the administration of their duty and of justice.

Therefore I express my regret, because I do hate to be up against this sort of thing, but I am unable honestly and truly to see what benefit would accrue to the community and to the native community especially if a further inquiry was opened up. Certain witnesses who were involved in the first examination are not available to give their evidence if such an inquiry was to take place. Therefore, Your Excellency, I am unable to support this motion.

DR. THE HON. A. C. L. DE SOUSA: Your Excellency, I am prompted to intervene in this debate because of a question put by the hon. and reverend member. He does not seem to understand why a responsible officer should be interested in suppressing evidence in a case not only of murder of natives by natives but also of the murder of a European by natives. While he was asking this question, I saw the Leroghi Plateau before me. I saw it during the discussion on the Carter Commission Report, and references have been made to the Plateau in this debate. To that extent I regret to say that the Noble Lord has vitiated or weakened his case. If the Leroghi Plateau had been left alone, we should be able to view this motion in quite a different light, in the light of justice or of vital evidence supposed to have been suppressed by officers

concerned. But I say that this motion is not entirely dissociated from the question of the Leroghi Plateau, on which I say covetous eyes are cast by a certain section of the farming community.

I do not want to raise old troubles, but a story in the Bible has just occurred to me as being very fitting. There was a King by the name of Ahab, a King of Israel, and next to his palace there was a farm, a very beautiful and attractive farm. Both the King and his wife, the beautiful Jezebel, used to cast covetous eyes on it day in and day out. A proposal was made to the farmer by the King to exchange it for better and bigger land elsewhere, but he would not give up the inheritance of his ancestors. He refused, until the last, the noble and sweet queen put up a charge of blasphemy against the farmer, who was sent to death. Those of us in this House who are Christians know what happened to the King and what the Prophet Elijah said to him.

When I have said that, I do not think I should say anything more, save to remind the hon. mover and the acting seconder of a similar motion put up in this House asking Government for an inquiry in a matter which may not be of such vital importance to the Colony generally but it was certainly very vital to a section of the community, the Indian community. I hope the hon. members will remember what part they played on that motion, in the debate, and on the vote. (Lord Francis Scott : We did not vote.)

THE HON. THE ATTORNEY GENERAL : Your Excellency, at least one hon. member of this House imagines that the integrity of the law officers of the Crown has been attacked, though I personally failed to hear any attack made by the Noble Lord, in fact, if I may say so, it was exactly the reverse, because he said perfectly clearly that the points made in what he called the whitewashing paper were quite unnecessary with regard to the suggestion that this Government through the law officers at any rate, had desired in any way to lose the case. However, to my regret the Powys case has been brought into this debate a great deal—though having read the motion I thought that it might be left out—I think therefore that it is only right for the House to hear a few words from me on the subject. All that I have got to say on the details of the case has been written. The House is entitled at any time to know how its officers on this side of the House are doing their business, and if they want to know how the law officers conducted this case they have only got to read this White Paper, and therefore I will not go into all the details of the case again.

In considering this motion, what I feel we should ask ourselves is, what good will be derived from appointing a committee to inquire into the events of the years 1930 to 1933?

In support of the motion the Noble Lord has read to us many quotations from statements which were made to a justice of the peace. Well, all those statements will do for you is to take you this far: they will prove to you that the prosecution was right in thinking that they had a good case against the persons whom we accused of being murderers. It was my opinion, and the opinion of every officer in my office, that we had a good case, and we put it up. The point that the Noble Lord himself forgets is that a great deal of what he has read is hearsay evidence and therefore could not be given in the case before the judge, and secondly, that a great deal of what he read to us was in fact brought out very strongly. I may say to the Noble Lord that there is nobody in this House more disappointed than I at the result of the case, though I also join with him in casting not the slightest reflection on the learned gentleman who tried the case and who I have no doubt gave a just and proper decision.

We have been accused by the hon. Member for Nairobi South with having decided this motion in advance. In a sense I must plead guilty to having made up my own mind in advance, because I knew there was nothing that could possibly be brought out in this debate that I did not know already. That is his first point. My premonition was correct: there is absolutely nothing new.

The Noble Lord has asked us to appoint this commission of inquiry, but from my own point of view I can see no specific good which will arise out of it. A commission of inquiry a year ago, before Government had acted in this matter, might have been a necessary thing to have. You have heard that the number of murders in 1933 went up to an alarming extent. But I am glad to tell you that as a result—I think the direct result—of the action taken by Government immediately afterwards, to wit in 1934, the incidence of murder in that district has gone down. I think I have recited before, in answer to a question, the action which Government took. One of the principal evildoers of the place was removed to the coast in banishment; we levied collective punishment on a large portion of the tribe; we placed patrols in the district from the King's African Rifles; and there has been established a special police post which they have to pay for.

What, then, can we gain out of this inquiry? At one time I thought it would be suggested that there should be an inquiry into the failure of the evidence in the Powys case, but no good purpose can be served, the case has failed and can never be revived. There is no chance of bringing the accused before the courts again, and whatever we may or may not think of the prosecution, no specific good will be done to the

Colony or to the House if as a result it is found that a young officer—and I do not admit it for a moment—that a young officer had not brought forward the evidence quite in the same way as a more experienced person would have done. I wish to make it quite clear that I am perfectly satisfied that that would not be the result, but if it was, how far would that take you. The next thing you would discover, assuming every point in favour of those who wish the inquiry, would be that certain other measures should have been taken by a certain administrative officer. That officer is no longer there, and it seems to me of little use now to say if someone else had been there from 1930 to 1933 and had acted in a different manner there might have been other results. You have already had administrative reasons why Government has complete confidence in this officer still, but in any event I wish to stress this one point only, that no specific good can be done to the Colony at large by holding this inquiry, even if everything can be proved that has been suggested.

Reference has been made in the course of this debate to the unfortunate Kiberenge, and also to what I call the two honey pot cases. These are more individual and local matters, perhaps, but I will make some passing reference to them. Kiberenge rightly or wrongly was convicted on his own evidence, namely, by pleading guilty to the charge of perjury or something of that description. The Noble Lord told you that quite fairly himself. It seems to me there can be little reflection on anybody in Government if Kiberenge, as a result of that plea of his, was imprisoned for two or three months hard labour. The facts were as you know, that he originally came in and made a statement which the Crown officials at any rate believed to be quite true when they brought the case against the five accused Samburu with regard to the death of Mr. Powys. As the Noble Lord has told you, on investigation certain of the side issues in that statement were found to be incorrect, and when Kiberenge was taxed on this, he, for reasons known only to himself, went back on his own statement and said the whole thing was a tissue of falsehood. On that charge he was put before a magistrate, who was not the gentleman referred to so often, but another magistrate who came from Nakuru, and was duly sentenced.

So much for Kiberenge, and I think we can have little sympathy for anybody who goes into the dock and says "I am guilty". If as a result of having so pleaded he is sent to prison without the usual investigations into the details of the crime.

The honey pot cases, as you were told by the hon. the Chief Native Commissioner, were referred to Government, and as a result were sent to the Supreme Court, either on

appeal or revision, it does not matter. The cases were investigated by the Supreme Court, and the Court came to the conclusion that the correct sentence had been given. You must remember that there are a great many *ex parte* statements made from time to time in and out of the House which do not appear in the evidence before the Court. For instance, it is asserted definitely in this House that these people had been told they could go to the Plateau and get their honey pots. I do not know whether that is true or not, but I do know that that did not appear in the evidence. I mention this in order to make it quite clear that the court which sat in revision on the cases had not that fact before them in the evidence. If it had appeared, I have not the slightest doubt that the magistrate originally would not have convicted at all. If on appeal that fact was not brought out then again I say it is no fault of the administration of justice or anyone else but it is the fault of the appellants. It would seem to me that it should have been the first fact brought out before the Court of Appeal if it were true.

I would like to dissociate myself, I am afraid, from some of the remarks of the hon. and reverend member, because I can assure him that Government does not view with equanimity the fact that there was even one murder per quarter in this area. I am glad to say that the incidence of murder in this district is now reduced, not to one a quarter but to one a year, and long may it remain so!

VEN. ARCHDEACON THE HON. G. BURNS : On a point of explanation, I did not say Government were patting themselves on the back because there was only one murder a quarter!

THE HON. ISHER DASS : Your Excellency, the Noble Lord, in moving this motion, has without the slightest doubt made out a very strong case for an inquiry. The hon. the Chief Native Commissioner, replying on behalf of Government, pointed out certain difficulties that he could see and assumes that no useful purpose would be served by holding such an inquiry in face of those difficulties. What are the difficulties that he finds? That the area inhabited by the Samburu is so very large that it would be humanly impossible for a committee of inquiry to go around and collect evidence, and that it would mean a lot of money spent unnecessarily. My answer to that is, that the same amount of trouble is experienced in collecting the hut and poll tax. In a question of this importance, which concerns any section of the community, a difficulty of this nature should not be taken into consideration too seriously.

The hon. the Chief Native Commissioner also informed the Noble Lord that Government had collected a fine of £900

from the Samburu tribe. If that is so, it means that Government have some reason for believing that the gentleman has been murdered by certain members of that tribe.

THE HON. THE ATTORNEY GENERAL : On a point of order, I do not know who the hon. member is referring to, but it was not the direct result of the Powys case that this fine of £900 was levied but as the result of all the cases to which reference has been made to-day.

THE HON. ISHER DASS : I am grateful to the hon. and learned Attorney General for telling us that this case forms part of all the other cases.

Now, the hon. and learned Attorney General in his eloquent speech made two or three points. He asked us, what actual useful purpose would be served by having this inquiry, that even if various things were found out connected with this case the accused could not be retried for that offence. I cannot agree with him, because among primitive people, when a period of five or six years has elapsed, it does occur that those who have committed some crime begin to talk about it, because they think nobody will take any notice of it and that the Government machinery will not work. Hence that is more reason why this case, having gone to the Supreme Court and been disposed of, should be made the subject of an inquiry, so that the truth should be got from these people who think that no further action is likely to be taken by Government at all.

But that is not the point. The hon. the Attorney General told us that even if some new things came to light, no useful purpose will be served by an inquiry. We know perfectly well that the unfortunate gentleman who was murdered has gone from the world, that there is no chance of him coming back again, and to ask for an inquiry is only to prevent a repetition of such things. No power on earth can bring him back and the accused cannot be retried even if to-morrow they admitted they had committed this offence, but the motion asks that there shall be no repetition of these things, that other natives shall think twice before committing any crimes in the future. That is the spirit of the motion moved by the Noble Lord.

There is one personal explanation, however, which I should like to make. While I am in full sympathy with the motion and on principle would have supported it, I shall have to vote against it for one reason, and that without imputing motives to anyone. As an honest man, while sympathizing with the European elected members in principle, I say that as a mark of retaliation I shall not vote for this motion because of the treatment they accorded me when my motion was moved!

LT.-COL. THE HON. LORD FRANCIS SCOTT : Sir, I cannot help feeling extremely gratified with the way the debate has gone, because in point of fact the only answers given seem to me to completely justify my request for this inquiry. The fact that though the hon. member Mr. Isher Dass is going to vote against me I have his support anyhow of the principle of the thing, shows that I must have put up a pretty good case!

The hon. the Chief Native Commissioner said he was quite satisfied that all that was wanted was this White Paper, and he quoted the Secretary of State as saying that all reasonable people must agree that Government had taken every possible step to deal with this question. I can only tell him this, that all the reasonable men whom I have met and discussed this question, who knew something about it—and I am quoting reasonable men—consider that this White Paper was an absolute insult, that it was an instance of *suppressio veri, suggestio falsi*. Therefore I am afraid the Secretary of State will be disappointed if he thinks all reasonable men take his view.

I must say that I was somewhat horrified to hear the defence put up this morning both by the hon. the Chief Native Commissioner and the hon. and venerable member representing native interests, that really a few murders—28, 29, or 33 whatever it is—did not matter very much. I was glad to see that my hon. friend the Attorney General shared my amazement . . .

THE HON. THE CHIEF NATIVE COMMISSIONER : On a point of explanation, I did not mean to suggest they did not matter but that it was remarkable no more had occurred under the circumstances.

LT.-COL. THE HON. LORD FRANCIS SCOTT : I am very sorry he quoted this point of view which I cannot share. If you really followed it up more logically, I suggest Government might institute a new form of tax, in issuing licences to these various tribes for so many murders per year!

What emerged from the speech of the hon. the Chief Native Commissioner was this : that though there had been only twenty-eight, I suggest there were a good many more not allowed for. I will quote, for instance, the mysterious death of the native who gave evidence before the Carter Commission against the Samburu. He died mysteriously four days later. Of course, there is the case of Kiberenge which I presume is not included in this list but whose death is strictly due to the question we have been discussing.

What was so very strikingly a justification of my case was that although so many murders are known and cases tried, so few convictions were obtained for lack of evidence, and

the gravamen of my attack is this, that the officer in charge of that district did not use his influence to produce that evidence in the way he should have, but, if there is any truth in some of the statements which I have read this morning, he acted in the other direction and gave the natives anyhow the impression that he did not want them to come forward and give evidence. That is a very serious thing; I think, as the hon. and venerable member said, it is almost unbelievable it should happen, but I suggest that in the natives' mind anyhow it did happen.

This case of Kiberenge. I must say that for an unfortunate native who is not only first of all put into prison for some months for giving what the legal officers of the Crown believed was the truth and that he subsequently met his death, I consider is a much more serious thing than just something which deserved a little bit of Government's sympathy. The hon. and learned Attorney General said it was his own fault because he pleaded guilty. We all know that an unfortunate native of this sort who found that what he said was not believed and did not know what to do, would think it was the best thing to withdraw it and say it was not true at all, on which he was sent to prison. That is obviously what happened with Kiberenge.

Nobody has attempted to answer this: why was that evidence corroborating his statement and which was, according to what I have read this morning, definitely taken down by a sergeant of police and handed to an officer of the police, and which the police said subsequently they did not know what had happened to it—although the Commissioner of Police, in an interview at Government House, admitted they might have forgotten about it—why was that evidence lost and not produced at the trial? Nobody has answered that question, and that is one of the worst instances in the whole case. Although it is an attack on a certain police official for not producing it, I suggest that the real reason was the human one: that having given his opinion that the thing was an accident, he did not wish it to be brought up again in another way.

