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COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

SECOND SERIES

VOLUME XII

1941

First Session, 1941: 16th April to 26th June

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List of Members of the Legislative Council

President:

HIS EXCELLENCY THE GOVERNOR, SIR HENRY MOORE, K.C.M.G.

Ex Officio Members:

CHIEF SECRETARY (HON. G. M. RENNIE, C.M.G., M.C.).
ATTORNEY GENERAL (HON. W. HARRAGIN, C.M.G., K.C.).
FINANCIAL SECRETARY (HON. C. R. LOCKHART, C.B.E.).
CHIEF NATIVE COMMISSIONER (HON. E. B. HOSKING, O.B.E.).
DIRECTOR OF MEDICAL SERVICES (DR. THE HON. A. R. PATERSON,
C.M.G.). (1)
DIRECTOR OF AGRICULTURE (HON. D. L. BLUNT).
DIRECTOR OF EDUCATION (HON. A. T. LACEY, O.B.E.).
GENERAL MANAGER, K.U.R. & H. (BRIG.-GEN. THE HON. SIR GODFREY
RHODES, C.B.E., D.S.O.).
DIRECTOR OF PUBLIC WORKS (HON. J. C. STRONACH).
COMMISSIONER OF CUSTOMS (HON. A. W. NORTROP).
COMMISSIONER OF LANDS AND SETTLEMENT (HON. C. E. MORTIMER,
M.B.E.).

Nominated Official Members:

HON. S. O. V. HODGE (Prov. Commissioner, Coast). (2)
HON. H. M. GARDNER, O.B.E. (Conservator of Forests).
HON. C. TOMKINSON (Prov. Commissioner, Central).
HON. S. H. FAZAN, C.B.E. (Prov. Commissioner, Nyanza).
HON. T. A. BROWN (Solicitor General).
HON. R. DAUBNEY, C.M.G., O.B.E. (Director of Veterinary Services).
HON. G. B. HERDEN, C.M.G. (Postmaster General).
HON. H. IZARD (Prov. Commissioner, Rift Valley). (3)
HON. J. C. MUNDY (Commissioner of Income Tax). (4)

European Elected Members:

MAJOR THE HON. F. W. CAVENDISH-BENTINCK, C.M.G., Nairobi North.
HON. S. V. COOKE, Coast.
HON. LADY SIDNEY FARRAR, Nyanza.
HON. W. A. C. BOUWER, Uasin Gishu (Acting). (5)
COL. THE HON. E. S. GROGAN, D.S.O., Ukamba.
LT.-COL. THE HON. J. G. KIRKWOOD, C.M.G., D.S.O., Trans Nzoia.
COL. THE HON. F. S. MODERA, D.S.O., M.C., Nairobi South.
HON. W. G. D. H. NICOL, Mombasa.
LT.-COL. THE HON. LORD FRANCIS SCOTT, K.C.M.G., D.S.O., Rift
Valley.
HON. MRS. O. F. WATKINS, Kiambu. (6)
HON. E. H. WRIGHT, Aberdare.

Indian Elected Members:

HON. ISHER DASS (Central).
HON. SHAMSUD-DEEN (Central).
HON. R. KASIM (Western).
HON. J. B. PANDYA, C.B.E. (Eastern).
HON. A. B. PATEL (Eastern).

Arab Elected Member:

HON. SHERIFF ABDULLA BIN SALIM. (7)

LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL.—Contd.

Nominated Unofficial Members:

Representing the Interests of the African Community—

DR. THE HON. C. J. WILSON, C.M.G., M.C.

HON. H. R. MONTGOMERY, C.M.G.

Representing the Interests of the Arab Community—

HON. SHEIKH HAMED BIN MOHAMED BIN ISSA.

Clerk to Legislative Council:

MR. R. P. ARMITAGE (Acting).

Reporter:

MR. A. H. EDWARDS.

- (1) Dr. F. J. C. Johnstone, Acting, 17th and 18th April.
- (2) Vice Mr. G. H. C. Boulderson, on leave pending retirement as from 14th June.
- (3) Appointed Provincial Commissioner, Rift Valley Province.
- (4) Vice Commissioner of Mines.
- (5) Vice Major the Hon. S. G. Gheris, on active service.
- (6) Elected for Kiambu, 8th April, vice the Rt. Hon. Lord Erroll, deceased.
- (7) Elected for Arab Electoral Area, 29th January, vice Capt. Sir Ali bin Salim, K.B.E., C.M.G. (R.N.V.R.), deceased.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

16th April—

Hon. Director of Medical Services.

17th June—

Hon. Attorney General.

19th June—

Hon. Attorney General.

Hon. Member for Nairobi-South.

Hon. Nominated Arab Member.

24th June—

Hon. Attorney General.

Hon. Director of Agriculture.

Hon. General Manager, K.U.R. & H.

Hon. J. C. Mundy.

Hon. Acting Member for Usain Gishu.

Hon. Nominated Arab Member.

25th June—

Hon. Attorney General.

Hon. Director of Agriculture.

Hon. General Manager, K.U.R. & H.

Hon. Nominated Arab Member.

26th June—

Hon. Attorney General.

Hon. Director of Agriculture.

Hon. General Manager, K.U.R. & H.

Dr. the Hon. C. J. Wilson.

Hon. Nominated Arab Member.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

FIRST SESSION, 1941

Wednesday, 16th April, 1941

Council assembled at 11 a.m. at the Memorial Hall, Nairobi, on Wednesday, 16th April, 1941, His Excellency the Governor (Sir Henry Moore, K.C.M.G.), presiding.

His Excellency opened the Council with prayer.

The Proclamation summoning the Council was read.

OATH OF ALLEGIANCE

The Oath of Allegiance was administered to:—

Member for Kiambu Electoral Area—

Mrs. O. F. Watkins.

Member for Arab Electoral Area—

Sheriff Abdulla bin Salim.

COMMUNICATION FROM THE CHAIR

His Excellency made the following Communication from the Chair:—

Honourable Members of Legislative Council,

I do not propose to take up the time of the Council with any long address, but the march of world events has been so bewildering in its speed and complexity since this Council adjourned at the end of last December that perhaps it may be of advantage to compare briefly the position of Kenya then with that in which she finds herself to-day.

While the invasion of Greece by Italy in October last had introduced a new and important factor into the Middle East campaign, it was still impossible to foresee how far the struggle there would be localized or lead to developments on a much wider scale. It was not till the stubborn resistance of the Greeks in

Albania combined with the lightning successes of General Sir Archibald Wavell in North Africa rendered German aid to Italy imperative for the restoration of Axis prestige that a German incursion into the Balkans was forced upon her. It seems clear that Germany has become involved in the present fierce fighting in the Balkans owing to the stout resistance put up by the Greeks and the determination of Yugoslavia to maintain her independence.

What was our position here in Kenya at this critical period? Thanks to the generous aid we had received from the Union of South Africa, from the Rhodesias, from our sister colonies in East and West Africa and from India, any serious fear of invasion from Italian East Africa was passed, but her nuisance value was considerable and made necessary the retention here of a large body of troops. The problem, therefore, which confronted General Cunningham was whether in view of the vast distances to be covered over bad roads, many of which were little better than jungle tracks, he could hope to advance into the heart of Italian East Africa and maintain his communications before the advent of the long rains. How magnificently he has solved that problem you all know. Let me give you a few dates. After a period of patrol activity, the advance may be said to have started with the capture of Beles Gugani on 4th February. By 11th February Afmadu had fallen, three days later on the 14th our troops were in Kisumu, and Mogadishu fell on the 25th. In South Abyssinia it was the same story, Mega falling on the 18th and Moyale on the 23rd. Since then there has been no slackening in the speed of the advance,

[H.E. the Governor] and the month of March saw one after another of the enemy's strategic points falling into our hands. Berbera was recaptured by Aden forces on 16th March, and finally Addis Ababa was entered by our troops on 5th April. I am sure all honourable members will wish to join me in congratulating General Cunningham and all the troops under his command at this signal feat of arms. (Applause.)

But despite these local successes, the war is still to be won and we cannot for one moment relax our efforts. In Abyssinia itself there are still considerable enemy forces to be mopped up, and even after they have been liquidated I have no doubt that the maintenance of law and order will present serious difficulties to the officers responsible for the administration of occupied enemy territory. In North Africa the events of the last few days have served to remind us that the Germans are determined to keep our troops there fully extended in the defence of Egypt. In the Balkans an allied front has now been formed, and we know from past experience what stout fighters are the Greeks and Serbs, who once again are fighting side by side with us. But the weight of men and material against us is very great, and it is certain that a grim struggle awaits us. Whether simultaneously with this Balkan drive the oft threatened invasion of England will materialize we cannot tell, but if it does one thing is sure. Our folk at home are ready for them, and they can take it.

There is nothing new in what I have just said, and the facts must be clear to any intelligent person. But I think they bear recapitulation, since I should like to dispel any suggestion that, because the war has been driven so far from our borders, we here in Kenya can rest on the laurels of the East African campaign. Up to date it is true to say that, despite difficulties of overseas markets and some cases of individual hardship, the war has brought us prosperity. How long this may last no one can foretell. All the indications are that the shipping position during the next few months will become increasingly acute, since the overriding consideration is the reservation of space for materials or essential foodstuffs required by the United Kingdom

for the prosecution of the war. How far our internal market, artificially inflated by local military expenditure, is likely to be maintained at its present level by military needs or the demands of Italian occupied enemy territory it is difficult to forecast, but it is common knowledge that during the last year very considerable profits directly attributable to the war have been made by certain lines of business.