But, Sir, it was a very serious matter for the unfortunate Kiberenge as resulting not only in his imprisonment but in his death subsequently.

I was interested to find that the hon. the Chief Native Commissioner did refer to the murder of Mr. Powys and that the hon. and learned Attorney General was apparently of the same view, that is of course without casting any reflection on the finding of the court. I thought that the excuses of the hon. the Chief Native Commissioner for this were really the

weakest thing I have ever heard. He admitted it was a confession of failure, those were the words he actually used, and because of this confession of failure other steps had to be taken.

In further support of my motion, a very remarkable thing has been pointed out by officers of Government, that there has been a marked improvement in the condition of that area during this last year. I suggest that is because it was taken away from the administration of those who administered it before and put into far more capable hands. (Hear, hear.)

With regard to the question of these honey pots and the revision court, I did not say that the conviction of these Dorobo was an illegal one or one that the High Court should turn down; what I did say is that it had always been the custom of these Dorobo to have their honey pots in that part of the district and that in no way had they committed an offence. The district officer up there took what I consider a savage method of dealing with them, and I do not consider that because the High Court did not revise the case that that bears on the matter at all. I should very much like to know whether Government have ascertained from Mr. Clive if it was a fact or not that he did give them permission to go to that place.

The hon. member Mr. Shamsud-Deen asked why all this evidence which I have read was not brought out at the trial? That is one of the things we want to know. It is one point we feel sore about, that the evidence brought out at the trial was not made strong enough, and that if the people in charge of the area had acted better they would have brought further evidence which would have secured a conviction. The hon. member also brought in the question that I had made an attack on the Attorney General for the way he conducted the case. I never did, as the hon. the Attorney General has already said. What I did say was that I did not think the young officer who conducted the prosecution had conducted it as it should have been conducted, and that there was a strong feeling at the time that in such an important case—important not only with regard to the Powys murder but important from Government's point of view because of the tremendous amount of prestige to Government or the counter-feeling of the prestige of the witch doctor which depended on the result of that case—it should have been in the hands of a more experienced man.

It is well known that this witch doctor told these Samburu that he would protect them, that he was much stronger than Government, and that he would get them off. Unfortunately, the result was they did get off. Many of us feel that if only my hon. and learned friend opposite (the Attorney General) had conducted that case they would not have got off.

I should like to draw attention to a remark in the White Paper on that matter, in which His Excellency Sir Joseph Byrne states :

“I wish to make it quite clear that I attach the greatest importance to maintaining the constitutional position which is that the Attorney General, by virtue of his office, is solely responsible for deciding whether a prosecution should take place; and, moreover, that the conduct of any prosecution is entirely within his sphere.

There cannot in my understanding of the English constitutional position, be any question of his receiving instructions from his Government in this matter.”

In point of fact, the hon. and learned Attorney General, on page 27 of the same Paper, in his own statement says that as Legislative Council was sitting at the time he had to be present, and although he wished the Solicitor General to prosecute in his stead “I was instructed to recall him to take his place in Council.” I suggest that that is a direct contradiction of Sir Joseph Byrne's statement, that he never interfered in any way with the way in which the Attorney General should conduct a prosecution.

The hon. members Dr. de Sousa and Mr. Isher Dass said they were going to vote against my motion because of the part we took in the debate on the motion concerning the arson case. To my recollection, it is a little time ago, and the debate took up a long time, not a single European member took part in the debate at all, and we certainly did not vote because the motion never went to a division.

DR. THE HON. A. C. L. DE SOUSA : The hon. Member for Mombasa took part.

LT.-COL. THE HON. LORD FRANCIS SCOTT : He seconded the amendment moved by the hon. member Mr. Pandya. That was the only part we took.

I hope that the hon. member Mr. Isher Dass will reconsider his decision as he obviously agrees with the case which I put up.

I regret very much that Government refuses to grant this inquiry. I am afraid that it will leave a very bad impression in the country, and the impression will be that Government dare not face an inquiry because they are frightened of what will come out if it is held.

The question was put and lost by 7 votes to 23, one member not voting.

Ayes : Messrs. Bemister, Harvey, Hoey, Major Robertson-Eustace, Capt. Schwartz, Lord Francis Scott, Sir Robert Shaw.

Noes : Mr. Barton, Major Brassey-Edwards, Mr. Bruce, Archdeacon Burns, Messrs. Fazan, Fitzgerald, Harragin, Kirsopp, La Fontaine, Logan, Morris, Pandya, Dr. Paterson, Mr. Pilling, Sir G. Rhodes, Messrs. Shamsud-Deen, Sikes, Dr. de Sousa, Capt. Tisdall, Messrs. Vidal, Walsh, Welby, Dr. Wilson.

Did not vote : Mr. Isher Dass.

BILLS.

SELECT COMMITTEE REPORT.

THE CRIMINAL PROCEDURE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I beg to move that the Report of the Select Committee appointed to consider the report on the provisions of the Criminal Procedure (Amendment) Bill be adopted, subject to the deletion of the first three lines of paragraph 11 thereof and the substitution of the following : "That the present clause 23 be deleted and the following be substituted therefor."

The majority of the amendments are amendments of which notice was given previously, at the second reading of the Bill, and which we actually discussed. For instance, paragraph 2 of this Report has already been discussed; it was originally brought in in order to conform with similar legislation in Tanganyika and to bring it into line with a certain section which appears in the Code itself. Clause 2, as hon. members probably gathered on the second reading, is necessary in order to delete the provision which appears in this amending Bill, whereby confessions could be made to certain policemen. The law regarding confessions will therefore remain as it is at the present moment.

Paragraph 3 is merely a verbal amendment, dealing with such things as "stayed or terminated" for the word "stayed" for the sake of clarity.

Paragraph 4 dealing with section 196A of the Principal Ordinance, merely makes it clear that when a man is discharged he is in fact acquitted. It is simply making assurance doubly sure.

Paragraphs 5 and 6 refer to the list of jurors which has to be prepared by the Registrar. It provides for the list to be made triennially, but that alterations shall be made yearly and posted up in the offices of the Provincial Commissioners and in every district.

Paragraph 7 is more important. It deals with the question which was debated at some length on the second reading with regard to depositions which can be read in the High Court. The suggestion made in the Bill was following the Bushe Report, that depositions therein enumerated should be read as a matter of right, subject of course to the disallowance of the judge. Hon. members thought that was going too far, and as a result amendments were put in. I commend to your attention the word "unreasonable" and also the proviso which limits to a great extent the power of the prosecution to put in these depositions, namely, by providing that the court must be satisfied that it will not unduly prejudice the accused. With that proviso no accused person need be afraid of the reading of these depositions without due consideration by the court.

Paragraph 9 refers to clause 20, and deals with the point taken up by the hon. and learned Member for Nairobi South on the second reading. You will remember that again following the Bushe Report, there was a clause put in the Bill providing that every appellant should have the right of appearing at his appeal. This matter has been considered by the hon. member and myself, and we have also discussed it with the learned Chief Justice. As a result of that consultation we have amended the clause appearing in the Bill to conform with the law as at present in force in the Rules of the Court of Appeal for Eastern Africa, by which an appellant in custody will not be allowed to be present when it is merely a question of law which is being discussed on his appeal, though if prepared to pay the expenses he will always be able to appear. It does not interfere with the right of the court to say they think an appellant should be present.

Paragraph 10 merely makes it clear that a person pending his appeal may have the right at his own request to begin to serve his sentence before the appeal starts, and paragraph 11 contains merely a verbal amendment to which I do not think any further reference is necessary.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THIRD READING.

The hon. the Attorney General moved that the Criminal Procedure (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

THE SALE OF PYRETHRUM BILL.

THE HON. T. D. H. BRUCE: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Sale of Pyrethrum Bill be adopted.

The only amendment recommended to this Bill by the Select Committee is that a clause be added providing that there shall be a maximum price to be charged by the agency appointed under the Bill for pyrethrum powder consumed or used in East African territories and that it "shall not exceed the export parity of pyrethrum flowers based on the average London price for the previous three months plus 20 per cent and cost of gristing and packing".

Hon. members are aware, I think, that the export parity, which is a technical phrase, is the price in London less the price of getting the product to London. Thus, if the price in London is £90 a ton of pyrethrum powder and the cost of getting it there is £30, the export parity is £60 a ton. I may say that this definition has the approval of the Kenya Farmers Association and the Coffee Board, and the reason for the addition of the clause is to prevent possible exploitation of local consumers by the agency.

It is felt that this Bill when passed into law with the addition of this clause will afford protection to an industry which all hope before long will become a very important industry in this Colony.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

THIRD READING.

THE HON. T. D. H. BRUCE moved that the Sale of Pyrethrum Bill be read a third time and passed.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

The Bill was read a third time and passed.

*Council adjourned till 9 a.m. on Saturday,
the 3rd August, 1935.*

SATURDAY, 3rd AUGUST, 1935

Council assembled at the Memorial Hall, Nairobi, at 9 a.m. on Saturday, the 3rd August, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 2nd August, 1935, were confirmed.

MOTION.

MORTGAGE REDEMPTION BY GOVERNMENT BONDS ; WITHDRAWN.

CAPT. THE HON. H. E. SCHWARTZE : Your Excellency, I beg to move :—

“In the opinion of this Council, Government would be well advised to appoint a Committee, either Select or otherwise, to consider and report on the possibility of evolving a scheme for the redemption of mortgages by the issue of Government Bonds.”

I have to thank you, Sir, for allowing this motion to be taken first, in view of the fact that I shall not be here after the interval.

I shall not take up the time of the House at all in view of the fact that I have been informed that Government are prepared to accept this motion. I therefore only want to say this—because one is so often apt to be misunderstood in this Colony—that I want to make it quite clear this motion does not suggest for one moment that any legislation which is introduced should effect any compulsory taking over of mortgages by Government. The whole idea of the scheme, if a practical scheme can be worked out, is to put money into circulation in this Colony by the release of frozen wealth.

There can be no two opinions that one of the most important things in times of depression is to achieve the result, if one can, of putting more money into circulation. There is an enormous lot of money in this Colony invested on mortgage which is to-day frozen; that is to say, mortgagors are unable to pay the interest on the mortgage either wholly or in part, and the mortgagees are unable to realize their security, either because in times like this that security in present day values rarely bears any relation to the real value and the value it would have when times get better, and also because the mortgagors in this country—anyone who knows anything about

these things will agree—have been and still are tremendously reluctant to foreclose and to put their mortgagors out of business.

The whole basis of this scheme, and it is not by any means a novel one, is that Government should issue negotiable bonds to which there will have to be some percentage backing, possibly by virtue of the Land Bank funds, and should take over mortgages at a considerable discount, paying interest at very considerably reduced rates.

I am convinced myself that there are a very large number of mortgagees in this Colony who would be prepared to accept payment in the form of Government bonds at a reduced rate with regard to capital and a considerably reduced rate with regard to interest. The result would be that there would not have to be any actual expenditure of Government funds, although a certain amount would have to be earmarked for the issue of negotiable bonds. A mortgagor prepared to take 40 per cent or 50 per cent of the amount originally lent would be issued bonds to that amount which would be negotiable, which could be given to a bank as security for an overdraft, and so on, and he would be paid interest quarterly at the reduced rate of 3 per cent or 4 per cent, whatever may be decided on by Government, and Government would recoup themselves for the interest paid out by collecting that reduced rate from the mortgagor.

The outline of the scheme is a simple one, the details will have to be worked out very carefully by the committee to be appointed. I am very grateful to Government for accepting the motion and agreeing to appoint a committee which, I am sure, they will do at the earliest possible moment because, again, any scheme which can be put into force like this which will be obviously highly beneficial to the Colony does justify a full examination into the possibilities. In view of that, I will now with the permission of the House and in the absence of any dissentient voice ask leave to withdraw the motion.

The motion was by leave withdrawn.

BILLS

THIRD READING.

SELECT COMMITTEE REPORT—THE PENAL CODE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Penal Code (Amendment) Bill be adopted.

Actually the Report is unduly long in this case because it was necessary to incorporate in it the various amendments of which notice had been given before the second reading and which we actually had an opportunity of discussing at that second reading. I refer to such a long paragraph as paragraph 3 which relates to the section dealing with intoxication. A model copy was sent out from home and adopted by all the East African countries in an endeavour to bring into force the wording of the exact law which exists in England at the present moment.

The others are merely verbal, such as to put in clause 4 the word "or" and a reference to section 31. Paragraph 6 of the Report merely refers to what will happen in the case of an escaped convict, and I explained that on the second reading. We have clarified the law with regard to trespass, which even as re-drafted was not at all clear, but I think by inserting the word "lawfully" as stated in paragraph 5 of the Report it will achieve the object desired. Paragraph 7 of the Report merely links up the necessary section of the Penal Code to the Criminal Procedure Bill which was passed yesterday.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL moved that the Penal Code (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

COIR FIBRE INDUSTRY BILL.

THE HON. T. D. H. BRUCE: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Coir Fibre Industry Bill be adopted.

The Committee have recommended certain small additions to the Bill, the effect of which is to provide that the Bill, which in its original form applied only to the manufacture of coir fibre by machinery, will apply also to the preparation of coir fibre by hand. As was stated when the Bill was read the second time, coir fibres can be prepared without the use of special machines, and the Committee considered these amendments were necessary in order to serve as an inducement to any person prepared to incur the capital expenditure and put in machinery for the preparation of the fibre. That is the only alteration recommended.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

THE HON. T. D. H. BRUCE moved that the Coir Fibre Industry Bill be read a third time and passed.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

THE LEGISLATIVE COUNCIL BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Legislative Council Bill be adopted.

Frankly, Sir, I am very disappointed at the length of this Report. As the Council are aware, a Select Committee of the House was appointed last year, and as a result of their Report this Bill was presented. Unfortunately, when the Bill went to Select Committee this session, apart from the few amendments which we knew would have to be made, the members of the new Committee differing considerably from those who sat on the original Committee, held different views on various points, and they have been reflected in the Report now before us. I may say that except on what I may call the principle issues, or constitutional issues, Government is naturally anxious to put into this Bill anything hon. members on the other side think will facilitate the elections of members, and the majority of the amendments we are considering today were proposed by the elected members.

I will not deal with the first paragraph, because it contains only verbal amendments.

As I said on the second reading, it is necessary that this Bill should come into force by proclamation, because we have as you all know provided for a new form of registration of voters, and until those registers are ready it would be impossible for this Bill to come into operation.

The most important, in my opinion, amendment to the whole Bill will be found in paragraph 4, where we extend the life of the Council from three to four years, and there are various consequential amendments to that later on.

On page 2, paragraph 7, we have made small amendments with regard to the marking of ballot papers and clarified the position with regard to what is meant by the words "without

due authority". What we sought to do in the principal Ordinance was to see that no one did mark a ballot paper for another person who had not due authority for so doing. It was pointed out that that might give rise to some misunderstandings, and we have therefore put in that these papers shall not be marked unless authorized under the Ordinance or the rules.

There is another important amendment to which I should like to draw hon. members' attention, and that is on the same page, paragraph 7 (c). This is with regard to the printing of pamphlets. It has been pointed out that in Kenya to-day, particularly during an election, it is possible for any printer, either on his own or at the request of some other person, to print scurrilous pamphlets concerning candidates who may be standing for Council. They will not even have the opportunity of replying before polling day, and it is always impossible to bring it home to one particular person as having published a libel about a candidate. We therefore make provision now that the name of the printer shall always appear at the bottom of any of these pamphlets so published.

It has been necessary on page 3, paragraph 11, to make provision for by-elections. As hon. members are aware, at the next general election there will be three Indian areas instead of one. It is obviously clear that if there is to be a by-election between now and the dissolution of Council, it will be impossible to work under the new Ordinance. We have therefore made provision that the existing voters' rolls will have to be kept up *pro tem*.

We have also accepted an amendment which was suggested with regard to reducing the penalty for unsuccessful objections from Sh. 5 to Sh. 2/50.

We have defined exactly what is meant by "Government relief". It was always a rather nebulous term, and one member went so far as to suggest that borrowing money from the Land Bank would be receiving Government relief. We have therefore made clear what is really meant.

We have all the way through provided, and I am now dealing with the Rules, that Commissioners of Oaths shall be added to the other functionaries under the Ordinance who can sign their names as witnesses to various documents that have to be signed.

We had cut out the right of candidates to be present inside the polling booths. It was pointed out that this might be extremely hard; that it was all very well for a candidate who had a reliable agent, but as the candidates were the people most interested in the whole election it seemed a little hard

that they should not be allowed inside to see that things were being carried on correctly.

We have also added the word "Hindi" to the various other languages in which the names of candidates in the Indian elections will be printed. This was done at the request of the hon. Indian member, because he was going to move later that with this language added it might be unnecessary to use symbols on the ballot papers. While the majority of the Committee agreed there was no objection whatever to adding Hindi to the other languages, we did not agree that it would be wise to omit the symbols we were providing for.

The last amendment, on page 4, merely deals with making provision for where two candidates are elected as will be the case in the central Indian area.

On page 5, at Rule 32, provision is made for a recount. It has never been quite clear how often or when there had to be a recount in the votes. We have therefore provided that on the application of any candidate or the agent of such candidate, one recount, or as many recounts as to the returning officer may seem reasonable, shall be made before the returning officer makes his declaration. Obviously it is necessary, particularly in the case of a close election, that provision should be made for one, two or three recounts. We put the word "reasonable" in so that there should be some discretion given the returning officer as to the number of times he should make recounts of the poll.

In paragraph (h) we have reduced the fraction from one-sixth to one-eighth. It was pointed out that one-sixth might be a real hardship on a candidate. An example was given of a very close election which took place last year in which a candidate who, though having one, did not obtain one-sixth of the number of votes, and it would be extremely unjust if he had had to have his £50 deposit forfeited under this Rule.

We have also for the same reason put in a proviso whereby the Governor can, in a case of hardship, return the deposit even if one-eighth of the poll has not been obtained.

In the Rules as presented on the last occasion by me, provision had been made whereby the District Commissioner could refuse to issue postal ballot papers on the day of the election. Hon. members on the Select Committee say that this Rule is a hardship also, that on innumerable occasions it is quite impossible for them to know beforehand whether their supporters are going to be ill or away on the day of the election, and it was not thought by a large majority that it really involved as much work as was suggested in the evidence

before the original Committee on the officer in question. We have therefore made provision on page 6, sub-paragraph (b), by the deletion of the proviso to allow postal ballot papers being issued on the day of the election.

The last paragraph on page 6 merely defines such things as a postmaster. A postmaster in the Rules as printed was permitted to witness signatures of postal voters. It was pointed out that there were actually only two postmasters as such in the whole Colony, which naturally was not the intention of the draughtsman of the Rules, who imagined that every post office had a postmaster. As that is not so, we have defined postmaster as the person for the time being in charge of a post office, and have also again made provision for signature before a Commissioner of Oaths.

I think those are the only amendments. I do not think they are of any great importance, and the only serious discussion we might have this morning will be on certain amendments which form the subject of a Minority Report which you will find at the end of the Report.

THE HON. T. D. H. BRUCE seconded.

THE HON. J. B. PANDYA : Your Excellency, I regret the amendment suggested in the Minority Report regarding the number of polling days for the Indians has not been accepted by the majority.

We understand that this Bill will come into operation by proclamation, and I hope that the proclamation will be issued in time to prepare the registers of the various constituencies which are created for Indians by this measure.

With regard to the Minority Report, the original Committee (of which I was a member) had accepted the principle of symbols for Indian elections. It was practically based on the ground that we wanted to reduce the number of polling days for the Indian elections and that the use of these symbols would make it much easier for illiterate persons to vote without assistance from the officer in charge of the election. In view of the fact that Government have not accepted the one polling day or the suggestion to reduce the number of polling days, and further, that Government have accepted the Hindi language in addition to the other languages used, I think this symbol system could safely be left out.

With regard to the division of the Indian electoral areas, the point made in the Minority Report I had made in the original committee and I would have preferred to have single constituencies. That was not accepted by the majority, and

after very careful consideration the Indian political organizations have ultimately accepted this division into three areas. I consider this is an improvement over the present arrangement of five seats for the whole Colony, and if in practice we find there is any real hardship it will be for us to bring that difficulty before Government.

THE HON. N. S. MANGAT : Your Excellency, I have only a few points, some of which have already been discussed by the hon. member Mr. Pandya.

The first is about the polling day. It is a matter on which the Indian community feels keenly, that although Government have not bound themselves to one day it will be seen that the Governor can exercise his discretion in the matter and give not more than three days for polling.

One of the amendments suggested by the hon. Indian member on the Select Committee, referred to by the hon. and learned Attorney General, went so far as to say that borrowing money from the Land Bank should be considered as Government relief. I do not think that is the interpretation which can be put on the recommendation, for clause 9 (5) of the Bill says :—

“No person shall be entitled to have his name on any register of voters if such person . . . (5) has, since the publication of the last revised register of voters, received from Government funds or from the funds of any local authority.”

The word “relief” would only mean that only those voters who have had mortgages or money advanced them from the Land Bank and that money has been written off and forgone by Government, would be in the same category as any relief from Government funds or local authority. If that is a correct interpretation, and I submit it is, there is no harm in keeping that amendment in the Bill.

The third point is about the symbols. I think they are unnecessary because, after all, we have at least three days for an election, and the inclusion of Hindi will facilitate very much the filling up of ballot papers, specially by the Hindu ladies. Moreover, symbols have very keenly appreciated psychological results, as a candidate who has the symbol of a lion may have a walkover and a candidate who has the symbol of a rabbit will have no chance !

A fourth point is about the electoral areas. We only hope that in the near future Government will consider making one candidate for each constituency, in view of the expense incurred by Government and candidates.

THE HON. SHAMSUD-DEEN : Your Excellency, I have to make two small comments on the Report.

One is that I do not find any provision for the consent of the candidate being obtained before he is nominated. I have myself once been the victim of that sort of joke, when without me having been consulted or my consent obtained some of my opponents in order to ridicule me got nine signatures and put in a nomination paper for me, and I recorded a few votes. I realize that now the £50 deposit is introduced, probably a nomination will not be accepted until the money is put down. Even then, a nomination of that sort does expose a person to a certain amount of ridicule if he is nominated without his consent. That is one point on which I should like the consideration of the hon. and learned Attorney General.

The second point has to do with the plural voting. I am open to correction, but my impression is that about a century ago the British Empire did away with plural votes, and a system of one man one vote introduced. I cannot see any reason why there should be two members for one constituency, and especially I am convinced by the weight of evidence in the Minority Report that the interests of Indians living in the out-district are entirely distinct from those in the townships. Naturally a member who stands as a candidate for say Nairobi realizes full well the number of votes he is likely to get from Masai or Machakos will be comparatively speaking infinitesimal, and he will not care to go to those people for their votes or, if elected, all his attention would be concentrated on the interests of the people in the bigger towns. All those people living in the out-districts will simply have no representation in his House at all.

I cannot see any reason why if a member can be elected with about twenty-eight votes or from others with about fifty or sixty votes, a constituency could not be created for Indians consisting of Indians in the outlying districts or divided into two, one up-country and the other down-country, so that you would have one member for one constituency in which a voter would have only one vote. I hope that this last point will be taken into consideration.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Your Excellency, I do not wish to intervene in this debate beyond correcting a misapprehension on the part of the last speaker. Plural voting on property qualifications existed up to twenty-five years ago. I think it was in 1910 that it was abolished, but even to-day it exists in Great Britain in the City of London and in the Universities.

CAPT. THE HON. H. E. SCHWARTZE : Your Excellency, in reading the Report again this morning there is one little matter which I do not think is possibly quite clear, and that is in connection with proviso 14 (g). It says "one recount, or as many recounts as to the returning officer may seem reasonable". It may be argued—a lot of things are argued in this Colony, sometimes with success!—that if a returning officer does not consider it reasonable he could refuse one recount, and I do not think that that is intended. I therefore move that the Report be amended by inserting the words "as of right" after the word "recount" in the third last line of subparagraph (g) of paragraph 14 and by the insertion of the word "subsequent" between the words "many" and "recounts" in the same line.

It will then read :—

"Provided that, upon the application of any candidate or of the agent of such candidate, one recount as of right, or as many subsequent recounts as to the returning officer may seem reasonable, shall be made before the returning officer makes the declaration."

I feel certain that the hon. and learned Attorney General will accept that amendment.

THE HON. CONWAY HARVEY seconded.

THE HON. THE ATTORNEY GENERAL : I am quite prepared to accept that amendment, which was the intention of the Select Committee, and I think it does make it even clearer than I have shown in the Report.

The question was put and carried.

The debate on the original motion as amended was resumed.

CAPT. THE HON. H. E. SCHWARTZE : Your Excellency, regarding the point raised by the hon. member Mr. Shamsud-Deen, as to provision being made in the Bill to prevent a person being put up for election without his consent having been obtained it must, as he says, be a keen supporter who would do that because of the £50 deposit that has to be made, or it might be done by a bitter enemy who roars with laughter because you did not know you had been put up. I do not know if it is possible to make an amendment to clause 12 to cover the point raised by the hon. member, by putting in after the word "shall" on the second line the words "subject to his written consent being obtained". I rather think that perhaps we can agree on this in the interval.

Regarding the question of symbols, I suggest that the simplest way would be for all candidates to take symbols of different birds, and each would then know he is top of the tree! (Laughter.)

DR. THE HON. A. C. L. DE SOUSA: Your Excellency, there are just two points which I mentioned on the second reading, with reference to symbols and constituencies, which I wish to mention now.

The Indian elected members are united in asking Government to consider these two points, and I hope the hon. and learned Attorney General will give me some indication of Government's intention in meeting us in this respect. In the debate on the second reading the hon. the Attorney General said he had made an advance in that Indians instead of having five votes would now only have two, and I hope that Government will go further and give one, by having five constituencies, and each voter having one vote. As for the symbols, it is the general desire not only of us but the electorate that they should be deleted. In the Select Committee on the Liquor Bill an indication was given that Baluchis would be put on the same level as other Indians, and I hope some indication will be forthcoming as to that from the hon. the Attorney General.

THE HON. THE ATTORNEY GENERAL: On a point of order, Sir, would it not be easier if members had definite amendments like the hon. member Capt. Schwartz has moved which I can accept, instead of just suggesting that it would be a good thing for a certain thing to happen under the Ordinance? I put out this suggestion. I am not at all averse to putting in some words which would indicate that a candidate would have to sign his nomination paper. May I suggest that some member of the Council move that Council report progress so that this order can stand over until after the usual interval, when we can find out what particular amendments hon. members wish to put in?

THE HON. CONWAY HARVEY: Your Excellency, I move that progress be reported on the debate for the reasons given by the learned member who has just sat down.

LT.-COL. THE HON. LORD FRANCIS SCOTT seconded.

The question was put and carried.

The debate was adjourned.

MOTION.

SALE OF CROWN LAND IN TOWNSHIPS.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, before formally moving the adoption of the motion standing in my name, I wish to offer an apology to the hon. member for Nairobi South and to this Council for the inadvertent omission of his signature to the Report which has been circulated. The hon. member did sign the Report, the omission is entirely my fault, and has been rectified in the official records of the House.

It is also a matter of regret that when this Committee commenced to sit the hon. member Mr. Shamsud-Deen, who was the Indian representative on it, was unfortunately out of the country. Furthermore, that certain correspondence which I had with the Indian Merchants' Federation at Mombasa appeared unfortunately to have miscarried in the post.

I beg to move, Sir :—

“That the Report of the Select Committee appointed to report on certain financial questions in connection with the sale of Crown Land in Townships be adopted.”

This Report is not a very lengthy document, and has been in the hands of members for some time now, so that it is perhaps unnecessary for me to go over the reasoning which has led to the conclusions which the Committee have summarized in paragraph 11 of the Report on page 4.

Briefly, their recommendations are so far as initial terms of sales go that we should retain the present formula distributing the capital value as to one-fifth as to cash-down payments and a rental on the remaining four-fifths, with this amendment—that the interest rates on the four-fifths should now be reduced from 6 per cent to 5 per cent. Subsequently, at any time during the currency of the lease, the lessees would have the option in the case of expensive plots valued at more than £1,000 of redeeming up to one-half of the rent at twenty years' purchase and in the case of less expensive plots up to three-quarters rental. It is thought that if an option is given it will remove any possibility of discouragement to purchasers on the grounds of very high rentals as well as the initial purchase price.

THE HON. THE TREASURER seconded.

The question was put and carried.