The case for the introduction of some form of excess profits tax on the lines of United Kingdom legislation has been generally recognized and would, I feel sure, have received general public support at an earlier date. But until quite recently I was advised that the statistical data necessary for the effective operation of the tax was lacking. That data is now available and provides information which fully justifies the enactment of the measure in Kenya. I have, therefore, decided on the advice of Executive Council to introduce a Bill in the near future to impose an excess profits tax modelled on similar taxes at present in force in the United Kingdom, South Africa and Southern Rhodesia. The rate of tax at present under consideration is not less than sixty per cent, and will be retrospective in effect from whatever date is ultimately fixed. I understand that a similar decision has been taken in Tanganyika and that an announcement to that effect is being made in that territory to-day. The desirability of introducing similar taxation in Uganda and Zanzibar is also under consideration by the governments concerned. The Zanzibar Government, if such taxation is introduced in Zanzibar, is in favour of its introduction on an East African basis.

No thoughtful person who considers the latest additions to income tax in the United Kingdom and the conditions of life and the standards of living so cheerfully assumed by the British public at home, can fail to appreciate how small in comparison are the financial sacrifices which we in this country are making. I am confident, therefore, that this measure of war taxation will receive general support. (Hear, hear.)

In November last I indicated that the results of last year were likely to result in a considerable surplus, and that the question as to how that surplus could

[H.E. the Governor] be best devoted to the prosecution of the war was under consideration. Final figures are still not yet available, but it seems probable that it will not be less than £150,000. It is proposed, with the approval of the Secretary of State, to make a grant of £10,000 to the Air Ministry towards the cost of the Kenya Auxiliary Air Unit, and a grant of £5,000 to the Army Welfare Officer for the use of the troops. It was also intended originally to consider a grant to army funds in respect of road expenditure for military purposes. Owing to the change in the military situation the military road programme has had to be radically revised, and the question is being re-examined by the Central Roads and Traffic Board and the Standing Finance Committee in the light of the altered circumstances.

Closely related with these proposals is the possibility of making use of Italian prisoners of war on road work or other public works. This has been under discussion with the military authorities, who are solely responsible for the custody and maintenance of prisoners of war. Government has expressed its willingness in principle, subject to the approval of this Council and the Secretary of State, to find certain funds for public works upon which prisoners can be employed when they are available. They are not available at present.

During the middle of January Sir Philip Mitchell was seconded from the post of Deputy Chairman of the Governors' Conference for special duties on General Sir Archibald Wavell's staff. I should like to take this opportunity to pay a tribute to the work done by him while he was Deputy Chairman.

Consequent on the departure of Sir Philip, the staff and work of the Secretariat of the Governors' Conference has been reorganized. The title of Secretary has been changed to Chief Secretary, and in addition to his previous duties Mr. Gurney has been appointed Chairman of the East African War Supplies Board and of the newly constituted East African Civil Supplies Board, which are due to meet next week. Kenya, Uganda, Tanganyika Territory and Zanzibar are represented on these Boards.

Hon. members have already seen, from articles in the Press, the activities of the East African delegation to the Eastern Group Conference which was held in New Delhi at the end of last year. The most important and pressing matters arising out of the Conference were the establishment in India of a Central Provision Office to co-ordinate military requirements within the area concerned, and the appointment of a new body called the Eastern Group Supply Council with headquarters at New Delhi to co-ordinate the production and supply of munitions and stores to meet those requirements. This organization was to carry into effect the proposals of the Eastern Group Conference. Those proposals have now been approved by His Majesty's Government and by the other Governments concerned. In accordance with the usual practice in organizations of this kind, the participating Colonies will not appoint their own members on the Supply Council but will be represented by the United Kingdom representative, who will be the Chairman of the Council. Sir Archibald Carter, formerly Permanent Secretary to the Admiralty, has been appointed to this post, and he is now in India. Kenya and the other colonies and dependences concerned can send advisers to the Council when they so desire, while a member of the Colonial Office has been attached to the Chairman's staff to act as adviser on colonial matters generally, and arrangements have been made to keep him fully informed of the work of the Council.

The presence of large military forces in East Africa has placed some strain on the Colony's resources. Since January 1st the East African War Supplies Board has been responsible for providing the Army's requirements of locally produced foodstuffs and, despite the quantities involved, has succeeded in meeting those demands with little interference with civilian supplies. In certain cases, such as butter, bacon and cheese, some rationing to distributors has had to be introduced, and at times there has been a shortage of other foodstuffs, such as potatoes, but on the whole the civilian population has suffered very little inconvenience. A word of praise is due to the military suppliers, whether commercial firms in Kenya, Uganda and Tanganyika or the Supply

[H.E. the Governor] Board Controls, for the way in which they have met the situation. I understand that deliveries have been coming forward regularly, and that the arrangements made by the Board are working smoothly.

The supply position in regard to imported goods has been kept under constant review, and in all the circumstances it can be regarded as satisfactory, with one important exception, that of iron and steel products. The heavy demand for war purposes, both within the Empire and in the United States of America, necessarily means that iron and steel can be made available only for purposes vital to the war effort, and it is essential that the public should recognize this position and adapt themselves to it.

The work of the various Supply Board Controls has continued along established lines. The Supply Board Coffee Control has been the subject of criticism, and much correspondence has appeared in the Press. I would only say here that the introduction of Coffee Control would not have been considered unless the Government, taking the broad view, had believed that control was necessary in war-time because of the difficulties in marketing which were considered likely to arise and which, in fact, have arisen. Allegations have been made in connexion with certain transactions effected by the Control Committee, and I have decided, at the request of that Committee and in the interests of all concerned, that an inquiry should be held. The appointment of a Commission and its terms of reference have already been announced.

On the general question of control from the standpoint of coffee-growers, I would remind hon. members that the Coffee Industry Ordinance of 1934 contained legislative provision for a conference of coffee growers and the appointment of a coffee board, and that so long as that Ordinance remains in operation in its present form Government must look to these official bodies as the channel of expression for the views of coffee growers on matters affecting the industry. It can be regarded as unlikely that Government would fail to accept a majority recommendation of a conference of coffee growers convened under the

provisions of the Ordinance on any subject affecting the industry from the growers' standpoint, provided that no major financial obligation by Government were involved. I would, however, remind hon. members that the present scheme of control does involve a financial obligation by Government, and at this session hon. members will be asked to approve an increase in the Government guarantee to the Coffee Control from £60,000 to £90,000. I must make it clear in this connexion that in present circumstances Government would feel unable to invite hon. members to assume financial obligations on behalf of the taxpayers in connexion with any scheme of coffee control which did not include control of marketing.

Two matters which are, I know, causing anxiety in certain quarters are the questions of post-war reconstruction and of soil conservation. As regards the former, the course and duration of this war are so incalculable that the production of a plan to meet post-war conditions in this Colony must present very special difficulties. I propose, however, to appoint a small committee to study the problem and keep the situation under continuous review.

Soil conservation in its broadest sense, including such questions as soil erosion, reforestation and improved water supplies, involves both staff, materials and money, which I had hoped to obtain through the Colonial Welfare Fund. Owing to the war such a programme has had to be postponed, but in certain native reserves and settled areas good progress is being made with such staff as is available. So much has been said and written on this subject that the man who loves his land can be in no doubt as to where his duty lies, and on the preventive side a good deal can be done, and in some cases is being done, by the individual landowner himself. In the native reserves this educational progress must necessarily be slow, but in certain areas there has been a most encouraging response to the efforts made by officers of the Administration and the Agricultural Department working in collaboration. The provision of more native agricultural instructors is an urgent need, and the possibility of training more of them despite the war is being examined. It is also proposed to

[H.E. the Governor] increase the vote for reforestation. So far as more ambitious programmes are concerned, I suggest that they might well be considered by the committee to be appointed on post-war reconstruction.

Hon. members will see that most of the business on the Order Paper is confined to financial resolutions of a minor character and certain amending legislation. The success of the local War Loan, which necessitates coming to Council for authority to raise a further amount, is most encouraging. I hope that more and more persons will take advantage of this method of saving which the loan provides. The Pyrethrum Amendment Bill, embodies certain new features as to the control of that commodity and represents the considered views of the Pyrethrum Board.

In conclusion, I should like to extend a welcome to Mrs. Watkins, who succeeds the late Lord Erroll, whose untimely death in such tragic circumstances we all deplore, and also to Sheikh Abdulla bin Salim, who succeeds the late Captain the Hon. Sheikh Sir Ali bin Salim.

MINUTES

The minutes of the meeting of 19th December, 1940, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

By THE CHIEF SECRETARY (MR. RENNIE): Schedule of Additional Provision No. 4 of 1940.

Standing Finance Committee Report on Schedules of Additional Provision Nos. 5 of 1939 and 3 of 1940.

Kenya Judicial Department Annual Report, 1940.

Printing and Stationery Department Annual Report, 1940.

Prisons Department Annual Report, 1940.

By THE DIRECTOR OF AGRICULTURE (MR. BLUNT): Agricultural Department Annual Report, 1940.

Amani Agricultural Research Station Annual Report, 1939.

By THE DIRECTOR OF EDUCATION (MR. LACEY): Education Department Annual Report, 1940.

By THE COMMISSIONER OF LANDS AND SETTLEMENT (MR. MORTIMER): Quarterly Land Grants Return, Oct.-Dec., 1940.

By MR. GARDNER (Conservator of Forests): Forest Department Annual Report, 1940.

By MR. HEDDEN (Postmaster General): Abridged Annual Report of Posts and Telegraphs Departments, 1940.

NOTICE OF MOTION

APPOINTMENT OF CONSERVATION BOARD
Notice of the following motion was given by Lord Francis Scott (Rift Valley):—

"Be it resolved that a Conservation Board be appointed immediately for the purpose of conserving the assets of the Colony and Protectorate in respect of water, soil, and forests, and of enforcing the application in practice of the legislation enacted for this purpose in all parts of the Colony and Protectorate."

BILLS

FIRST READINGS

The following Bills were read a first time, on motion of the Attorney-General (Mr. Harragin):—

The Criminal Procedure Code (Amendment) Bill.

The Local Government (Rating) (Amendment) Bill.

The European Officers' Pensions (Amendment) Bill.

The Non-European Officers' Pensions (Amendment) Bill.

The Water (Amendment) Bill.

The Native Liquor (Amendment) Bill.

The Vagrancy (Amendment) Bill.

The Interpretation and General Clauses (Amendment) Bill.

The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Bill.

The Pyrethrum (Amendment) Bill, and

The War Risks Insurance (Amendment) Bill.

Notice was given to move the subsequent readings at a later stage of the session.

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, 17th April, 1941.

Thursday, 17th April, 1941

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 17th April, 1941. His Excellency the Governor (Sir Henry Moore; K.C.M.G.), presiding.

His Excellency opened the Council with prayer.

OATH OF ALLEGIANCE

The Oath of Allegiance was administered to:—

Ex Officio Member—

Dr. F. J. C. Johnstone, Acting Director of Medical Services.

MINUTES

The minutes of the meeting of 16th April, 1941, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 45 of 1940—EUROPEANS AND ASIANS OF MILITARY AGE

MR. WRIGHT (Aberdares) asked:—

1. What is the estimated number of—

- (a) Unofficial male Asiatics; and
(b) Unofficial male Europeans of military age in Kenya?

2. How many of such (a) Asiatics and (b) Europeans have joined the military forces?

MR. HARRAGIN: 1 (a) The estimated number of unofficial male Asiatics of military age normally resident in Kenya is 11,750.

(b) The estimated number of unofficial male Europeans of military age normally resident in Kenya is 5,200.

2 (a) The approximate number of such Asiatics who have joined the military forces is 1,500.

(b) The approximate number of such Europeans who have joined the military forces is 2,100.

No. 3—PRISONERS OF WAR ON ROAD WORK

MR. COOKE asked:—

(a) Is Government aware that the South African Government has prepared a scheme by which prisoners of war will be employed in the Union on the building of roads?

(b) Is Kenya Government contemplating a similar use of prisoners in this country?

(c) If not, why not?

MR. RENNIE: (a) Government understands this to be the case but has no official information on the subject.

(b) Government is considering the matter in consultation with the Secretary of State for the Colonies and the military authorities.

(c) In view of the reply to (b) this question does not arise.

No. 4—SOUTH AFRICAN ROAD EXPERTS

MR. COOKE asked:—

(a) Will Government consider the engagement in this country after the war of those South African road experts who are at present here on military service, and will they consider the retention of some of the valuable road-making machinery now here, with the object of a large-scale road policy in Kenya?

(b) If not, why not?

MR. STONACH (Director of Public Works): (a) and (b) Yes, the Government will consider these questions, provided that the personnel and material referred to are in or near Kenya at the end of the war and can be made available by the Government of the Union of South Africa, and provided further that funds for an extensive road improvement programme are then available or likely to be available soon.

No. 6—FOREST AND SOIL DESTRUCTION

MR. COOKE asked:—

Is Government aware that there is a growing resentment by thinking and far-seeing people throughout Kenya at what they consider the wilful failure of the authorities to take strong and effective action to stop the present cutting down of forests and destruction of soil going on throughout the country?

MR. BLUNT: No, Government however, fully realizes that in spite of successful localized efforts in many districts much more remains to be done towards preserving the forests and soils of Kenya.

[Mr. Blunt]

Lack of staff and insufficiency of funds preclude an intensified attack on the problem in war time, but much can be done by thinking and far-seeing occupiers of land in Kenya themselves and the Government welcomes the growth of an enlightened public opinion on the subject.

MR. COOKE: Arising out of the answer does the first "No" mean that Government is not in touch with thinking people in this country?

No. 8—K.D.F. CLASSES

COL. MODERA (Nairobi South) asked:—

Will Government state—

(a) How many Europeans in each of Classes I, II and III under the Defence Force Ordinance have, since 1st September, 1940, been permitted by the Director of Man Power to leave their civil employment to join His Majesty's Forces?

(b) How many exemptions previously granted by the Tribunal under the Defence Force Ordinance have been cancelled subsequent to 1st September, 1940? What proportion of such cancellations occurred in Classes I, II and III respectively?

(c) How many Europeans according to the statistics compiled by Directorate of Man Power remain exempted from military service within their respective classes under the Defence Force Ordinance?

(d) What, according to the statistics compiled by the Directorate of Man Power, are the numbers of Kenya Defence Force in Classes I, II and III respectively not scrving with His Majesty's Forces? How many of these are included in Nairobi District defined in Government Notice No. 453 of 1938?

(e) What is the constitution of the Man Power Committee for Nairobi District as designated in Government Notice No. 453 of 1938? When

was that Committee first appointed? How often has that Committee met since first appointed? What is the date of the last meeting of that Committee?

MR. HARRAGIN: (a) All applications have been dealt with by the Kenya Defence Force Tribunal. The numbers are as follows:—

Class I	19
Class II	65
Class III	45
Total	129

(b) Class I	19
Class II	65
Class III	45
Total	129

(c) Class I	227
Class II	1,336
Class III	1,015
Total	2,578

(d) The answer to the first part of the question is as set out in (c) above. The answer to the second part of the question as follows:—

Class I	67
Class II	377
Class III	183
Total	627

(e) The constitution of the Man Power Committee for Nairobi District as designated in Government Notice No. 453 of 1938 is as follows:—

The District Commissioner (Chairman).

The District Commandant, K.D.F.

C. K. Archer, Esq.

H. B. Hamilton, Esq.

Major W. B. Brook, J.P.

This Committee was first appointed under Government Notice No. 1033 of 1939. The Committee has never met. In view of this answer the question as to when the last meeting was held does not arise.

[Mr. Harragin]

The reason why the Committee has never met is because the then Deputy Director of Man Power (the late Earl of Erroll), who was dealing entirely with the European side of the Man Power Committee's work, was of the opinion that it would be easier for the Central Man Power Committee to deal directly with European personnel in the Nairobi District.

The District Commissioner advises that the lists of personnel kept in the District Commissioner's Office were made available to Lord Erroll.

COL. MODERA: Arising out of that last answer, is it the intention of the Committee to meet or dissolve?

MR. HARRAGIN: I am not aware of what the intention of the Committee is at the moment, not being a member, but in answer to the question I should imagine that the answer is in the negative, that it would be dissolved.

NO. 9—WOMEN'S TRANSPORT SERVICE

COL. MODERA asked:—

(a) Will Government state whether members of the Women's Transport Service serving in this Colony are members of a military unit?

(b) Whether the pay of women who are serving in the Women's Transport Service as officers and other ranks and who joined up from Government service, is made up by Government to the equivalent of the pay drawn by them in Government service?

If the answer is in the negative, why are female treated differently to male Government servants who have joined the fighting services?

(c) Does the time spent by women who are serving as officers or other ranks in the Women's Transport Service and who joined from Government service count for pension?

If the answer is in the negative, why are female treated differently to male Government servants who have joined the fighting services?

MR. RENNIE: (a) No.

(b) (i) No.

(ii) In view of the fact that the Women's Transport Service is not a military unit the question of differentiation of treatment does not arise.

(c) Yes, provided that the individuals concerned are serving in pensionable appointments.

LORD FRANCIS SCOTT: Does not Government consider it a very ungenerous method of treating these women who have given up their time to the service of the country, merely because in a technical way they are not members of a military unit? (Hear, hear.)

NO. 10—NORTHERN SOMALI TRIBES SETTLEMENT

MR. COOKE asked:—

In the matter of post-war settlement and reconstruction will Government consider the necessity of providing sufficient and suitable land for those members of the Northern Somali tribes who have lived many years in Kenya and consider it their home?

Will Government bear in mind that many of these men gave loyal and devoted service in the past and that politically, if for no other reason, it is unwise to keep them landless?

If the first part of this question is in the affirmative, will Government set up a small committee to study the matter and to make recommendations?

MR. MORTIMER: The settlement of the Northern Somali tribes has been delayed by the war but it has received and will continue to receive the close consideration of the Government, in the light of the views expressed in paragraphs 812 to 815 of the Report of the Kenya Land Commission.

The claims of those referred to in the second part of the question will be kept in view.

No advantage is seen in the appointment of a committee at the present stage, but the proposal will not be overlooked when the time is opportune.

MR. COOKE: Arising out of that answer, will Government give an assurance that they will get a move on in the

[Mr. Cooke]

matter because, according to the reply, it has been delayed since the report of the Land Commission, in 1934, seven years ago? Will Government give an assurance that the matter will be expedited?

MR. MORTIMER: I can give an assurance that the matter will be expedited as far as circumstances permit.

NO. 11—LAND TENURE COMMITTEE

MR. WRIGHT asked:—

When will the committee appointed in September, 1939, to advise on the conversion to freehold of leasehold land titles submit its report?

MR. MORTIMER: The delay in the submission of the report of the Land Tenure Committee has been occasioned by the prolonged illness of the Chairman of the Committee and by the entry of Italy into the war which made it difficult for members to find time to carry on this work. A draft report is now in course of preparation and it is hoped that the final report will be ready for submission to Government soon after the middle of this year.

NO. 12—TRADE DISPUTES BOARD OF INQUIRY

MR. ISHER DASS asked:—

In view of the assurance given by Government in the last session of Legislative Council for the appointment of a tribunal for the settlement of labour disputes, will Government please state:—

(a) The likely date of the setting up of the tribunal?

(b) The names of the personnel of such tribunal?