BILLS**SELECT COMMITTEE REPORT.****THE LIQUOR (AMENDMENT) BILL.**

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Liquor (Amendment) Bill be adopted.

Again we have very substantial amendments, though I do not think any extremely important amendments, but on a subject such as this where such a lot is said about it, it is difficult not to have some type of amendment.

The first amendment of importance is with regard to the Shop Hours Ordinance and the Liquor Ordinance. It has been represented very strongly to the Committee that where the Shop Hours Ordinance applies, particularly with regard to grocers' licences, that that Ordinance should prevail. The reason is that there are so many shops which have both liquor and ordinary licences under the Licensing Ordinance that, while they are in theory supposed to close in accordance with the Shops Hours Ordinance, there are in the case of grocers' licences certain hours under the Liquor Ordinance in which they can keep open. As it has been pointed out, it is quite impossible for the police to supervise the shutting of these shops when one Ordinance permits them to open for one particular class of trade, and in practice what is happening is that all which have liquor licences keep open as long as they are permitted under the Liquor Ordinance. We have therefore amended the Liquor Ordinance to make it subject to the Shop Hours Ordinance.

In paragraph 2 there is a typing error which I should like to correct at once. It occurs in the third line from the end where it says "members or the invited guests of members". The words "or invited guests of members" should be crossed out. It is a mistake of mine which I will explain. It has regard to clubs, and as I said on the second reading the difficulty was under the old Ordinance or in theory that no person except an actual member was allowed to enter the precincts of a club at all, even the grounds. Clearly that was not the intention of the Liquor Ordinance, which was to say that no one who was not a member would be able to buy a drink. In making the amendment to permit people to enter club premises although not permitted to buy liquor therein, these unfortunate words crept in.

The next amendment is really a formal one, and deals with railway ships. It is pointed out by the Railway that their ships on the Lakes are frequently changing routes. One goes

in dock and another takes it place, and for the transfer of a licence from one to the other it is necessary under the law to give thirty days' notice of the transfer. This is not a matter of practical politics, and we have therefore permitted them to transfer the licence more easily.

The next amendment is to meet the hon. Member for the Coast chiefly on a point which you will remember he raised on the second reading regarding canteens, that under the wording of the Ordinance no one except actual serving officers of the mess of the Police or K.A.R., or whatever it might be, could pay for a drink in that mess. We have therefore added the words "honorary members".

The same remark I made with respect to ships is applied to railway restaurant cars, and you find that reflected in paragraph 5.

There was some discussion with regard to the issuing by District Commissioners of what I might term extension licences, up to 2 a.m. or whatever the time might be. Under the Bill, a District Commissioner was going to be given permission to issue these licences subject to any restrictions. Some hon. members thought that though in practice that would probably work out well, if you got an unreasonable District Commissioner he might impose conditions which were hard. We have therefore restricted his discretion in the manner reflected at the bottom of page 2 :—

“(b) The district commissioner may grant such licence subject to such reasonable restrictions and conditions as to him may seem fit: Provided that such restrictions and conditions shall not in any case be such as unduly to restrict the amenities which, by the granting of the licence, it is proposed to provide.”

That of course is to make it perfectly clear that he cannot put in any ridiculous conditions. I think one member suggested he might insist that roast beef be served free after 12 o'clock!

We clear up in paragraph 8 on page 3 a point which seems to have been worrying the liquor trade for some considerable time, and that is with regard to the necessity to open. There are a lot of views on this subject, but I do not intend at this juncture to raise any argument, except to say we are now putting in a provision making it definitely clear that although you have a licence, if you do not want to open you need not.

Paragraph 9 refers to the nominated member of the municipal council who serves on the Liquor Licensing Court. As you know, it was pointed out, and I mentioned it at the second reading, that whereas the municipal council could

appoint one of the members of the court, whom we will call the judge, it was also able to put the Town Clerk up to object to some particular licence. The original amendment reflected in the Bill sought to provide that the nominated member should not adjudicate upon an application which was being opposed by his council, but it went even further, and said that no member of the municipal council should adjudicate in such a case. To my horror I discovered that it would mean that half the court would have to go out of action as nearly all the members, in some capacity or other, are serving on the municipal council. We have therefore restricted that particular clause to the one member of the council who is nominated by the council to the Governor to represent them, and he will be the only one who will have to withdraw when his council objects to any particular licence.

The next point I would like to draw attention to is the extension in the proviso to paragraph 10, which means clause 17 of the Bill and clause 43 of the Ordinance. It has been pointed out that as the law stands at the moment, although you may go in and buy a drink at one minute to midnight, another section of the Ordinance says that no drinks shall be consumed after twelve, with the result that unless you are a particularly fast drinker it is quite impossible for you to consume the drink. Although we will insist that no further drink shall be sold after twelve o'clock, provided you have a meal—and this is taken verbatim from the English law on the subject—you will be allowed a quarter of an hour in which to consume your last drink.

The other amendments I think I can safely say are only verbal, such as on page 4, paragraph 12, making it clear with regard to whom exactly the Ordinance applies. This is necessary, because the definition in the Ordinance which came in; it also makes it clear that Baluchis born in Africa do not come under the heading of natives.

THE HON. T. D. H. BRUCE seconded.

THE HON. F. A. BEMISTER: Your Excellency, I want to move an amendment to the Report to follow on page 4, item 2. My amendment is, that in the event of a hotel being outside the municipal area or within three miles of the municipal boundary the licensee shall have the right of appeal to the Governor through the Provincial Commissioner of the district concerned against his classification as a town hotel. Further, should the appeal be allowed, the rate of the licence shall be calculated as from 1st of January, 1935.

Owing to the attenuated attendance on this side of the House perhaps it is a little presumptuous of me to attempt

this hotel is suffering in that the people owning it have to pay the full licence of £5 per month in order to attract people to that place.

As I say, I do not ask for the licence to be altered but that the licensee should have the machinery laid down there through which he could appeal to Your Excellency. You need not grant it, your Provincial Commissioner may say no, but actually, Sir, I do really consider that it is an insult to every Provincial Commissioner, an insult to the Governor, and it is a great hardship to the person, to debar anybody having that access which should be the right of every Britisher.

THE HON. J. B. PANDYA seconded.

CAPT. THE HON. H. E. SCHWARTZE: Your Excellency, I am going to support this, and I would ask the hon. and learned Attorney General to accept it because it was not discussed by the Select Committee on the lines that the hon. Member for Mombasa has now put it up. We never realized that what was wanted was what is being asked for now, and those members present, the hon. the Attorney General and the hon. the Commissioner for Local Government, will agree with me that what we thought was being suggested was that any hotel out of the boundaries of the two municipal areas should have the right of appeal. We unanimously turned that down for the simple reason that we felt that every single hotel except the largest would come appealing to the Governor or Governor in Council on the ground that their turnover and profits were not comparable to the big hotels in the municipal areas, and the original Committee were quite clear that we could not differentiate between licences granted in a municipal area between one hotel and another. That was quite impracticable.

This amendment is apparently asking for the right of a hotel which is placed in a very peculiar position because it is outside the municipal area or within three miles of it. That, of course, would limit the appeals to a very large extent, and it does seem fair, from what the hon. member has said, that a hotel placed in that peculiar position—not within the municipal area and therefore not getting the advantages of being within it but being three miles outside and therefore having to pay the full rate as if it were in the municipal area—should have the right of appeal.

I do not like the actual terms of his amendment. You do not want an appeal to the Governor through the Provincial Commissioner; but that is a small point. But I ask that the amendment be accepted, and I genuinely believe that if it had

been put up on these lines in Select Committee we should have accepted it, because the reasons on which we turned it down were reasons which do not apply now.

MAJOR THE HON. F. W. B. ROBERTSON-EUSTACE : Your Excellency, I support the amendment. It is a case where hardships exist, and it may occur again in other places. If the amendment is accepted the wording can easily be put right.

THE HON. THE ATTORNEY GENERAL : Speaking to the amendment, Your Excellency, I think it extremely unfortunate that I should always be put in the position of being always hard-hearted and not accepting what on the face of it would appear such reasonable and kindly thoughts! But I do not agree with the hon. and learned Member for Nairobi South that had the amendment been put in this form the Select Committee would have accepted it. He will agree with me that a bad case makes bad law, and the history of the matter is this.

When we originally discussed the advantages of the towns with regard to these licences and whether licences in townships or municipal areas should pay more than others, it was pointed out that it would be extremely unfair if we allowed someone just the other side of the township boundary to come in under a small fee. We therefore decided with all seriousness on the decision which was supported in this House afterwards, that for the purposes of the Liquor Licensing Ordinance a township boundary should be the accepted boundary plus three miles. That was our serious decision, and we have heard nothing advanced except the one hard case to suggest that it was not a sound decision.

The position to-day is that the hon. Member for Mombasa has put up a case for small hotels not doing particularly well being able to appeal to the Governor, who would have to be some sort of court of appeal to decide a matter which incidentally the original committee found it impossible to decide.

THE HON. F. A. BEMISTER : May I refer to Hansard that my contention is exactly the same as to-day?

THE HON. THE ATTORNEY GENERAL : The idea which I understood he was conveying was that it was unfair that places in a small way should pay as much as the big hotels, and he quoted this unfortunate hotel which he has in mind. The position is this. That hotel will be within three miles of the town—there are no doubt innumerable other hotels in the same position, I do not know, there is no time to go into that now—but, in any event, is there any reason why a hotel in such close proximity to that town as this should

have a reduced licence? The answer is that it should never have had a licence at all because there is no necessity for one, and that is the basis of the whole law, the question of necessity. I have no doubt that it is a hard case, I am not doubting the word of the hon. member. The whole point is answered by the fact that it should never have got a licence, because having got it it cannot carry on and wants to appeal because it is in such a bad way, for a reduced licence.

My objection to this amendment in a nutshell, and the committee realized it, is that the ideal method of taxation under the Liquor Ordinance would be so much a bottle, a percentage on sales. We went into the point, and decided that under existing circumstances, and this was unanimous, that it was impossible at the moment to introduce that, and this is really the bugbear, with the greater objection that we have it for one particular hotel, and the Governor is going to be put in the invidious position of having to decide what, within this particular boundary, this three-mile limit, what is a case of hardship.

My own personal opinion is that if we give way on this, we should go into the whole question again. There is no reason why a small hotel just within the boundary of a township should pay whatever the licence is and that after an appeal the Governor in Council should be able to reduce the licence to the amount suggested in the amendment. I appeal to the House not to tinker about with an important principle like this. If necessary, the whole question might be gone into, though heaven forbid, for we could not settle it last year, and I do not think any committee is capable of settling it this year. I am afraid that I cannot advise Government to accept this amendment.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, I should like to remind the hon. the Attorney General that when we sat on the original Committee one of the difficulties was to decide what limit outside municipal areas should be the limit when hotels should have to pay the high licence on the ground which he has just put forward. It was first suggested that five miles outside was too far, and we got to three. As I understand it, this particular hotel I believe is situated about four miles from Macupa Causeway. You would think it obvious that the limit of Mombasa municipality would be on the Island and not on the mainland. As for some reason it was extended to the mainland, this hotel, instead of being four or five miles away from the municipal area, when it would come under the lower rates, has been brought for no particular reason within three miles.

It does show that there is a case, which would be limited to very few hotels, a borderline case like this for having an appeal to the Governor allowed. I should certainly oppose an appeal for all hotels all over the country on the lines that the hon. member on my left (Capt. Schwartze) has just pointed out. I should add that I understand this hotel is situated seven miles from the nearest other licensed hotel.

THE HON. THE COLONIAL SECRETARY : Your Excellency, I move that progress be reported so that the matter can be considered in the interval.

THE HON. THE TREASURER seconded.

The question was put and carried.

The debate was adjourned.

MOTION.

FREE FERRY SERVICES, MOMBASA AND COASTAL AREA.

THE HON. F. A. BEMISTER : Your Excellency, I beg to move the following motion :—

“That in the opinion of this House it is essential for the economic development of Mombasa and the Coastal Area that a free ferry service connecting the main trunk roads be provided out of Central Revenue.”

I think it will be agreed that it is one of the most important, if not the most important, motion ever produced in this assembly. I have not the slightest doubt that if this debate ever got to the ears of the people in England it would cause them a tremendous amount of surprise. It might not have done a few years ago when this was considered Darkest Africa, but when you read the papers to-day you notice there are many thousands of people in England, some even members of Parliament, who to-day agree that Mombasa is neither a suburb of Nairobi nor part of the Union of South Africa! In fact, there are many people in England drawing good fat incomes derived either from pensions or dividends taken from the revenues of this country, many of which have their sources in the labour and enterprise of Mombasa. Just imagine, therefore, their surprise when they read that over five million pounds were invested in Mombasa in putting in an up-to-date wharf system and that within about 250 yards there is a toll ferry system!

For the benefit of those people who live in the interior I would beg leave to give a few points of information.

Mombasa should not be thought of only as a pleasant place to look at, or a place where in concrete sheds you attempt

to evade your proper taxes by getting through a very efficient Customs service. Let it be remembered always that Mombasa was, is, and always will be the principal town of the Colony! (Laughter.) When you had to build forts in practically the district in which we find ourselves now to protect trade and travellers from savages, Mombasa was under a special Government who carried out their duties for the peace and welfare of the people under their charge. The whole business of Uganda and the interior started and was built up from and through the enterprise of the people of Mombasa and yet, Sir, to-day, forty years after British occupation, anyone who wishes to inquire can find that so far as the Central Government is concerned Mombasa is the only place of any importance that cannot elect its own chairman of the Municipality, it is the only place of any importance that does not own its own water supply, and it is the only place at all in the whole Colony that has a toll ferry system inside its borders. (Capt. Schwartze : And it does not have an election.) You wait a bit.

Only a few years ago Government, through the Railway Department, built a magnificent causeway over the Macupa Reach which cost several thousands of pounds. Did it ever enter your minds or their minds to put a toll on passengers crossing that bridge? Obviously it did not, because once you have spent thousands of pounds on a foot bridge, a bridge which people can walk or drive over, no Governor and no Government would ever dare to suggest that people should pay a toll anywhere in this Colony. The Macupa Causeway is merely part of the main road system and as such essential to the development of the coastal area and Mombasa.