MR. RENNIE: (a) His Excellency the Governor has appointed a Board of Inquiry under section 8 of the Trade Disputes (Arbitration and Inquiry) Ordinance, 1940, and a notice to this effect has been published in this week's issue of the Gazette.

(b) The Board is composed of the Director of Man Power together with such other persons as the Director may co-opt for the purpose.

NO. 14—LAND AND WATER PRESERVATION (AMENDMENT) ORDINANCE, 1940

MR. COOKE asked:—

1. Will Government say the number of applications made for advances under 4(1) of the Land and Water Preservation (Amendment) Ordinance, 1940?

2. How many of these applications have been granted?

3. And the total sum advanced up to (a) 7th December, 1940? (b) 31st March, 1941?

MR. LOCKHART (Financial Secretary): 1. None.

2. and 3. In view of the answer given to part 1, parts 2 and 3 of the question do not arise.

MR. COOKE: Arising out of that, can Government reconcile the statement made in Council that Regulation No. 53 of 1940 was brought in in order to expedite this matter so as to get a move on with this credit advance business? That was the excuse for the Regulation last session.

MR. LOCKHART: I shall have to ask for notice of that question.

NO. 16—WAR RISKS INSURANCE FUND

MR. COOKE asked:—

Will Government state the total sum contributed by Kenya and Uganda to the War Risks Insurance Fund up to and including 31st March, 1941?

And the total approximate sum expended in administering the Fund up to and including the same date?

MR. LOCKHART: 1. The figures to 31st March are:—

Kenya Contributions ..	£50,895
Uganda Contributions ..	£29,017

Cost of Administration—

Kenya	£1,151
Uganda	£551

2. In addition, £297 has been spent on office furniture and equipment which will have some residual value. These figures do not include commission payable to agents or allow for certain refunds and adjustments which may be necessary.

No. 19—LAKE STEAMER SERVICE
MR. KASIM asked:—

Is the hon. General Manager, K.U.R. & H., aware of the fact that for the last few months s.s. *Usoga*, one of the steamers sailing weekly round Lake Victoria, cannot cope with the heavy first-class passenger traffic, due to increased demands from members of His Majesty's Forces as well as the civil population?

If the reply is in the affirmative, and in view of the expected increase in the tourist traffic from America, Sudan and India, will he please state what are the insurmountable difficulties in the way of running the s.s. *Rusinga*, another lake steamer, at present lying idle, as an auxiliary service?

SIR GODFREY RHODES (General Manager, K.U.R. & H.): It is a fact that sufficient cabin accommodation has not been available for all members of His Majesty's Forces who have desired to do the round trip on the Lake Victoria steamer during their leave and since the beginning of the present year soldiers have slept on deck in camp beds provided by the administration. Two cabins are now reserved for the use of those sleeping on deck.

2. All civilian passengers who have received accommodation have been provided with berths in cabins, but it is possible that civilian passengers who have not received accommodation and who joined the ship at the south end of the lake between one Tanganyika port and another have had to be accommodated in camp beds on a few occasions. If it were not for the additional military traffic there would be adequate accommodation for all civilian passengers. As the military traffic is likely to decrease with the dispersal of the forces in areas further afield, the question of placing the *Rusinga* in commission was not considered in this connexion.

3. Consideration was given in the latter part of last year by Railway Advisory Council to the question of placing an extra steamer in commission. Council considered that the introduction of a second round-the-lake steamer was not justified on financial grounds. This opinion was accepted by the High Commissioner for Transport.

No. 20—INCOME TAX COLLECTIONS
COL. MODÈRA asked:—

1. What is the amount of income tax collected between 1st January and 31st March, 1941, in respect of assessment years up to 31st December, 1940?

2. What is the amount of tax already assessed but still outstanding at 31st March, 1941, in respect of assessment years up to 31st December, 1940?

3. Have a number of returns, showing liability for tax, been sent in for assessment of income tax, for the year of assessment 1940, in respect of which no assessment had been made by the Commissioner of Income Tax up to 31st March, 1941? If so, what is the number of such cases, and the total amount of income tax shown to be payable on such forms?

MR. LOCKHART: 1. Final figures of revenue collections up to 31st March are not yet available but an approximate figure is £89,500.

2. Approximately £70,000.

3. About 1,500 returns representing an estimated tax assessment of £70,000 had not been assessed up to the 31st March.

SCHEDULES OF ADDITIONAL PROVISION

Nos. 5 OF 1939 AND 3 OF 1940

MR. RENNIE: Your Excellency, I beg to move that the Standing Finance Committee Report on Schedules of Additional Provision Nos. 5 of 1939 and 3 of 1940 be adopted. Hon. members have been supplied with a copy of this report, and I should like to draw attention to a small typing mistake in the first sentence, where the word "motion" should be read for the word "action". The Schedules have been in the hands of hon. members for some time.

As regards No. 5 of 1939 it refers, as hon. members are aware, to the excess expenditure incurred in 1939 after the accounts had been wound up. The revenue expenditure schedule covers additional provision of £117,421, but £1,031 is specifically set off by savings, and approximately £2,273 has been recovered by consequential increased

(Mr. Rennie) revenue. The net expenditure, as explained on the first page of the schedule, is therefore £114,117. The loan expenditure schedule covers additional loan provision of £17,837.

The other schedule, No. 3 of 1940, deals with the period 1st July to 30th September, 1940, and covers an expenditure of £213,208. Of this, £2,604 is specifically set off by savings, and a sum of approximately £74,444 will be recovered by consequential increased revenue. The net additional expenditure is therefore £136,160.

Both schedules have been examined by the Standing Finance Committee, and in their report they recommend that both should be approved.

MR. HARRAGIN seconded.

The question was put and carried.

No. 4 OF 1940

MR. RENNIE: Your Excellency, I beg to move that Schedule of Additional Provision No. 4 of 1940 be referred to the Standing Finance Committee. As hon. members are aware, this is the normal procedure.

MR. LOCKHART seconded.

The question was put and carried.

FIRE CONTROL BILL

SELECT COMMITTEE APPOINTED

MR. HARAGIN: Your Excellency, I beg to move that a select committee be appointed to examine the Control of Fire Bill prepared by the committee appointed by His Excellency the Governor in Council to consider what steps should be taken to control grass fires and to draft any necessary legislation to give effect to their recommendations, in the light of comments received from interested persons and public bodies, and to report thereon, the select committee to consist of: myself, as Chairman, or the Solicitor General (Mr. Brown); and the hon. members Mr. Blunt, Mr. Gardner, Mr. Wright, Lady Sidney Farrar, Mr. Montgomery and Mr. Isher Dass.

The history of the Fire Control Bill to date is that during last year a com-

mittee sat, they reported towards the end of the year, and attached to their report was the bill in question. As a result of the report, Government circulated the report and the bill to all interested parties in the Colony asking for their comments and criticisms. Those comments and criticisms are now to hand, and it is necessary for some one to examine them, because they differ, as might be expected in a very difficult subject such as this, and it is necessary to collate the replies and come to some decision on them, as to whether or not the bill should be submitted to Council in its present form or whether it will require amendment. Under the circumstances, Government thinks it will save time if a select committee of Council sits on the bill before it is presented in order to save appointing a select committee on the second reading. I am asking Council to adopt the slightly unusual method of appointing the hon. member Mr. Brown as chairman alternative to me, because it is possible that I may be extremely busy in the near future and the sittings of the committee might be delayed in consequence.

MR. BROWN seconded.

The question was put and carried.

PENSIONS AND GRATUITIES

MR. LOCKHART: Your Excellency, I beg to move that this Council approve the payment of a reduced pension, at the rate of £8-0-2 a year, with effect from 29th January, 1941, inclusive, and a gratuity of £26-13-4 to Mr. M. S. F. X. C. V. de Souza in respect of his temporary service on the military establishment from 1st September, 1916, to 31st July, 1918, both days inclusive, and the payment of a reduced pension at the rate of £5-4-5 a year with effect from 15th April, 1941, inclusive and a gratuity of £17-8-4 to Mr. T. F. Pereira in respect of his temporary service on the military establishment from 21st May, 1915, to 31st August, 1916, both days inclusive.

These sort of pensions under the old Superannuation Act have been superseded by the provisions of the Non-European Officers Pensions Ordinance. As has happened on previous occasions, it is necessary to approve of this part

[Mr. Lockhart]
of the pensions by motion of Council,
as it is not now covered by the existing
law.

MR. HARRAGIN seconded.

The question was put and carried.

INCOME TAX RULES

NON-RESIDENTS' ALLOWANCES

MR. LOCKHART: Your Excellency,
I beg to move: Be it resolved, that the
Income Tax (Non-Residents' Allowances)
(Amendment) Rules, 1941, shall come
into operation with effect from 1st
January, 1940.

In the principal Rules, (a) and (b) provide for an allowance for income tax purposes in the case of non-residents—£100 in the case of unmarried taxpayers and £130 in the case of the married individual. The amending Rules make exactly the same provision and do not alter the income tax allowances in any way. All they do is to amend the reference by which the persons qualifying for the allowances are described, owing to the fact that the Income Tax Ordinance itself has been amended. Therefore the reference to the relevant provisions also need amendment. It does not affect in any way the position of non-resident taxpayers but is purely a drafting technical amendment.

MR. HARRAGIN seconded.

The question was put and carried.

LOAN RE-ALLOCATION

INDIAN SCHOOL, KISUMU

MR. LOCKHART: Your Excellency,
I beg to move: Be it resolved, that this
Council hereby approves the expenditure
of a further £4,000 upon the purposes
specified in the first schedule hereto, as
a charge against Loan Account, and
further approves that the provision there-
of be found by re-allocation from the
item of loan account specified in the
second schedule hereto:

FIRST SCHEDULE

£305,600 (1933) Loan—

Public Building (Education
Building, Indian School,
Kisumu)

£4,000

SECOND SCHEDULE

Savings

£305,600 (1933) Loan—

Public Buildings (Educa-
tional Building, Nairobi
Indian Boys School) ..