We all know that it is impracticable to build a bridge across the coast ferries, but to establish a free ferry service would cost little more than the construction of a bridge. We ask for something which the capital cost of maintenance would not equal the maintenance alone of the Jinja Bridge. Actually, Sir, I feel you will consider it an insult to talk of such a trivial matter of cost to you, but we have not had £100,000 for the country outside the coastal area. Therefore, I will put it on a higher plane.

I would ask you to grant a boon : to remove for ever an anachonism from the administration of the Colony. I would ask you to establish a free ferry service to a part of the country which has had little or no assistance from the Central Government, which has traditions which to-day are the pride of the whole Colony and a part of the country which has suffered from neglect more than any other part of the Colony. By granting this, I am confident that you will at one stroke of the pen assist the coast to be developed and that you will give heed to thousands of your loyal people.

THE HON. J. B. PANDYA : I beg to second, Your Excellency, and I think it will be agreed by all concerned that it is extremely important that the development of the coast depends upon a free ferry service. I hope Government will agree to this motion.

MAJOR THE HON. R. W. B. ROBERTSON-FUSTACE : I beg to support the motion, Sir. Having only recently expressed my views very clearly on the subject it is unnecessary for me to repeat them. I understand the motion is to be withdrawn, but I do trust and urge on Government that they will give this matter their very serious consideration and come to some conclusion as to who should run these ferries, whether they should be leased to private companies, whether they should be run by a contractor, or whether the municipality of Mombasa is to take them over and run them.

VEN. ARCHDEACON THE HON. G. BURNS : Your Excellency, I entirely support this motion. I understand of course that it is dealing with the main trunk roads leading from the mainland into the Island. It does not say so in the motion, and I presume that it refers principally to the Likoni ferry service, because if it meant that Government was being asked to take over the Nyali Bridge or to relieve the burden that is on the people there it would be difficult for me to support it. But, seeing that the motion deals chiefly with the Likoni ferry I heartily support it, especially from the point of view of the natives in that part of the country who make use of that ferry.

A man or woman, coming with perhaps 50 cents worth of produce, before getting to the markets to sell that produce, has to pay 3 or 4 cents to get across, and again on the return journey, so that I hope Government will see their way to accepting this.

THE HON. CONWAY HARVEY : Your Excellency, I do not at this juncture intend to speak either for or against the motion, but I should like to know whether the matter has formed the subject of investigation by the Central Roads and Traffic Board. As every one is aware, there is an *ad hoc* body set up specially to deal with problems of this nature, and I suggest there is some little danger of doing the wrong thing if we consider one isolated item in our transportation scheme without fully considering its bearing on the transportation scheme of the Colony as a whole.

THE HON. SHAMS-UD-DEEN : In supporting this, Your Excellency, I wish to say that I do not look on this ferry quite as linking the island with the mainland, but my

impression is that Likoni is really an extension of Mombasa town itself. If this motion is accepted, I have not the least doubt that it will result in a great deal of extension at Likoni as merely an extension of Mombasa town separated by this small piece of water.

THE HON. THE COLONIAL SECRETARY: Your Excellency, the motion moved by the hon. member for Mombasa reads:—

“It is essential for the economic development of Mombasa and the Coastal Area that a free ferry service connecting the main trunk roads be provided out of Central Revenue.”

I have listened in vain to the hon. mover for the grounds on which that categorical statement is based. He merely stated that if the ferries were not free the economic development of Mombasa would be retarded but gave no grounds in support of that view.

As I understand the motion, it deals with the three ferries—if I am wrong the hon. member will correct me—that it refers to the Likoni, Mtwapa, and the Kilifi Ferries. (Mr. Bemister: That is right, and that is what the words “coastal area” mean.) Mtwapa and Kilifi are under Government control, and the future of Likoni is at present under consideration. The hon. member for Nyanza reminded this House that the Central Roads and Traffic Board was an *ad hoc* body appointed to consider such questions as this. As recently as October, 1934, the question whether the Mtwapa and the Kilifi ferries should be free was considered by that Board, and the following decision was recorded:—

“The question of free ferries was discussed. The Board recorded the opinion that the ferry fees should be reduced to a minimum but that the ferries should not be free.”

Reductions were accordingly made in the schedule of charges and were applied with effect from the 1st of January of this year. In the aggregate, the reduced charges amount to about 30 per cent of the previous charges.

The present position is that Government will receive approximately £450 in revenue this year from the ferries under Government control, and the expense of repairs is also estimated at £450. Government, however, bears the cost of depreciation, and considerable replacements will have to be put into effect in the very near future.

The hon. Member for Mombasa drew a rather distressing picture of the sad position of Mombasa, and said the fact that Mombasa had not a free ferry and was not connected with the

mainland by a free ferry would surprise the people at home. If, however, anybody in this Council is acquainted with the city of Sydney in Australia, he will remember that not long ago it was a town literally divided in two by an arm of the sea, and that until the wonderful feat was accomplished a few years ago of building a bridge across the harbour, ferry fees were collected.

At the present time, the fees charged on the ferries at Mombasa are considered by Government to be very reasonable, and, as I have said, the principle of charging fees on ferries is a universal one: There may be exceptions in certain cases for special reasons, but the generally accepted principle is that fees should be collected at least to cover the cost of maintenance of ferries.

I may say that I asked the other day what was the difference between a ferry and a bridge, and as far as I could ascertain the only logical difference between the two appears to be that in the one case you transport yourself and in the other you are transported. Whether that difference justifies the imposition of a fee I am not prepared to argue!

As at present advised, Government sees no adequate reason for accepting the principle that ferries should be free or that this Colony should depart from the practice accepted elsewhere, that tolls should be collected to cover at least the cost of maintenance. Government is, however, prepared to consider, in consultation with the Central Roads and Traffic Board, the representations now made and to examine whether and concessions in respect of agricultural produce would be practicable. I am unable to hold out any hope that it will be found practicable or that any concession can be made to other users of ferries.

To give effect to the motion would mean that Government would be subsidising the public to the tune of approximately £2,500 a year. I have ascertained the figures regarding Likoni from the hon. the General Manager of the Railways, and he informed me that the cost of running Likoni is between £1,500 and £2,000 a year, exclusive of overhead supervision, insurance, petrol duties, etc.

For the reason given, Government is unable to accept the motion, but will consider the matter in consultation with the Central Roads and Traffic Board.

THE HON. F. A. BEMISTER: May I thank, Sir, the Acting Colonial Secretary for so heartily supporting the proposition, by giving me the actual data which I had not before? I am very glad to find this ferry costs only £2,500. I am also

glad to know that the Central Roads and Traffic Board will consider this matter, because may be at some time they will have somebody from the Coast on the Board and they may hear something about the Coast.

THE HON. CONWAY HARVEY: On a point of order, I suggest that the hon. Member for the Coast is and has been a member of the Board.

THE HON. F. A. BEMISTER: He ought to have done better than this!

HIS EXCELLENCY: Do I understand that the hon. member wishes to withdraw his motion.

THE HON. F. A. BEMISTER: Thank you.

THE HON. LORD FRANCIS SCOTT: Have you the leave of the seconder? (Laughter.)

The motion was by leave withdrawn.

Council adjourned for the usual interval.

On resuming.

BILLS

SELECT COMMITTEE REPORT.

THE LEGISLATIVE COUNCIL BILL.

THE HON. THE ATTORNEY GENERAL having moved:—

“That the Report of the Select Committee appointed to consider and report on the provisions of the Legislative Council Bill be adopted.”

THE HON. T. D. H. BRUCE having seconded.

CAPT. THE HON. H. E. SCHWARTZE having moved:—

“That the Report be amended by inserting the words ‘as of right’ after the word ‘recount’ in the third last line of sub-paragraph (g) of paragraph 14 and by the insertion of the word ‘subsequent’ between the words ‘many’ and ‘recounts’ in the same line.

THE HON. CONWAY HARVEY having seconded.

The question having been put and carried.

The debate on the substantive motion as amended continued.

THE HON. N. S. MANGAT: Your Excellency, after consultation with my colleagues, I have only one amendment to propose out of the Minority Report of the two members. I move :—

“That the Report be amended to give effect to recommendation (2) of the Minority Report by the Hon. Isher Dass.”

I think that this question of symbols is a domestic matter which should be left to the Indian members to determine, and if there is any difficulty caused by the absence of the symbols I think it is covered by Rule 23, which provides that where a voter is illiterate the District Commissioner or the returning officer can be informed and fill up his paper. As there are very few cases where a voter cannot speak one of the four languages, I think Rule 23 can be used to make up for the absence of these symbols. I ask that this amendment be accepted.

DR. THE HON. A. C. L. DE SOUSA seconded.

THE HON. THE ATTORNEY GENERAL: Speaking to the amendment, Your Excellency, this point, as hon. members probably realize, was very carefully gone into by the Select Committee. In the first place, it came up originally on a suggestion which I think was made by the hon. member Mr. Shamsud-Deen, and on considering it we referred to the practice in India, where we found something of this description was done.

If I may say so, the answer to the hon. member is this : In the first part of his speech he said he was most anxious that the Indian elections should be reduced to one day. As I said on the second reading, that is the earnest desire also of Government, and the only reason the Bill is worded in this way is that we believe that in practice it will take longer ; we hope, however, that the elections will only take one day. One hon. member said that the reason why he was in favour of symbols was to facilitate Government having the elections in one day, and that is my position now.

Indian members wish their elections to be held in one day, we hope to be able to meet them in the near future, and we are told that by having symbols they will assist materially in reducing the period to one day. For that reason, if for no other, I suggest that the use of symbols be retained.

It is now suggested that because we have added the language of Hindi to the provisions of the Rules, that the necessity for symbols will go by the board, that everybody will be able to read one of the four languages now mentioned.

With all due respect to hon. members who think that, my information is to the contrary. I am told by those who have had to do with the Indian elections that there is really a large number of the Indian electorate who are not able to read. Those officers who are responsible for the carrying out of these elections and whom we have been able to speak to—and I admit that I did speak to them, because the suggestion did come from Indian members that we should have symbols, and before I finally agreed I asked the officers concerned. They said that in view of the fact there were so many illiterate voters it would be easy for those voters to see the symbols of the candidates whom they wished to vote for, and the officers thought it was an extremely good idea. That was put into the Report of the Select Committee which originally sat, at the request of two Indian members, who also said it was a good idea, and we adopted their suggestion on that point *in toto*.

Now we are told, having been persuaded, perhaps against our better judgment, we were and are persuaded, that for some reason not really disclosed at all in the debate they think they would like to do away with symbols. If the object of the election is to elect a person by the vote of the majority, it seems to me it is absolutely essential that the majority should know exactly for whom they are voting, and we know that in this case, in order to do that, it will be a wise precaution to have symbols and not to rely on having the ballot paper read to them or the fact that they can read one of the four languages.

THE HON. J. B. PANDYA : Your Excellency, I am very sorry indeed that the hon. the Attorney General has twisted my argument. I did not mean that because one-day polling was the ultimate aim for the elections that it would be essential to keep the symbol system. If it was stated in the Bill that the polling should only be on one day, there was every justification for Government to insist on the symbols, but when Government is unable to agree to our suggestion of one-day polling I cannot understand why they should insist on the symbol system.

The point is that the last time when the hon. the Attorney General took the advice of the returning officer in the matter, he forgot to ask in what language the papers were printed. The only language at that time was English; therefore, naturally, it was found that there were a large number of people who could not read English and required the assistance of the returning officer. But in view of the fact that four Indian languages are now going to be used I can see no reason why this amendment should not be passed.

I do feel, although I was in favour of symbols before, there is no necessity now, and the Indians themselves do not want the symbols.

The question was put and lost.

The debate on the substantive motion as amended was resumed.

THE HON. SHAMSUD-DEEN : I beg to move that the Indian electoral area be constituted as follows . . .

THE HON. THE ATTORNEY GENERAL : Your Excellency, on a point of order, has the hon. member not already spoken to this motion? There was one motion before the House, and he has spoken to that, and I think moved or suggested that he was going to move an amendment with regard to a candidate signing his own application form. He is only entitled to speak once on the substantive motion and should move all the amendments he desires when he does so speak.

HIS EXCELLENCY : I had forgotten that the hon. member had spoken, but I think he has.

THE HON. SHAMSUD-DEEN : Shall I be precluded from moving any amendment?

HIS EXCELLENCY : I am afraid that is so.

DR. THE HON. A. C. L. DE SOUSA : Your Excellency . . .

HIS EXCELLENCY : The hon. member has already spoken to the motion.

DR. THE HON. A. C. L. DE SOUSA : On a point of explanation, I understood that when this matter was deferred until the interval that we should have an opportunity of discussing whatever amendments we were going to move. On that assurance, some of us kept quiet.

LT.-COL. THE HON. LORD FRANCIS SCOTT : As I understood it, the suggestion by the hon. the Attorney General was that the Indian members, when they asked for certain alterations, should put them up in the concrete form of a definite amendment which they would have an opportunity of moving. That is the actual position, not that they should make other speeches on the whole Bill.

HIS EXCELLENCY : I understood that they were going to hand written amendments to the hon. the Attorney General during the interval, but I do not think that that can give them authority to make a second speech.

THE HON. THE ATTORNEY GENERAL : On a point of order, as has been shown the hon. member Mr. Mangat understood the position very clearly, because he came back and moved a definite amendment which we have just dealt with, which is what I wanted. Progress was reported in order that those desiring to, could put up amendments, which was done by the hon. member quite correctly.

DR. THE HON. A. C. L. DE SOUSA : And another of us wants to move another amendment.

HIS EXCELLENCY : I cannot have every member speaking two or three times. The amendments could have been moved by the hon. member Mr. Mangat.

DR. THE HON. A. C. L. DE SOUSA : I say that that is most unfair.

HIS EXCELLENCY : I must keep to the Standing Rules and Orders of this House.

THE HON. THE ATTORNEY GENERAL : The hon. member Mr. Isher Dass has not spoken, he can move the amendment.

THE HON. ISHER DASS : Should I move the amendment, Sir?

HIS EXCELLENCY : Yes.

THE HON. ISHER DASS : I have only one amendment, which is contained in Recommendation 4 of the Minority Report. I understood from the hon. the Attorney General that he would make some kind of statement and give an indication as to how the situation mentioned in this recommendation was going to be met, and I leave it at that. I move :—

“That the Indian Electoral Area should be constituted with the five following constituencies :—

- (1) Nairobi Municipality.
- (2) Mombasa Municipality.
- (3) Kisumu Municipality.
- (4) All trading centres and other places not included in the above three Municipalities and situated to the East of Nairobi town, to be known as the Eastern Constituency.
- (5) All trading centres and other places not included in the above three Municipalities and situated to the West of Nairobi town, to be known as the Western Constituency.”

In moving this amendment I have only one reason, and that is that my other colleagues have suggested there is no necessity of having two votes in one constituency, and that Government intends, and we are all in favour of it, that there shall be one-day elections. I suggest that the municipalities of Mombasa and Nairobi have too many representatives in this Council, for the simple reason that both actually elect two of the Indian community who are supposed to represent all interests. In addition, there are two European members from each place, while there are two members representing the native interests. I think, if I am not mistaken, that the twenty members on the other side represent Nairobi as well! so that those two places are very well represented, while actually the places contained in the eastern and western areas are not well represented. One member comes from Aberdare, and that is all. I do not think that Government should have any objection to accepting this amendment.

DR. THE HON. A. C. L. DE SOUSA seconded.

THE HON. J. B. PANDYA : I know that we are pressed for time, Your Excellency, and I think it unfortunate that this important amendment has been moved at the last moment in this House. We have been dealing with this Bill in committee for a long time, and we carefully considered the whole situation and arrived at understandings acceptable to the Indian Congress and Indian political organizations of the country. It is in keeping with the irresponsibility of certain members in the House that this sort of thing should be brought in in this manner without consulting the people concerned.

THE HON. SHAMSUD-DEEN : Your Excellency, can an hon. member describe other members as irresponsible? We have been called too many things, and we cannot stand it any more!

THE HON. J. B. PANDYA : I never called anybody irresponsible, but said this was in keeping with their irresponsibility.

To change the whole construction of the representation of the Indian people at the last moment is absolutely indefensible, and to say that there should be only one representative for each municipality of Mombasa and Nairobi without giving anybody the opportunity of considering whether it is the right thing to do is in my opinion nothing less than irresponsible. I cannot under any circumstances support such an idea of division of constituencies without being given an opportunity for consideration.

THE HON. ISHER DASS : On a point of explanation, this is a point which we have already raised on the second reading of the Bill, and is not a new one as the hon. member has suggested.

HIS EXCELLENCY : The hon. member must not make a second speech. He can rise on a point of personal explanation.

THE HON. THE ATTORNEY GENERAL : I intend to say very little, Sir, on the amendment, but would merely point out that this is an amendment of the principle of the Bill, and we are now discussing the details of the Select Committee Report. If for no other reason I must resist such an amendment.

Members of the House must realize that it is quite impossible for the proceedings of the House to continue efficiently if we are going to have such amendments of principle sprung on us at the last minute. Not for one moment would I consider this amendment at any time, but I should at least have to speak to it if it were raised at the proper time, and this is not the proper time.

DR. THE HON. A. C. L. DE SOUSA : On a point of information, this question was before the Council at the second reading.

HIS EXCELLENCY : I do not want a point of information, only a point of explanation or order, which is a different matter.

DR. THE HON. A. C. L. DE SOUSA : I suggest that I am entitled to say something?

HIS EXCELLENCY : You may speak to the amendment.

DR. THE HON. A. C. L. DE SOUSA : I will in that case.

I am sorry that the hon. member Mr. Pandya has taken up an attitude which is deplored by the other four Indian members. The contention is that this matter has been brought up at the last minute, or it is I believe the contention of the hon. the Attorney General. But this question was raised towards the end of June, in the earlier part of the session, and Government had enough time to consider it. It was also raised in Select Committee, and that is some weeks ago. Government therefore cannot say they did not have enough time.

As for the fulminations of the hon. member Mr. Pandya against us and his reference to the Congress, I might inform him that as far as I know, and I am a member of the Indian Association of Nairobi, this question was never referred to

us, and we constitute a large percentage of the Indian population of the Colony. Whatever has been done has been done within the closed walls of the hon. member Mr. Pandya's party. I am sorry . . .

THE HON. THE ATTORNEY GENERAL : On a point of order, I do not like taking this point, but I really must ask if the hon. member is in order on the particular motion before the House to discuss individual and private matters between himself and Mr. Pandya?

HIS EXCELLENCY : The hon. and learned Attorney General is perfectly right, and I must ask the hon. member to confine his remarks to the terms of the motion, which is the amendment proposed by the hon. member Mr. Isher Dass.

DR. THE HON. A. C. L. DE SOUSA : Yes, I was prepared to do that, but the hon. member referred to the Congress, so that I have too, otherwise you cannot have a correct idea of the argument for or against.

I think, Sir, when this Council, when considering any matter affecting any interests, the primary duty of Government and of all other members interested, is to listen to the representatives of the Indian community, and if it is a case that out of the five, one member . . .

LT.-COL. THE HON. LORD FRANCIS SCOTT : On a point of order, the hon. member is now speaking on general lines. May I suggest that he speaks on the amendment?

DR. THE HON. A. C. L. DE SOUSA : As I am not well acquainted with the rules of debate, I do not wish to continue speaking.

THE HON. CONWAY HARVEY : On a point of order, may we hear the terms of the amendment?

HIS EXCELLENCY : They have been read, it is only wasting the time of the House.

THE HON. CONWAY HARVEY : It is quite impossible for anyone to follow.

HIS EXCELLENCY : I know.

LT.-COL. THE HON. LORD FRANCIS SCOTT : I support the contention of the hon. the Attorney General, Sir, that this is a question of amendment to the principle of the Bill. The main principles were thoroughly discussed and an agreement was reached by the Committee which dealt with the Bill, and

speaking for the European elected members, we could not in any way at all agree to this amendment being brought in at this stage.

HIS EXCELLENCY : The question is, that the amendment be adopted.

The question was put and lost by 3 votes to 21, one member not voting.

Ayes : Messrs. Isher Dass, Shamsud-Deen, Dr. de Sousa.

Noes : Messrs. Barton, Bemister, Major Brassey-Edwards, Mr. Bruce, Archdeacon Burns, Messrs. Fazan, Harragin, Harvey, La Fontaine, Logan, Morris, Pandya, Dr. Paterson, Mr. Pilling, Sir G. Rhodes, Major Robertson-Eustace, Lord Francis Scott, Capt. Tisdall, Messrs. Vidal, Walsh, Welby.

Did not vote : Mr. Mangat.

The debate on the substantive motion was resumed.

THE HON. SHAMSUD-DEEN : On a point of order, I wish to ask if it is in order to move Rule 81 of the Standing Orders :—

“81. If the reference is in respect of specified clauses the report of the Select Committee shall be debated in Council on not less than one day's notice of motion for its adoption. The Bill shall then or at a time to be arranged be referred or returned to the Committee of the whole Council.”

I wish to know if I am in order to move that this Bill be returned to committee of the whole Council?

THE HON. THE ATTORNEY GENERAL : The hon. member is in order to move it. I doubt whether the Council will accept his motion. A Bill may always be returned to committee of the whole Council when the whole Council so desires.

THE HON. CONWAY HARVEY : Surely an amendment must be moved by a member who has not spoken to the substantive motion when that is under discussion?

THE HON. SHAMSUD-DEEN : Rule 81 allows you to do so, and I formally beg to move that the Bill be referred to committee of the whole Council.

THE HON. ISHER DASS seconded.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I do not think there is any need for me to speak on it and the House will not allow its time to be wasted in this ridiculous

manner. Nothing can be gained from any point in the Select Committee Report and the innumerable amendments we have made, by referring the whole Bill, which will mean taking it clause by clause. I trust that members will reject the motion.

The question was put and lost.

The debate on the substantive motion was resumed.

THE HON. THE ATTORNEY GENERAL: Your Excellency, there has been so much said already on this Bill and on the various amendments that there is little left for me to say in reply to my motion. But I would remind hon. members that in view of the tone the debate has taken the suggestion would appear to be that Government has been forcing on them some Rules or an Ordinance that they themselves do not wish. With regard to the main principle which was referred to in the amendment offered, all knew we could not accept it. Every detail in this Bill and the Rules were, in fact, either proposed or accepted by the hon. Indian members on the Select Committees, and to suggest now that Government is trying to put on to them what they do not want is ridiculous in the extreme. At the same time, as responsible members of the House they must realize that Government cannot go on *ad nauseam* altering Bills or Rules every time someone has a bright idea. We discuss whatever it is, Indian members agree to them, and then come to the House three weeks or a month later and think it should be something else and that Government has treated them harshly because their motion is not immediately accepted.

The question that the Report as amended be adopted was put and carried.

THIRD READING.

THE HON. THE ATTORNEY GENERAL moved that the Legislative Council Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THE HON. SHAMSUD-DEEN: Your Excellency, I think I have the right, even at this stage, according to Standing Orders, to get up and move that the Bill be recommitted. Rule 81 provides for that. Although I do not wish formally to suggest that the Bill should be recommitted, I do say that the hon. and learned Attorney General, when he says that because certain members sit on a select committee, that other members are precluded from expressing their views afterwards,

is entirely out of place. On a point of order, even at this stage, I have the right to move that the Bill be recommitted, according to Standing Orders.

HIS EXCELLENCY: The position is that the hon. the Attorney General has moved that the Bill be read a third time and passed. I have put that, and have declared that the Ayes have it.

The Bill was then read the third time and passed.

SELECT COMMITTEE REPORT.

THE LIQUOR (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL having moved:—

“That the Report of the Select Committee appointed to consider and report on the provisions of the Liquor (Amendment) Bill be adopted, subject to the deletion of the words ‘or the invited guests of members’ in the sixth line of paragraph two.”

THE HON. T. D. H. BRUCE having seconded.

THE HON. F. A. BEMISTER having moved an amendment to the Report.

THE HON. J. B. PANDYA having seconded.

Progress having been reported.

The debate was continued.

THE HON. THE ATTORNEY GENERAL: Your Excellency, on a point of order, during the adjournment I had the opportunity of conferring with the hon. member Mr. Bemister, and I understand that the exact form in which he wishes to move his amendment is as follows:—

“That the following addition be made to the Report:—

‘That the Schedule to the Ordinance be amended by the addition of the following proviso at the end of sub-clause (f) of clause (1) thereof:

‘Provided that in respect of premises situated without the Municipality or Township boundaries but within three miles of such boundaries the Governor may, on the application of the licensee, remit such portion of the license fee as, having regard to all the circumstances of the case, he may deem to be reasonable.’”

I have been instructed by you, Sir, to say on behalf of Government that we accept this amendment.

The question was put and carried.

The question that the Report as amended be adopted was put and carried.

THIRD READING.

THE HON. THE ATTORNEY GENERAL moved that the Liquor (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

NATIVE MARKETING BILL.

On the Order being called from the Chair—

(The Hon. Indian Members, Messrs. Isher Dass, Mangat, Shamsud-Deen and Dr. de Sousa retired from the deliberations of Council.)

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Native Marketing Bill be adopted.

As hon. members are aware, this Bill was referred after a long debate to a Select Committee, and I intimated at the time that it was unlikely there would be many substantial amendments. The Report you have may appear bulky, but one reason is that I had to incorporate in it the several amendments which I had had printed at the end of the Bill for the information of members. I have no intention of referring to those matters which have already been debated. Actually, from my point of view, there are only about four points on which I need touch. Mainly the amendments are verbal; we have, for instance, used the word "specified" all through before produce, because it was argued that if we left the word "produce" without the qualifying adjective it might include any product. We have therefore inserted "specified native" before "produce" to make it quite clear as only referring to produce which the Governor specifies in his notice under section 3. We have done the same with regard to references to all divisions of land; all through the Bill we have used the words "declared area" as meaning declared under section 3.

The first amendment of importance to which I invite Council's attention is on page 3, paragraph 5, which refers to the power to prescribe conditions including the power to

require that all purchases must be paid for in cash. We have introduced there the words "minimum prices". It was thought by your Committee that it would be wise if we gave authority to the authority under the Ordinance to prescribe the minimum prices, and I am sure that everyone will agree with it.

There are two further amendments to which I will now refer. One is in paragraph 7. You will remember that we gave power to the District Commissioner—or as he is to be called in the Ordinance the licensing authority—to refuse to renew or grant a licence, and it is stated that he shall give reasons to the authorities above him, namely the Provincial Commissioner and the Governor, to whom an appeal is provided when he sends forward an appeal. I think everybody—certainly I did—considers that when an officer is acting in a judicial manner such as would be demanded of him under this section, that when he is giving reasons to his superiors he should also give them to the appellant. This was not quite clear under the section as formerly worded. It might have meant that he had only to give his reasons to the Provincial Commissioner and the Governor, which would be manifestly unfair to the appellant who would not know what he was appealing against, except that he had been informed he could not get what he wanted; it would also make it difficult for the Governor to adjudicate in the matter.

Clause 17 of the Bill has been deleted as redundant, but a new clause has been substituted. This new clause contains the provision which at present appears in clause 16. Now clause 16 deals with the rule-making powers of the Governor, and it is thought it is unnecessary to establish a market by rule. The Report therefore proposes in clause 17 to give the Governor power by notice to establish new markets in any declared area and also to declare any place in a declared area to be a market for the purposes of the Ordinance. The latter amendment is to clarify the position with regard to markets which already exist and which the Governor may declare to be markets under the provisions of this Ordinance.

Hon. members were told in the course of the second reading that it was the intention of Government to declare as markets as far as possible all trading centres. I say as far as possible advisedly, because there will be certain cases where that will be impossible, and we therefore see no objection to the proviso which we have now added to this clause :—

“Provided that when the Governor has made an order under the provisions of section 3 of this Ordinance, in respect of any district or part of any district, all trading centres situate in such declared area, other than such

quality of opportunity and fairness between all those who are interested. If such a safeguard is not there, I am afraid that various undesirable practices may creep in; even the past experience we have had in this matter makes me believe it will be desirable to have this safeguard. I do not lose sight of the fact that there are certain administrative difficulties, because it might happen that even the one who got the right by auction to have that monopoly might not be a desirable person, but I am prepared to accept an amendment which would satisfy Government that it should be subject to the final decision of the Governor in Council. In this I am to a great extent persuaded by the precedents which we have in other spheres. In Mombasa Municipality to-day, the final power to nominate the members of the Municipal Board rests with the Governor, but as a rule the results of the informal elections which are held are accepted by him. In the same way, if in the first instance there was this provision for auctioning an exclusive licence, subject to the approval of the Governor, I am sure it would work out to the satisfaction of all concerned. Otherwise I am afraid that the issuing of an exclusive licence would depend entirely on the goodwill of the administrative officers and other persons, which is likely to create an atmosphere of favouritism.