£4,000

This motion has the effect of giving the approval of this Council to the expenditure from loan funds of £4,000 on the construction of part of the Indian school at Kisumu, the sum having been found from savings on the Nairobi Indian School. It is proposed with this sum to build class rooms which will accommodate the whole of the secondary school, and it is also hoped to provide further class rooms as well.

MR. HARRAGIN seconded.

The question was put and carried.

WAR LOAN ORDINANCE, 1940

ISSUE OF FURTHER LOANS

MR. LOCKHART: Your Excellency,
I beg to move: Be it resolved that, under
section 2 of the War Loan Ordinance,
1940, this Council authorizes the raising
of further loans not exceeding £500,000
by the issue, and sale whether within or
without the Colony, of registered bonds.

The aim which we set ourselves at the last session of raising £500,000 in subscriptions to the East African war loan has been attained. In fact, the total subscriptions now slightly exceed this figure. That this amount should have been reached in so short a time, three and a half months, as Your Excellency said in your address yesterday, is most encouraging, and I feel that a notable part of it is due to the very hard work put in by the War Savings Committee under the chairmanship of Mr. A. Lawrie and the secretaryship of Mrs. A. E. Vasey. Hon. members may also be interested to know that deposits in the Post Office savings bank have also shown a very marked increase, and the funds so subscribed are being invested in war loan issues in the United Kingdom.

We now propose as the next objective a further £500,000, and although I think it may be too much to hope that we shall reach it in the same length of time it should be possible to reach it before the end of the year.

[Mr. Lockhart]

I should like to take this opportunity to make some reference to the terms of this loan which, of course, have not been changed. As hon. members know, we follow in the East African war loan the general terms of the last previous issue in the United Kingdom, which was 2½ per cent national war bonds. Since that date, in the United Kingdom there have been two further issues—a further issue of 2½ per cent national war bonds repayable in 1946 or 1948 (that is one year worse than the previous issue which we followed here); and also an issue of 3 per cent savings bonds which are, however, repayable in 1965 and are not, therefore, comparable in their terms of interest to the present issues. Those replace the 3 per cent war loan in the United Kingdom, which previous issue was repayable in 1955.

It is quite true that in the United Kingdom the issue of 3 per cent defence bonds is still on sale, limited to £1,000 to each person, but, for the matter of that, so are other prior issues which give a more favourable rate than 2½ per cent. There is the 3½ per cent war loan of the last war, which is also free from income tax to non-residents of the United Kingdom and which at the present price, about 103, will give a return of £3-8-0 per cent. To mention another issue comparable to our own, in October last there was an issue in the Union of South Africa of 2½ per cent war loan repayable in 1946. That loan was issued at 99, but I can hardly think that a discount of £1 would have made any particular difference or appeal to investors in East Africa. This was issued last October, and it is quite likely, I should say, that if it was made to-day the Union Government would not give a discount at all.

Finally, hon. members may have noticed yesterday in the *East African Standard* that in Australia they have issued a war loan, a short-date loan of 2½ per cent and a long-date loan of 2½ per cent. We do not know the exact year of redemption of the short-date loan, but it is very unlikely that it differs materially from ours, which is 1947.

I take the opportunity to mention these facts not because we have had any com-

plaints, and it is certainly not the case that we have had any reluctance on the part of the public in East Africa to invest in this loan because of its terms—indeed, the resolution before hon. members shows that the contrary is the case—I mention it only because reference to this matter has recently appeared in the Press in critical terms.

MR. NICOL (Mombasa): Your Excellency, as I am a member of the War Savings Committee it gives me very great pleasure indeed to second this motion. Before I get on to that, I would like to make mention of the hard work which the chairman and secretary of the committee have put in—they have worked like galley slaves.

When Council authorized on the 17th December last the raising of £500,000, I said then that by the end of April the figure would be up to £750,000. As far as I can see, I do not think I shall be very far out. I also said it would be a good advertisement if we could come to this Council in a short space of time and ask for an extension of the figure. We have got the advertisement now, and it is very creditable to Kenya and East Africa that we are in a position to go right out for the million pounds.

It might interest hon. members to know that the subscriptions to the £5 bonds has worked out in savings in the region of £10,000 per week since the loan was launched. It is not out of place to say that the savings which are reflected in the Post Office savings bank are also very encouraging indeed, particularly in Kenya, though I must say one is rather disappointed in one of the other territories.

Sir, in your address yesterday you said that we have all got a long way to go before the war is over, and everybody will agree with you, but it is unfortunate that some members of the community should feel that because the campaign in East Africa is more or less over our troubles are over. The war as a whole has not really started yet, and people have got to realize and to face up to real hardships and real personal sacrifices in the future. Unless they do realize that, we are not going to be able

[Mr. Nicol] to destroy this evil which is about in Europe at the present moment. It is even more necessary now that more urgent personal economy should be practised by every single person, no matter what his caste or creed is. Personal economy is absolutely essential to the war effort, and one of the best means of saving and effecting personal economy is by investing in East African war loan and also through the medium of the Post Office savings bank.

There is one point about this particular loan, and that is that I have been surprised to find from correspondence from London that they do not seem to be particularly clear that this loan has the guarantee of the Home Treasury. I personally thought it was perfectly clear. I thought you, sir, made it perfectly clear in the broadcast you gave when you launched the loan, and from the wording of the prospectus, because it says there that when we turn the money over to the home Government we get a certificate from the Treasury guaranteeing repayment. I suggest that perhaps it would not be out of place for the hon. Financial Secretary to state in categorical terms that this loan has got the backing of the home Treasury so as to dispel any doubt to the contrary, and it may also bring in more subscriptions.

MRS. WATKINS (Kiambu): Your Excellency, I have long waited to hear the hon. Financial Secretary quote some form of loan which would bear no interest at all, because I think quite a lot of us would be very glad to hear of that sort of loan. I do not think that really one is interested so much in money for ourselves as guns for our troops.

MR. LOCKHART: Your Excellency, to deal first with the point raised by the hon. Member for Mombasa. Of course I do say quite categorically that this East African war loan has the backing of the Imperial Treasury. The money is lent to them on a certificate of indebtedness which undertakes to repay at maturity or notice. In the case of the B bonds which any holder wishes to

recover on six months' notice, the Treasury will also repay these if we ask them to do so. In practice we shall probably carry the balance ourselves, but they would repay if asked to do so.

On the point made by the hon. Member for Kiambu, this is in fact such a loan. Any subscriber to East African war bonds who wishes to renounce interest has only to say so and the interest will not be paid. Some such cases have occurred: one of our district councils has already done it, and also a section of our Indian community who object on religious grounds to usury but have taken bonds on those terms. It is only necessary, when filling in the subscription, to endorse the application form to that effect and the certificate issued will be endorsed similarly.

The question was put and carried.

EX GRATIA GRATUITY

LIEUT.-COL. S. J. COLE, C.M.G., O.B.E.

MR. LOCKHART: Your Excellency, I beg to move: Be it resolved, that this Council approves the payment of an *ex gratia* gratuity of £407 to Lieut.-Col. S. J. Cole, C.M.G., O.B.E., in respect of his services as Staff Officer to the Inspector-General, African Colonial Forces, for the period from 10th December, 1930, to 31st March, 1941.

The position is that Colonel Cole has been employed for the past fifteen years as one of the staff officers to the Inspector-General of the African Colonial Force which, of course, includes Kenya. His service in the army terminated ten years ago when, at the end of a long and distinguished career, he was awarded a small army pension, and he has been employed since that date on a non-pensionable basis. It has been considered on the representations of successive Inspectors-General that the extremely valuable service which Colonel Cole has rendered to the African Colonial Force should be recognized by the grant of a small pension for that non-pensionable service. Had it been a pensionable office the amount which he would have received would have been about £200 a year, and it is suggested as an equivalent to that that he should receive a

[Mr. Lockhart] gratuity of £3,000 on his retirement. That would be divided between the five colonies of East Africa and the four West African colonies, and Kenya's share would be £407. This was considered by the Standing Finance Committee, where it was agreed to recommend provision of the amount provided, of course, that the other contributing governments also agreed. On that understanding I invite hon. members to authorize payment from Kenya funds of £407 to Colonel Cole.

MR. HARRAGIN seconded.

MR. COOKE: Your Excellency, I do not quite understand the proviso put in by the hon. Financial Secretary. Surely if it is a matter of justice this sum of £407 should be paid by Kenya whether or not the others agree?

MR. LOCKHART: Of course we cannot dictate to the other governments as to what they will do. It is a general condition usually applied in these cases, and I have no doubt the other governments will agree. What it really amounts to is that Kenya is prepared to do its share. The proviso might induce governments hesitating in the matter not to defeat the whole scheme by being obstructive, which I think meets the hon. member's point.

The question was put and carried.

CRIMINAL PROCEDURE CODE (AMENDMENT) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Criminal Procedure Code (Amendment) Bill be read a second time.