With regard to clause 13, I am grateful to the Select Committee for accepting the amendment, namely, to convey to the applicant the reasons for the refusal of his application for a licence. I should, however, like to have pressed further for an amendment to have the right of appeal to the courts. A clause to that effect appears in the Uganda Ordinance which was passed subsequent to the Tanganyika Ordinance, and it is one which I think it is very desirable to include in this Bill.

Coming to the amendment accepted by the Select Committee in regard to the establishment of markets, may I take this opportunity of thanking Your Excellency personally and the senior officers of your Government for the sympathy and fairness with which our point of view has been considered in this matter.

This amendment is in implementation of the assurance conveyed in this House by the hon. the Chief Native Commissioner, and I had not the slightest doubt that Your Excellency is going to put it into practice.

But there is a difference, and I do not think it can be denied, that the legal provision in the Bill is very much more than an assurance conveyed in this House, and we are very grateful for this amendment. While it is no more than an implementation of the assurance, it means very much more to us, not because it gives us anything more than was originally

intended to be given by Government but because it is proof of the intention of Government which shows they are willing to take into consideration sympathetically the vast trading interest which we have in this country.

I do not wish to take any credit to myself, but if I had followed the policy of negation which was followed by the other hon. Indian members, who preferred to walk out and remain absent during the discussions on this important Bill—which they also consider vitally affecting the interests of the Indian community—if I had been foolish enough to follow that course, it is quite clear that important amendments which have been accepted by Government at my representations in this matter would not have received their sympathetic consideration. In that case, I would have done the greatest harm to the interests which I was sent here to safeguard and advance. In my opinion, if single-handed I was able to get the Select Committee and Government to a certain extent to accept my amendments and was able to achieve that result alone, how much more the Indian community would have gained in regard to other amendments if the other hon. Indian members had co-operated in this matter. I hope, Sir, that a lesson will be learnt from this experience that in this country a policy of negation will not pay and that those who follow that policy will be doing immense harm to the interests of their constituents.

I should like to say one or two words on general issues. On the second reading, I tried to substantiate my case with reasoned arguments, quotations from well known authorities, and from experience in the neighbouring territories. I spoke with great restraint and humility, and appealed to the European elected members for their sympathy and impartial consideration. Instead, I got their opposition. I do not wish to take the time of the House by making any reference to that past experience because it would hardly serve any useful purpose at this stage, but I should like to say that if on a Bill in which their direct interests were not involved this was their attitude it proved to us that we could expect very little sympathy from them at any time. They should not be surprised if the same feeling is reciprocated. This demonstrates to us why we should be governed from Downing Street in this country . . .

HIS EXCELLENCY : Order, order! I quite realize that the hon. member has been in a very difficult position. I have allowed him a very great deal of latitude, but I cannot think that this is in any way connected with this motion.

THE HON. J. B. PANDYA : Very well, Sir, I will drop that.

The only other word I should like to say is to the hon. Members representing Native Interests. They failed to realize the real implications of the Bill and the way in which it would affect the natives. With due respect, I should like to say they have not had first-hand information in regard to these matters . . .

LT.-COL. THE HON. LORD FRANCIS SCOTT: On a point of order, Sir, is this not a second reading speech and nothing to do with the Select Committee's Report?

HIS EXCELLENCY: That is exactly what I am trying to persuade the hon. member. I implore him to keep to the terms of the motion and not make a speech on the second reading.

THE HON. J. B. PANDYA: I am concluding now, Sir.

In conclusion, Sir, I should like to say that I have remained on my post to the last minute. I have advised the Government in regard to this Bill, and I admit that my labour is not wasted, as I have been able to persuade the Government to accept certain amendments for which I am grateful. But still, the Bill contains certain objectionable principles to which we are opposed and, as according to Standing Rules and Orders I could not speak to make my position clear as I have done just now, at the third reading stage when the Bill is finally being passed, following the intention which I made clear at the second reading debate I should like to record my dissent by walking out of the House at this stage and remain absent until the Bill is finally passed.

(Mr. Pandya then withdrew from the deliberations of the Council.)

VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, I have not very much to say with regard to the matter. One cannot help admiring the way in which my hon. Indian friend has stuck to his job in dealing with the matter of this Bill.

With regard to the point raised by him, I should like to say we who are representing native interests in this Council have gone to a considerable amount of trouble to find out from the natives whom we look on as being able to give us their opinion and advice as to the value of this measure what their views were. In every single instance in which I have had the opportunity of questioning natives and trying to explain to them the measure now before the House they have not only agreed to it but thank Government for having introduced such a measure as this.

There are some points, of course, which I should like to see made clearer, but at this stage I cannot because of course my colleague was on the Select Committee which dealt with the Bill and I must be true to whatever he did. I can assure the House that the natives, as far as they understand it, are—I am supposed to be in this House representing natives who do not understand the position, and I think it is going to be to their benefit throughout the whole Colony that this Bill should be brought in and passed.

THE HON. THE ATTORNEY GENERAL: Your Excellency, my only reply is to apologize to the House for having been responsible for yet one more member leaving! (Laughter.) As he only spoke to the principle of the Bill and not to the amendments, I do not think there is anything for me to reply to. As this Council well knows, it is not desirable to introduce into this type of legislation reference to the Supreme Court which only leads to delay and expense to the unfortunate litigant.

The question was put and carried.

THIRD READING.

NATIVE MARKETING BILL.

THE HON. THE ATTORNEY GENERAL moved that the Native Marketing Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

MOTION.

SELECT COMMITTEE ON ECONOMY REPORT.

Notice of motion having been given by LT.-COL. THE HON. LORD FRANCIS SCOTT:—

“This Council expresses its appreciation of the work performed by the members of the Select Committee on Economy and of the able Report produced by them. This Council, whilst emphatically disagreeing with the recommendations set forth in paragraphs 114 and 251 on the subject of (a) Defence Force and (b) District Councils, trusts that Government will lose no time in considering the Report in detail in order that the majority of the remaining recommendations may be implemented forthwith and become effective prior to the submission to this House of the 1936 Estimates.”

The Order having been called from the Chair.

THE HON. THE COLONIAL SECRETARY : In view of the fact that Your Excellency has not had an opportunity of considering the recommendations of the Select Committee on Economy and that since, therefore, it would not be possible for Government to take any effective part in the debate other than giving assurances that Your Excellency will consider most carefully these recommendations, I suggest to the Noble Lord that he may desire in the circumstances to defer his motion until a subsequent session of the Council.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Sir, having been warned by Government as to the attitude the hon. the Colonial Secretary was going to take, I discussed this matter with my colleagues and they all unanimously agree that we should accept Government's suggestion that the matter should be postponed until a later date, when Government is in a position to fully answer all the points that will then be raised.

BILLS

SELECT COMMITTEE REPORT.

THE LOCAL GOVERNMENT (MUNICIPALITIES) (AMENDMENT) BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT : Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Local Government (Municipalities) (Amendment) Bill be adopted in so far as that Report is signed by the majority of the members of the Select Committee.

Two members of the Committee recommended that the Bill be amended by the deletion of those words in one clause of the Bill which deal with the ability of the Municipal Board to lease ferries if they so desire, and one member of the Committee recommended that the Bill should be thrown out *in toto*. A further member did not sign the Report at all.

Hon. members will remember that in the course of the debate on the second reading of the Bill, opposition was expressed to those clauses of the Bill which deal with leasing ferries to private companies. There appeared to be in the minds of members who opposed that if this clause remained and if the Municipal Board of Mombasa in effect made that agreement with a company, such procedure would delay the possibility of the policy of freeing the ferries. During the first meeting of the Committee, after a prolonged discussion on this point, at which we were not able to arrive at an agreement, we did agree that those members who happened to live in Mombasa and were returning there should discuss

the matter with the Municipal Board in order to discover whether the Board would be prepared to take over the ferries without the inclusion of those powers in the present Bill. I understood that the arrangement then was that if the Board took the line that only by the retention of this clause could they consent to take over the ferries, the members would withdraw their opposition.

The subject was discussed by certain members of the Committee with the Municipal Board, but I understand that the question of free ferries was introduced at that discussion. In consequence possibly of that, the Municipal Board at a later meeting did pass a resolution that in view of the widespread desire for a reduction in tariffs to stimulate coastal development, that it introduced a new factor into the matter which is beyond the scope of the Board which, though it recognized such reduction should receive serious consideration, is not in a position to subsidize the losses recommended, and that in their view the ferry services should not be taken over by themselves but should be taken over and managed as a Government concern.

The question of a free ferry service is not really germane to the passage of this Bill because, as I pointed out in my reply, on the second reading, this is purely an enabling measure. Moreover, during the course of this morning, the question of free ferries has been discussed and Government gave an assurance that that matter will be referred to the Central Roads and Traffic Board. Furthermore, it was agreed during the second reading that the correct authority to establish and run ferries at Mombasa was the Municipal Board.

Therefore, Government proposes to proceed with this measure, which enables the Municipal authority to take over ferries and, if they so desire, to enter into an agreement—and again I would stress the fact that if an agreement is proposed to be entered into the terms of the agreement have to be referred to the Governor in Council for approval, and any question of connected with or of free ferries will naturally be one of the subjects which will receive attention when it is submitted for Your Excellency's approval.

THE HON. T. D. H. BRUCE seconded.

VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, if the municipal authorities are given this power, which this Bill unquestionably gives them, will it enable them to squeeze out ferries so that natives who are deriving a benefit from the existing ferries will be denied rates that they have had to my knowledge for thirty-six years?

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: The Bill does give power to the municipalities to take over these services, and if they do take over what has hitherto been run by private agencies then due notice has to be given of that action and the approval of the Governor to such a course has also to be given.

The question was put and carried.

THIRD READING.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT moved that the Local Government (Municipalities) (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

THE HARBOURS REGULATION (AMENDMENT) BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Harbours Regulation (Amendment) Bill be adopted.

This is a complementary measure to the Bill which has just passed, and the Select Committee recommend that it be approved with one amendment which deals with the power to be given the Governor to appoint the date on which it shall come into force. That is an obviously required amendment because of the delay which must occur before any actual transfers of ferry control are effected.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THIRD READING.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT moved that the Harbours Regulation (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

THE WAKF COMMISSIONERS (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Wakf Commissioners (Amendment) Bill be adopted.

There is only one amendment proposed in this Report, which was one which in effect I gave notice of on the second reading. It puts in the word "means" for the words "shall include" which appear in clause 3 of the Bill. The reason for this amendment is that it might be held, if we say "shall include" to automatically include Indians.

The hon. member Mr. Shamsud-Deen said on the second reading that it might be possible to include all Indians in this Bill. He attended the meeting of the Select Committee, and when we went into details of the small Bill before us, he agreed with us that perhaps it would be wiser if his amendments were postponed until a more comprehensive measure was introduced to deal with the whole subject if it were desirable.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THIRD READING.

THE HON. THE ATTORNEY GENERAL moved that the Wakf Commissioners (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SECOND READING.

THE AGRICULTURAL ADVANCES (AMENDMENT) BILL.

THE HON. THE TREASURER : Your Excellency, I beg to move the second reading of the Agricultural Advances (Amendment) Bill.

This Bill is, I think, entirely non-controversial. It provides a measure of relief to the parties to the agricultural advances scheme by reducing the present rate of interest, which is 8 per cent, to $6\frac{1}{2}$ per cent, with effect from the 1st of January of the present year, the latter figure being equivalent to that charged by the Land Bank. The suggestion

came from the Land Bank Board acting as agents for Government in regard to the agricultural advances scheme, and it has been approved by the Secretary of State. The reasons for the change will be found in paragraphs 17 to 19 of the Land Bank Report on the agricultural advances scheme and in the reasons attached to the Bill.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

SECOND READING.

THE SUPPRESSION OF NOXIOUS WEEDS BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Suppression of Noxious Weeds Bill be read a second time.

This Bill has been before Government for some considerable time, and is really designed at the request of the agricultural authorities not so much to deal with the noxious weeds in existence at the present moment but to deal with any new weeds which may happen to come into the Colony. It is necessary to have such a Bill in order that we can act quickly and eradicate them in their initial stages and not wait until they have gained possession of the country before we move.

Clause 3 gives the Governor power to declare a particular area to be infected by any weed which he shall declare to be noxious in that area. Clause 4 puts the duty on the person responsible to report the presence of that weed and to proceed to clear it. Clause 5 provides for the inspection of that land by inspectors who will be duly appointed under the Ordinance and who may give notice to the person responsible to clear that land if necessary under the Ordinance.

Clause 7 gives power to an inspector or authority where the person responsible refuses to get on with the clearing, to do the work and charge it to the person responsible. Other sections are only matters of detail, such as the manner in which notice shall be served and so on. Clause 10 links up the native reserves with the other portions of the Colony, and its meaning is to put the responsibility on to the headman in charge of a particular area in which these weeds are found. By linking up this Ordinance with the Native Authority Ordinance and the Compulsory Labour (Regulation) Ordinance, the headman is empowered to give orders to the natives within his jurisdiction to remove any weeds which have been declared noxious.

THE HON. T. D. H. BRUCE seconded.

THE HON. CONWAY HARVEY : Your Excellency although I feel somewhat like Horatius, the circumstances of this particular case hardly justify me in emulating all that great Roman's physical prowess!

There is nothing original about this legislation, which has been proved necessary in all agricultural countries, and, as the hon. the Attorney General indicated, has formed the subject of representations from various farming communities in this country to Government during the last few years. I may add, it has also the complete approval of that representative Board, the Agricultural Board, which before arriving at a decision circularized the Farmers Associations throughout the Colony. Everybody knows that up to now Government have taken certain steps, and in doing so many of us think they have unduly strained the provisions of the Diseases of Plants Prevention Ordinance. We therefore welcome the *ad hoc* legislation giving Government power which may at any moment be so very, very necessary to eliminate the spread of noxious weeds.

It is fully realized, Sir, that without the co-operation of the farmers of the country whose interests are to be served, and the native authorities, this legislation will be quite ineffective, but so far as the former are concerned I can assure Government that that cordial co-operation of the European farmers will not be lacking.