When the principal ordinance was discussed in this Council it received in certain quarters a rather frigid welcome. It was felt by a number of hon. members that by reducing the jurisdiction of first-class magistrates to two years unnecessary delay would be caused in the administration of justice. In that ordinance there was a suspending clause, by which I mean a clause which stated that the ordinance would only come into force by notice given in the Gazette by Your

Excellency. In fact, such notice has not been given, for in the meantime we have taken up the matter with the Secretary of State, the position being that the ordinance as it stands at present follows the recommendations of the Bushe Commission, which recommended that the jurisdiction of first-class magistrates be reduced to two years. That report has been accepted by the home Government, and the reason why you see two years in the principal ordinance was because we were following out the recommendations of that report. As a result, however, of correspondence with the home Government it is now agreed that the jurisdiction of first-class magistrates may be extended to three instead of two years. A reference to the records of the Supreme Court during the last three or four years shows that in fact there are not many cases in which a first-class magistrate inflicts a penalty greater than three years, so that the result of the amendment will be that very few cases will of necessity have to be sent for hearing before the Supreme Court but will be dealt with in exactly the same way as they are to-day. The only cases going to the Supreme Court will be cases where a first-class magistrate is of the opinion that an offender should receive more than three years. It may be thought there are very few first-class magistrates who actually sit in court and hear these cases. At the moment this is true, but I would point out that there is no restriction on the number of first-class magistrates whom Your Excellency may create, except the natural restrictions with regard to ability and experience which have to be considered by Your Excellency before appointment. So that in effect you will find that probably every District Commissioner of the necessary standing and ability in the country will be created a first-class magistrate. The result of all this will be that the effect of the ordinance will not be as serious as many hon. members thought when the ordinance was introduced and that the vast majority of cases will be heard as they are to-day.

MR. BROWN seconded.

The question was put and carried.

LOCAL GOVERNMENT (RATING) (AMENDMENT) BILL

SECOND READING

MR. MORTIMER: Your Excellency, I beg to move that the Local Government (Rating) (Amendment) Bill be read a second time.

This bill has been designed to overcome a special difficulty which has arisen on the promotion of the Grade A township of Kisumu to municipal status. The Rating Ordinance was applied to Kisumu township in 1937, the valuation roll was prepared in that year, and a rate levied in 1938. This valuation roll would normally have had a life of five years. Kisumu was, however, declared to be a municipality as from the 1st January, 1941. As the law now stands, a municipal council or board must on its inception prepare a valuation roll of the property within its boundaries, and this valuation roll must be re-prepared every five years or at such longer periods as the Governor may determine. As the Kisumu roll was not prepared in accordance with the provisions of the ordinance, it became invalid, and a new roll must be prepared during the present year unless the law is amended. The present roll was prepared only about three years ago, and it would be an unnecessary expense and hardship on this infant municipality to compel the preparation of a new roll at this stage. The present bill is therefore designed to prolong the validity of the existing roll for the full normal period of five years or such longer period as Your Excellency may determine, and of course the bill is made general in its terms so as to apply to any other Grade A township which in due course is promoted to municipal status.

MR. HARRAGIN seconded.

The question was put and carried.

EUROPEAN OFFICERS PENSIONS (AMENDMENT) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the European Officers Pensions (Amendment) Bill be read a second time.

The object of this amendment is to ensure that a European officer killed when travelling to or from the Colony by enemy action shall be deemed, for the purpose of the ordinance, to have been killed while on duty. There is no necessity for me to explain the reasons for this amendment as they are perfectly obvious under existing conditions, and I will only say it is similar to an ordinance which will be enacted all through the Colonial Empire.

MR. BROWN seconded.

The question was put and carried.

NON-EUROPEAN OFFICERS PENSIONS (WAR SERVICE) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Non-European Officers Pensions (War Service) Bill be read a second time.

This is similar to the amendment made at the last session of Council to the European Officers Pensions Ordinance, and provides that war service shall count for pension. All non-European officers serving in pensionable posts and now in the armed forces will be deemed for the purposes of the ordinance to be still in the public service of the Colony.

MR. BROWN seconded.

The question was put and carried.

WATER (AMENDMENT) BILL

SECOND READING

MR. BROWN: Your Excellency, I beg to move that the Water (Amendment) Bill be read a second time.

The object of this bill is to prevent people from draining swamps without licence if by doing so they are going to interfere with the water which is enjoyed by other people. It does not prevent any person from draining a swamp which is wholly within the boundaries of his own land, unless there is a stream flowing from that swamp across his boundaries. If there is no stream, and the swamp is wholly on his own land, it does not fall within the definition of a body of water and is not covered by this bill. But if a swamp is partly on the

[Mr. Brown]

land of one land-owner and partly on the land of another or if it is wholly on the land of one land-owner and a stream flows from it across the boundaries of that land-owner, that swamp will be covered by the definition of a body of water, and nobody can drain or interfere with it without the licence or sanction of the Water Board.

MR. HARRAGIN seconded.

The question was put and carried.

NATIVE LIQUOR (AMENDMENT) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Native Liquor (Amendment) Bill be read a second time.

This bill has two objects in view: the first is the suppression of the manufacture and sale in this Colony of the intoxicating liquor known as Nubian gin. Under the present law the control of Nubian gin and like liquor is only to be found in what I will call the more settled areas and such places as municipalities and townships, but with the advent of the war to this country I regret to say that the manufacture of Nubian gin has spread through the native reserves of the Colony and has become a real menace at the present time, and it is necessary to take the strongest action to suppress it.

The effect of this bill will be that the manufacture of Nubian gin will be absolutely prohibited within the Colony; no matter whether it be within a native reserve or municipality its manufacture will be an offence.

During the committee stage I will move a further amendment the necessity for which has come to light very recently, and it will take the object of the bill one step further. It is going to be made an offence, if the amendment is accepted, to be found in possession of apparatus wherewith to make this Nubian gin or with which native intoxicating liquor is distilled. The necessity for the amendment is obvious, because whereas it is simple to make away with the gin after it is made it is more difficult to the

manufacturers to make away with the apparatus for making the gin if they wish to continue in business.

The second object of the bill is to place the burden of proof on persons found in possession of native intoxicating liquor. It is a very strong measure to take admittedly. It is not a measure which is to be found very frequently in British law in that it places the burden of proof on the defence. But I can assure hon. members that there are innumerable instances where it has been found necessary to deal with some particular evil in a particular colony to introduce a measure such as the one you are now being asked to give approval to to-day. The reasons, I think, will be obvious to hon. members, when they realize the conditions under which people who are likely to be in possession of this intoxicating liquor live. Whenever the police search a house or hut of two or three rooms, it is almost impossible for them to pin on to one person exactly who is in possession of the intoxicating liquor which is found, so that in effect the law is flouted, because everybody in the hut denies knowing anything about the liquor found, and if there are three or four people sleeping in the one room the courts will not convict the four people of whom three may be innocent, although probably all four were in it as much as one.

The object of this further amendment is to make another attempt to strike at this evil, and place on all those found in possession or the landlord of the house the burden of proving their innocence. It must not be thought that merely because we enact this bill that every landlord will be convicted. It places the burden of proof on him to show he was not there when the liquor was found in his tenant's house and that he had not been near the house of manufacture, but it puts the police in a strong position in that some one will be held responsible for liquor found in any particular premises.

The last amendment is merely formal, and gives permission to certain police officers down to assistant inspectors to search premises without a warrant. It has been reported to Government by the

[Mr. Harragin] police that the necessity to rush off and get a warrant, when they suspect, or practically know, that intoxicating liquor is either being distilled or drunk in a particular hut, makes it almost impossible for them to catch the responsible persons. Now they will be permitted to enter without warrants provided that they bring the delinquents before a magistrate as soon as is reasonably possible.

MR. BROWN seconded.

MR. MONTGOMERY (Native Interests): Your Excellency, I only rise to support the bill, which I am quite certain will be very welcome to district officers and police officers. As the hon. and learned Attorney General said, since the beginning of the war the number of stills has increased enormously, as well as the consumption, and unfortunately consumption is not now confined to natives.

DR. WILSON (Native Interests): Your Excellency, I think it might go without saying that, speaking in the interests of the natives themselves, I support this bill, because we all know the grim results of the increased use of this so-called Nubian gin. Of course, as the hon. mover has pointed out, this question of holding under suspicion anyone having access to a room in which liquor is found, seems rather severe, but I am quite prepared to agree that it is absolutely essential to make certain that we get at the man responsible for the liquor.

I do not know whether I am in order in discussing the amendment which the hon. mover has said he will move in the committee stage, but if I might mention it here—if this business is to be completely illegal, why should the district commissioner be able to give a permit?

MRS. WATKINS: Your Excellency, I wonder whether the hon. and learned Attorney General might be able to include *tembo* as drunk and used outside the native reserves? As hon. members know, between Kiambu and Nairobi lies a lovely stretch of original forest, which is riddled with some of the worst drinking in the country. It is in fact almost possible to point out the exact compost pit where the *tembo* is hidden. The

police can do nothing, the district commissioner can do nothing, the forest cannot do anything, and when natives cannot get enough to drink in Nairobi they come to the forest. I think that what the hon. and learned Attorney General said is true, that it is going to be difficult to find the distilling apparatus, and it is certainly going to be more difficult in the forest than anywhere else. So I should like to see the drinking of *tembo* in the forest reserve, or outside native reserves, also banned by this measure, and power given to the police to stop it, more especially when the younger men are taking to it too.

COL. KIRKWOOD (Trans Nzoia): Your Excellency, I am not happy about the amendment that it is proposed to move. It says: that clause 4 of the bill shall be amended by adding the following new sub-clause:—

"(2) No person shall, except with the permission in writing of the District Commissioner in charge of the district in which such person resides, be in possession of any implement, apparatus or utensil capable of being used for the distillation of native spirituous liquor."

After many years' experience in South Africa, I have seen scores of these cases, but I doubt whether I have ever seen one where a primus stove was not part of the apparatus, irrespective of its size, and the possession of a primus stove would make a native liable to prosecution under this sub-clause. No doubt the hon. and learned Attorney General will be able to make an alteration to take care of this, but as it stands it means that if a native were in possession of a primus stove he would be liable to prosecution, which would be unjust to the native.

MR. HARRAGIN: Your Excellency, I should like to say at once to the hon. Member for Kiambu that I entirely sympathize with everything she has said, and from evidence I have had from the police every word is true. It is perfectly true that the police have the greatest difficulty in the particular area to which she referred, in dealing with the people under the circumstances she has mentioned.

[Mr. Harragin]

I do not quite follow what the hon. member meant by "drinking *tembo* outside native reserves", but I feel we could go into that at a later date, and I can assure her of every assistance which will help to suppress the real evil which is going on. At the moment, as hon. members are aware, in the municipality it is controlled, and the police are defeated immediately they get to the forest reserve where I understand the principal distillation or making of liquor, or *tembo* to which the hon. member referred, takes place. It is perfectly true that it is extremely difficult to bring home to any particular native the possession of this liquor, as it is usually found hidden not in any one person's hut but in a hut to which a number have access, and that is why the police are always defeated, for even if they find the *tembo* they cannot find the owner. But I shall be only too glad to go into that further.

The hon. Member for Trans Nzoia made a point with regard to the words in the amendment which will lead to injustice. Read in the ordinary sense, I agree with him, and I shall be willing to amend it in the committee stage. But it is only fair to say that, if we carry his argument to a logical conclusion, if you use fire in making *tembo*, a man having a fire is immediately in possession of something capable of distilling liquor. But a court can always interpret those words as capable of being used in the ordinary way. As, however, there is some doubt in the hon. member's mind, there will certainly be uncertainty in the minds of others. I will go into the point and try and clarify it before the committee stage. It was never the intention of the draftsman that it should be an offence to be in possession of a perfectly innocent apparatus.

The question was put and carried.

VAGRANCY (AMENDMENT) BILL

SECOND READING

MR. BROWN: Your Excellency, I beg to move that the Vagrancy (Amendment) Bill be read a second time.

The object of this bill is partly to bring our law into line with the vagrancy laws in other parts of the Empire, partly

to remedy omissions found in the ordinance, and partly to remove an unreasonable restriction which is at present imposed on the powers of the police in dealing with the problem of juveniles.

Clause 2 brings our law into line with other similar ordinances, by making it a defence if a person is in employment. At present, any person found wandering about and unable to show that he has visible and sufficient means of subsistence, falls within the definition of a vagrant, and any person however hopelessly unemployed and unemployable, who can produce a shilling from his pocket can say "It is true I was found wandering about but here is my visible and sufficient means of subsistence, and I am therefore not a vagrant". Yet an employed person, temporarily unfortunate and temporarily quite without cash, has no defence to a charge of vagrancy. Hon. members will appreciate that the essential feature of vagrancy is that a vagrant is a nuisance to the community, and an employed person is playing his part in the life of the community, and I submit he ought not to fall within that definition.

Clause 3 remedies an omission in the existing law. Under the present section 3, the police only have power to arrest without warrant persons who are vagrants. They have no power to arrest without warrant persons who have committed offences under the Vagrancy Ordinance. I must draw a distinction between the two. A vagrant has committed no offence and he is not a criminal; he is a nuisance, and as a nuisance he may be dealt with by being sent back to his home or reserve. If he leaves his home without permission he then commits an offence under the Vagrancy Ordinance. He then becomes a criminal, and is liable to imprisonment for six months. It is to deal with that class of persons that clause 3 is designed,

Clauses 4 and 5 are designed to cover the same class of persons who leave their homes without permission, having been sent back there as vagrants. At present they are brought before a magistrate, who can give them a sentence up to six months imprisonment, but he has

[Mr. Brown] no power to order that they should be sent back again to their homes. These clauses will give that power.

Coming to clause 6, this amends section 14 of the ordinance which deals with juvenile vagrants. At present the police only have power to take children before a magistrate if they are found "wandering about". You get cases of these children having run away from their homes and finding refuge in the servants' quarters of some bungalow, where they receive board and lodging, and while they no doubt do a good deal of servant's work in return, the owner or occupier of the bungalow knows nothing about it. The police are powerless to take action, because they are restricted by the words "found wandering about" in section 14 (1). Clause 6 (1) therefore inserts the words "or upon any premises without the consent of the owner or occupier" in order to enable the police to deal with cases of that sort.

Section 14 (2) deals with vagrant children who have run away from their homes a second time after being sent back to their parents by the magistrate. In committee I propose to move an amendment, of which hon. members have had a copy, that the same words "or upon any premises without the consent of the owner or occupier" be inserted in this subsection. The second part of (2) is intended to provide that a short and sharp discouragement in the form of six strokes with a light cane should be inflicted upon the child if he again runs away from home after being sent back there. Unfortunately, it has been decided by the courts that as the subsection stands at present, the punishment of whipping cannot be inflicted. The decision turns on the words "in lieu of other punishment". No other punishment is provided. Therefore, there is no punishment which a whipping can be in lieu of, and therefore no whipping can be inflicted. (Laughter.) Therefore you find children coming before a magistrate time and time again, and all a magistrate can do is to send them back to their homes each time, and the child leaves court, if not without a stain on his character, at any rate with a

smile on his face. There is one example of a child who has been before the court eight times in nine months. Each time he is sent back home, and each time he has every intention of leaving home at the earliest opportunity, and then is brought before the magistrate and sent back again. After this amendment, possibly something else will happen to him to deter him running away the ninth time!

Paragraph 3 of clause 6 merely corrects a typographical error in the ordinance.

MR. HARRAGIN seconded.

The question was put and carried.

INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Interpretation and General Clauses (Amendment) Bill be read a second time.

For eleven years it has not been realized that the words contained in this amending bill "cognizable to the police" were not defined in the laws of the Colony. That sounds a very drastic statement to make, but it is not as bad as it sounds because, in fact, those words are defined in the Criminal Procedure Code. But it has just been discovered by the tourists that the draftsman of the Code defined those words for the purposes of that ordinance only, so that the words when used in other ordinances have no meaning whatsoever. The object of the amending bill is to make the words "cognizable to the police" mean what they have meant for the last twelve years and which has been acted on by the police for the last twelve years without let or hindrance, until it was suddenly discovered that the words are restricted to the Code. Of course, the majority of offences are under the Code, but in certain other ordinances these words do occur, and this is a formal amendment to put right an omission in the drafting of the original ordinance.

MR. BROWN seconded.

The question was put and carried.

INCREASE OF RENT AND OF MORTGAGE INTEREST (RESTRICTIONS) (AMENDMENT) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Bill be read a second time.

The amendment which hon. members are asked to consider to-day in no way alters the principle of the principal ordinance, but it does make clear what, I think, was a drafting error in the original ordinance. When I say drafting error, it became one owing to the action which was taken in select committee when we altered certain sections and put in a schedule, and thereby unwittingly created the position in which we find ourselves to-day. Shortly, the position is this. The all-important date in the ordinance is the date known as the prescribed date. When you are dealing with business premises in section 17, the effect of that section in short is to enact that if and when it is wished to bring business premises within the purview of the ordinance that may be done by the usual proclamation, and that then the words "business premises" shall be read as if they were the words "dwelling houses".

The difficulty arose in the case of Nairobi. As hon. members are aware, dwelling houses came within the purview of the ordinance from the prescribed date, which in the schedule was 3rd September, 1939. This occurs in the schedule to the ordinance itself, with the result that when Government was asked to include business premises it was found that automatically it would mean that if we issued the usual and necessary proclamation the prescribed date would be 3rd September, 1939. Everyone will realize that that would mean chaos, let us say for example, the return of rents paid in excess since that date.

The amendment we are now asking Council to consider is to make it possible for the Governor in Council to set out the prescribed date in the proclamation, instead of leaving it to be the same date as that on which the ordinance was brought in for dwelling houses. It is

merely a matter of form, but extremely necessary if in any area of the Colony it is desired to include business houses in the ordinance. It must not be taken that Government necessarily intends to do it, but it was perfectly obvious that we could not do it even if we wanted to with any degree of equity, if we were forced to place the date at 3rd September, 1939. All this amendment does is to do what, I think, the ordinance was originally meant to do—to give the Governor in Council the right to prescribe the date in the proclamation.

MR. BROWN seconded.

COL. MODERA (Nairobi South): Your Excellency, I gathered from the hon. and learned mover that Government has not yet decided as to whether the application shall be made to business premises. I would ask the hon. member whether he would assure this Council that before the application is made to business premises Government will be entirely satisfied that they have before them sufficient data to justify the application to business premises.

MR. SHAMSUD-DEEN (Central): Your Excellency, the principle propounded by the hon. and learned mover is an innocent one. At any rate it sounds so, but Your Excellency must have noticed the conflicting opinions in the local Press as to the date on which this Ordinance should be applied. If we are to delegate this power to the Governor in Council to prescribe the date, I think we should be divesting ourselves of the opportunity of expressing what we know of the views of the various sections of the public concerned. With all due respect I submit that Executive Council has not the same facilities and means of ascertaining the views of the public as the hon. members of this Council have. We are in touch with practically all sections of the community, and know their hardships, and know what hardships will be created if the prescribed date of the operation of the ordinance is arbitrarily fixed by the Executive Council without having the means of ascertaining the views of the various sections.

I personally do not see any reason at all for any differentiation between the

[Mr. Shamsud-Deen] application of this ordinance to residential quarters and business premises. We have already applied it to the former, and I think Council would be perfectly safe in prescribing that date here and now to be the same as in the case of residential quarters. This is a matter of going into details, but I have before me letters from two or three people, lawyers' letters emanating on behalf of landlords and I think it is our duty to take into consideration the point of view of landlords as well as of tenants. I quite agree that the implication of the ordinance should not be such that tenants should have to pay if the application of the ordinance is to have retrospective effect or that landlords should refund rents already received, but it is a well known fact that during 1940 rents have fallen considerably as compared with rents which prevailed on the outbreak of the war. Now, as has been said in the Nairobi Municipal Council, it should be applied as from December, 1940. But there is a good deal of conflict of opinion in various quarters, and I think this Council should have the opportunity of expressing what is a suitable and reasonable date from which this ordinance should be applied to business premises.