VEN. ARCHDEACON THE HON. G. BURNS : Your Excellency, I will only deal with clause 10, and as I presume this Bill will go before the committee of the whole Council there is just one amendment I should like to propose. It refers to that part of the clause where it says "each headman who, under the provisions of the Native Authority Ordinance read together with the Compulsory Labour (Regulation) Ordinance, 1932,"

That is the difficulty I experience in giving my whole-hearted support to this Bill. It means there is going to be added on to the already fairly formidable list of things that natives can be compelled to do without any remuneration, another duty. The difficulty I experience is that in a headman's district which includes one side of the railway, will the natives in that district under that headman be compelled to clear the noxious weeds that may be found alongside the railway in that district? It will be putting on the natives in that district a read hardship indeed, if that is the case.

My objection to this being read with the Compulsory Labour (Regulation) Ordinance is that it gives a man, I speak reservedly, an unscrupulous headman—there are not

perhaps many but there are some—an opportunity to make use of the natives whom he can control behind the shadow of Government's authority to not only clear his own land whatever it may be but to also clear his very much larger piece of ground which he has accumulated since he become a headman under the shadow of Government.

I feel that it is quite possible that men who are unscrupulous will make use of this compulsory labour to serve their own ends instead of helping the natives in their little patches of land. I will move that the reference to the Compulsory Labour (Regulation) Ordinance be deleted from the Bill.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I feel I owe an apology to the hon. and reverend member for not explaining clause 10 more clearly than I have, because the result of the clause is exactly opposite to what he thinks.

The reason why I have added the words Compulsory Labour (Regulation) Ordinance, 1932, to the Native Authority Ordinance is in order to limit the power of the Native Authority Ordinance. Under the latter, a headman has power to give orders with regard to innumerable matters which have to be paid for. Subsequently, there was introduced the Compulsory Labour Ordinance which restricted the number of things for which unpaid labour could be called out. Therefore, I have linked up the Compulsory Labour Ordinance with the Native Authority Ordinance to remove from the minds of anybody that it would give any additional powers to a headman.

Actually, I am of the opinion now, that reading both of these Ordinances together and in spite of the restrictions placed on a headman by the Compulsory Labour (Regulation) Ordinance, if there is any noxious weed in that area on any particular person's land, it will be perfectly lawful for the headman to order the occupier to remove it, and that is as far as the matter goes.

I am glad to say that the hon. the General Manager has left the House, because he would be very alarmed to hear that a headman had any rights over his railway line! I can assure the hon. and reverend member that the General Manager will not be able to get the headman to call out his men in order to clear the railway lines.

VEN. ARCHDEACON THE HON. G. BURNS : Thank you.

The question was put and carried.

SECOND READING.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Girl Guides Bill be read the second time.

This Bill, and the one which immediately follows regarding the Boy Scouts, I must apologize for introducing into this extremely busy session and at this time. I know there are certain members who may not think it is of sufficient urgency, but actually Your Excellency has been good enough to show me one badge at least which was supposed to represent the Girl Guides Association which had in fact been made in Germany or somewhere and was being sold at the ordinary *dukas* in the town. It is therefore clear to everyone in authority that we must act quickly in order to stop this sort of thing. Both measures are the same, except for one section in the Boy Scouts Bill.

Clause 3 is the important clause, that no person shall use the uniform, badge, or anything of the description resembling the Girl Guides Association badges. You all know that the Girl Guides have been incorporated by charter in England, and this Bill forbids anyone imitating their badges. It also restricts in clause 4 the right of anybody and everybody to import even the correct badges and they cannot be sold without the authority of the Commissioner. You may rest assured that that authority will not be unduly withheld, because the more sales there are the better it will be in the interests of the Association. Clause 5 deals with falsely pretending to have any connection with the Association, and that is to prevent people going around the country and pretending they hold some position of importance in connection with the Association.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

SECOND READING.

THE BOY SCOUTS BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Boy Scouts Bill be read the second time.

This is the exact counterpart of the one which has just passed its second reading, with only one addition, clause 5, where provision is made to prevent a boy dressed in Boy Scout's uniform passing himself off as a police officer, a member of the K.A.R. or anything of that description. The object is to protect the native. No European would suspect a Boy Scout to be a person of authority such as a policeman, but

you must remember that Scoutmasters might represent themselves to natives as persons having legal authority to do something or other under the Police or any other Ordinance. This provision is inserted so that they will be punished if they do so represent themselves to be other than what they really are.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL moved that the Council do resolve itself into committee of the whole Council to consider the following Bills clause by clause :—

The Agricultural Advances (Amendment) Bill.

The Suppression of Noxious Weeds Bill.

The Girl Guides Bill.

The Boy Scouts Bill.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Council went into committee.

In Committee.

THE AGRICULTURAL ADVANCES (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE SUPPRESSION OF NOXIOUS WEEDS BILL.

The Bill was considered clause by clause.

Clause 7.

THE HON. THE ATTORNEY GENERAL moved that the words "Power of Inspectors to eradicate noxious weeds" be inserted as a marginal note.

The question was put and carried.

Clause 10.

VEN. ARCHDEACON THE HON. G. BURNS: In view of the explanation given on the second reading by the hon. and learned Attorney General for which I thank him, I understand that a headman will not have authority to call out men for a longer time under this measure, so that I do intend to move any amendment.

THE HON. THE ATTORNEY GENERAL: With regard to that, I would make it quite clear, not for a longer time than is permitted under the Compulsory Labour Ordinance.

VEN. ARCHDEACON THE HON. G. BURNS: That is what I mean.

THE HON. CONWAY HARVEY: Suppose the amount of time is insufficient to eradicate the weeds, what happens then? One would have thought that to carry out the provisions of this Ordinance it means eradicating the weeds irrespective of any time consideration.

THE HON. THE ATTORNEY GENERAL: As you are aware, Sir, I think sixty days is the permitted time under the Compulsory Labour Ordinance, and if natives working for sixty days in the reserve are unable to suppress these weeds it could hardly be said to be a new menace to the reserve.

THE HON. CONWAY HARVEY: That is quite right.

THE HON. THE CHIEF NATIVE COMMISSIONER: Under the Native Authority Ordinance headmen are empowered to call out natives for labour for so many days unpaid. If any additional labour is required, presumably it would be paid for, but I do not anticipate any need for paid labour. Probably there will be a larger number of natives available to do the work in the days allowed, and in that way all requirements will be met.

THE GIRL GUIDES BILL.

The Bill was considered clause by clause.

THE BOY SCOUTS BILL.

The Bill was considered clause by clause.

THE HON. THE ATTORNEY GENERAL moved that the following Bills be reported to Council without amendment:

The Agricultural Advances (Amendment) Bill.

The Suppression of Noxious Weeds Bill.

The Girls Guides Bill.

The Boy Scouts Bill.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY reported that the following Bills had been considered clause by clause in committee of the whole Council and had been reported to Council without amendment:

The Agricultural Advances (Amendment) Bill.

The Suppression of Noxious Weeds Bill.

The Girl Guides Bill.

The Boy Scouts Bill.

THIRD READINGS.

THE HON. THE ATTORNEY GENERAL moved that the above Bills be each read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bills were each read a third time and passed.

STANDING ORDERS SUSPENDED.

THE HON. THE ATTORNEY GENERAL moved that the Standing Orders be suspended to enable the Police (Amendment) Bill to pass through all its stages without due notice.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Standing Orders were suspended.

BILL.

FIRST READING.

On the motion of the hon. the Attorney General, seconded by the hon. T. D. H. Bruce, the Police (Amendment) Bill was read a first time.

SECOND READING.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I move that the Bill be read a second time.

This very short and urgent Bill has become necessary because it has been discovered that, under the present Ordinance, which was passed in 1930, in section 14 the following words occur: "this Bill shall apply to all future entrants into the police force and to all those who elect to come under the Ordinance within six months." That sounded very well no doubt at the time the Bill passed, but they forgot this and repealed the old Ordinance, with the result that all those persons who have not elected to come under the new Ordinance are not at the moment serving under any Ordinance whatsoever!

It is an omission which might happen to anyone, and must be rectified as soon as possible, and to ante-date it to the 1st of January, 1935, because the 1930 Ordinance was brought into force from that date. It is necessary this Bill should be passed at this session, otherwise many actions taken by some policemen during the last six months may be held to be illegal and *ultra vires*. Then no one will have an excuse of bringing an action against them and being over-ridden by an Ordinance later on.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL moved that the Council do resolve itself into committee of the whole Council to consider the Police (Amendment) Bill clause by clause.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Council went into committee.

In Committee.

THE POLICE (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE HON. THE ATTORNEY GENERAL moved that the Bill be reported to Council without amendment.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY reported that the Police (Amendment) Bill had been considered clause by clause in committee of the whole Council and had been reported to Council without amendment.

THIRD READING.

THE HON. THE ATTORNEY GENERAL moved that the Police (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

Council adjourned sine die.

WRITTEN ANSWERS TO QUESTIONS.

THE CURRENCY ORDINANCE, 1933.

No. 1.—THE HON. F. A. BEMISTER asked :

“Have the East African Currency Board Commissioners made use of the power to overdraw on the security of the three territories granted to them by means of the Currency Board Bill, 1933?

If the reply is in the affirmative, to what extent have they overdrawn, and what amount has been debited to Kenya?”

Reply.

The answer is in the negative.

No. 2.—THE HON. F. A. BEMISTER asked :

“What amount of currency was in circulation on 31st December, 1934?”

Reply.

The records of the Currency Board relate to currency in circulation in the currency basin of Kenya, Uganda and Tanganyika Territory, the returns prepared by the Board covering twelve months ending on 30th June of each year.

The quantity of shilling currency in circulation on 30th June, 1932, 1933 and 1934, respectively, was as follows:—

On 30th June, 1932	...	71,383,426	32
On 30th June, 1933	...	76,448,668	99
On 30th June, 1934	...	83,033,362	24

It will thus be seen that the quantity of currency in circulation on 30th June, 1934, shows an increase over 1933 of Sh. 6,584,693/25, and an increase over 1932 of Sh. 11,649,935/92.

KENYA LAND COMMISSION : SUPPLEMENTARY INSTRUCTION TO CHAIRMAN.

No. 3.—THE HON. SHAMSUD-DEEN asked :

“Is the Government aware that subsequent to the appointment of the Land Commission, the Secretary of State for the Colonies had issued any supplementary instructions to the Chairman of the Commission, which instruction went outside the terms of reference of the Commission?”

Reply.

No supplementary terms of reference or instructions were formally issued to the Commission. Their opinion was taken, however, on certain matters, which may, perhaps, be held strictly to fall outside their published terms of reference, e.g. the draft Native Lands Trust (Amendment) Bill, 1932, land required for mining purposes in Native Reserves, a certain area of land in the Coast Province, and the “privileged position” of Europeans in the Highlands.

KENYA LAND COMMISSION : ORDER IN COUNCIL *Re* HIGHLANDS.

No. 4.—THE HON. SHAMSUD-DEEN asked :

“Is the Government aware of any reason why the Land Commission went out of their terms of reference and recommended the promulgation of an Order in Council restricting all land transactions between different races, instead of merely defining the limits of the Highlands as intended by the terms of reference?”

Reply.

Government is not aware of any reason other than that contained in the Report why the Commission recommended the promulgation of an Order in Council regarding the Highlands.

ALLOWANCES TO POLICE OFFICERS.

No. 12.—THE HON. N. S. MANGAT asked :

“Will the Government state what sums were paid as travelling allowances and/or special allowances to the following police officers in respect of their investigation work in the arson case against the hon. N. S. Mangat and four others :

Capt. Neil Stewart,
Inspector W. R. Elliott,
A.S.I. Partap Singh?”

Reply.

The following motor allowances were paid to the officers named in respect of their investigation work in the case against the hon. N. S. Mangat and four others :—

	Sh.	cts.
Capt. Neil Stewart	41	60
Inspector W. R. Elliott	61	50
A.S.I. Partab Singh	59	50

Apart from these payments, no special allowances of any kind were granted to these police officers, or to any other member of the Force, in connection with their investigations.

POISONING OF CATTLE.

No. 35.—THE HON. E. H. WRIGHT asked :

“In view of (i) the serious cattle losses sustained last year by Colonel Abbay of Naro Moru, (ii) the subsequent evidence by both the Veterinary Department and the Police that the high mortality caused by arsenical poisoning and (iii) the belief that this arsenic was issued by a forest officer to his employees for poisoning baboons (and that without giving warning to neighbouring farmers), will Government disclose the findings of the Criminal Investigation Department, Police, and Veterinary investigations and, if (iii) above is confirmed therein, state what action they propose to take to deal with the poisoners and to compensate the loser?”

Reply.

Government is aware that cattle losses were sustained by Colonel Abbay of Naro Moru last year and that some of the deaths were caused by arsenical poisoning.

Investigations carried out by the Veterinary Department have proved that potential sources of arsenical poisoning, accessible to Colonel Abbay's cattle, existed on his farm at

the time of the said losses, and it is presumed that such sources were the cause of the loss of the cattle.

The last part of the question does not, therefore, arise.

EUROPEAN GOVERNMENT SCHOOL, KITALE.

No. 50.—LT.-COL. THE HON. J. G. KIRKWOOD asked :

“Is Government aware of the deplorable situation now existing at the European Government School, Kitale, i.e. :—

1. An outbreak of measles has taken place?
2. There is no sick room at the school?
3. The Principal's house has been turned into a hospital?
4. The Headmaster has been and is nursing girl pupils in his own quarters?
5. Will Government hasten the construction of a sick room?”

Reply.

Government is aware of the situation.

1. There have been 16 cases of measles during the current term, 14 girls and 2 boys.

2. There is no separate sick room. A portion of one of the dormitories was screened off but could not be used for infectious cases.

3. The answer is in the affirmative. The greatest number of cases of measles accommodated at any one time in the Principal's house was seven.

4. The answer is in the affirmative. There are at present no pupils suffering from measles at the school. The pupils concerned have either recovered or been removed from the school by their parents. The nursing of the cases was in charge of the Matron but it is understood that the Principal did duty on occasions at night time.

5. The proposal to expend the sum of £355 on the construction of a sick ward is being referred to the Standing Finance Committee at its next meeting.

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