MR. ISHER DASS (Central): Your Excellency, I am sorry to have to point out that the hon. member who has just spoken has probably lost sight of the fact that this bill is only an enabling bill, and in effect it does not give powers to Your Excellency to impose upon the wishes of the tenants and landlords concerned. Section 17 of the original ordinance provides that the Bill shall be applied to any commercial area if and when sufficient evidence is available to Government that tenants and landlords combined together demand the application of this ordinance. Therefore this bill is an enabling bill. If the Governor receives a request from landlords and tenants combined and there is sufficient evidence that it is desirable to apply it, it is then that such commercial areas shall be affected by such legislation.

The second point raised by the hon. member was that in 1940 there was a considerable reduction in rents in

Nairobi. This argument I must refute, for the simple reason that in the early months of 1940 rents in Nairobi commercial area had to be reduced not out of free will or any charity to the tenants but because, according to the town planning scheme of that area, 80 or 90 shops were being built and had to be completed before 30th June, 1940, and the landlords who were anxious to retain their tenants reduced the rents in order to keep those tenants. Then the tenants moved into the new shops, and occupied them. Then the idea arose this year that rents should be increased, but until such time as the landlords were assured that the 80 or 90 shops would be occupied quickly there was no increase in rents at all. On the other hand, rents were reduced to keep the tenants.

This bill is purely an enabling one. For instance, if people in Mombasa or any other area decided to-morrow morning to ask Government to apply the ordinance, according to the original ordinance it will be applied from 3rd September, 1939, but if this bill passes it will mean that any date could be fixed for the application of the ordinance to that area. In fact, it is more to the interests of the tenants and landlords.

MR. HARRAGIN: Your Excellency, I think I must have failed to make myself clear to the hon. member Mr. Shamsud-Deen with regard to what the bill does. It in no way derogates from the authority of this Council. It only carries out the original intention of the Council. At the present moment, the Governor in Council may by proclamation include business premises in Nairobi within the purview of the ordinance. This Council decided that it should be left to the Governor in Council to decide if and when that should be done, and all this bill does is to permit Your Excellency in making that proclamation to state the date from which it should be deemed to come into force, so that there is no question, whenever any area in this Colony is anxious to come under the ordinance, of having to summon Legislative Council to solemnly sit and prescribe a date from which the ordinance shall be deemed to have come into force for that area.

[Mr. Harragin]

I am not going to be drawn into an argument as to whether it is a good or bad thing at the moment to introduce legislation on the lines the hon. member spoke about in Nairobi. I can only assure him and the hon. Member for Nairobi South that before the Governor in Council does take this step all the necessary examination will be made. I would, however, remind him that already four very representative bodies in Nairobi have written in requesting that this should be done, and it was only when their recommendations came before Government and I was asked to look into the matter I found that automatically the prescribed date was 3rd September, 1939, which was certainly not the wish of those making application to Your Excellency. That is the only reason this amendment is before Council to-day. I can give no other undertaking, but I can assure the hon. Member for Nairobi South that all communications—and they are very lengthy ones in some cases—which I have received from those representing the rentier class in Nairobi have been duly forwarded to the proper quarter and will in due course be considered by you, sir, in Council.

The question was put and carried.

PYRETHRUM (AMENDMENT) BILL SECOND READING

MR. BLUNT: Your Excellency, I beg to move that the Pyrethrum (Amendment) Bill be read a second time.

The main object of this bill is to enable a scheme of restriction to be brought into force based on restriction of deliveries of pyrethrum flowers for sale if that is decided by the industry to be the form of restriction which it requires. The pyrethrum industry is at present in a rather serious position, in that if we have a favourable season it is quite possible that the planted acreage might produce something between 10 and 12 or even 14,000 tons of pyrethrum, and from our experience of the markets over past year it is probable that the market might not be able to absorb more than 6,000 or 7,000 of those tons of pyrethrum. Furthermore, pyrethrum is a commodity which cannot be kept for any

considerable time without losing considerably in value, so that the industry could not very well store any surplus against markets which it might be decided to develop in future without running the risk of severe loss.

There are two ways in which the production can be fitted to the demand. The first is by increasing the demand and thereby increasing sales. The Pyrethrum Board has already taken action designed to this end; it has agreed to reduce the price at which it will sell pyrethrum in America, and at the same time it proposes to institute an advertising campaign in that country in the hopes of drawing to the notice of possible consumers the use and value of Kenya pyrethrum. But the Board does not anticipate that these measures will be sufficient within the present year to cause such increased sales that the whole crop that may be produced will be absorbed. Moreover, the Board is already faced with difficulties in the shipment of its pyrethrum to certain markets which were steadily developing, and it is conceivable that shipments to America may become more difficult before the end of the present pool year.

The second way in which supply and demand can be fitted to one another is by some form of restriction of production. A meeting of pyrethrum growers was held at Nakuru on Tuesday last at which some 250 growers were present, and that meeting unanimously agreed that a form of restriction was necessary. They did not at that time agree on any particular form of restriction, but they appointed a sub-committee from among their number to confer with the Pyrethrum Board and work out a satisfactory scheme of restriction and to refer that scheme to the industry. They said they were prepared to accept such scheme if a majority vote in favour of it could be obtained. The Pyrethrum Board has already given a lot of consideration to this question, and has worked out a scheme which is based on restriction of deliveries to the agency for sale. This may or may not turn out to be the form of restriction which will be adopted by the industry, but the Board has examined many other schemes and

[Mr. Blunt] has found practical difficulties in the way of adopting them and thinks this is probably the best scheme that can be applied. It is in order to enable such a scheme to be applied if the industry requires it that the present bill has been placed before Council.

It may be and has been objected that restriction of deliveries, or any restriction of production in this country, is playing into the hands of our competitors in other countries, and there is a good deal of truth in this. The Board has carefully considered that aspect of the matter, but it has been found that in the other East African territories the total production of pyrethrum at present is comparatively small and that generally throughout the world production of pyrethrum of the high quality we can produce in this country is so small that probably it will not be impossible to improve our position if we ourselves restrict our production. Moreover, the Board proposes to approach the other East African territories to try and obtain their agreement to act on lines similar to those on which the Board acts here.

I should like to take this opportunity of expressing my faith in pyrethrum as a permanent industry in this Colony. I believe that some form of restriction is at present necessary, but I believe also that it will prove to be only a temporary measure and that increased consumption and a lower price level will enable the form of restriction to be applied to cease after a short time, and that the industry will then be left in a stronger, healthier, and sounder position as part of the permanent farming of this country.

Turning to the bill itself, clause 3 enables a form of restriction to be applied, either on acreage—and that is possible under the ordinance as it exists—or on delivery. There is a proviso to paragraph (d) which extends the protection which was given to certain pyrethrum growers who were growing before the ordinance of 1938 was passed. Growers who were then producing were protected in that the licensed acreage which they should be granted after the coming into force of that ordinance could not be less than the licensed

acreage they had been growing before the ordinance came into force. It is only reasonable if one is going to restrict deliveries to give them some protection against having their deliveries restricted as already is the case with their acreage. But I propose at a later stage to move an amendment to the last line of that proviso, where it is stated that the years 1935/36, 1936/37, and 1937/38 are the three years on which their acreage shall be based. It will be more in keeping with the original bill if the year 1935/36 is struck out and the year 1938/39 added.

In clause 2 of the bill opportunity has been taken to define what is a pyrethrum grower and to make clear what is the intention of the ordinance as regards the time when a licence is required to be taken out. This has not been quite clear in the previous ordinance.

The opportunity has also been taken in clause 3, paragraph (c), to provide for the transfer of the licence when the land on which pyrethrum is growing is transferred by sale or otherwise.

In clause 4 there appear in line 23 words which have apparently not been fully understood, where it says "the maximum quantity which he is permitted to grow or to deliver to the agency", and it has been suggested that the words "to grow" are redundant. The explanation of those words "to grow" is given if one reads clause 5. It is there made clear that when a licence is given on an acreage basis the licensee shall not deliver more than he is allowed to grow on that acreage basis, or when the licence is given on a delivery basis he is not allowed to deliver more than his licence permits him to do. If those two clauses are read in conjunction, there will be no doubt as to what is the meaning of those words "to grow" in clause 4.

MR. HARRAGIN seconded.

COL. KIRKWOOD: Your Excellency, it is quite an old saying that "Angels step in where fools refuse to follow", otherwise I am standing up first because I oppose this bill and ask Government wilfully and deliberately to postpone it for three months. This bill has been produced, the industry has not

[Col. Kirkwood] The meeting of growers was convened at Nakuru on the 14th; they had one week's notice over the Easter holidays, and although the hon. Director of Agriculture stated that some 200 odd were present a large number were not present and could not possibly have been present. Otherwise the industry has not been consulted in the way it should have been, and if a meeting is called to consider the proposals in this bill there will be many more men present if you accede to my request, and I urgently put that request forward, to postpone the bill for three months.

The meeting held was advertised on the 7th, and it was held on the 14th. The conclusions, which are not final, which were put forward at that meeting and taken have not been received by Government, and in any case they have not been included in this bill. There was no time, for the bill was printed before the meeting took place. I hope Government will accede to my request, and I hope it is a reasonable request, that the industry should be consulted, and that other hon. members on this side will back me up and make it a general demand that consideration be postponed for approximately three months, to give the industry time to have meetings and for the representatives who went to this meeting to return to their districts and discuss the present bill and be given an opportunity of putting up objections to a select committee when it is formed for the consideration of the subject.

I do not agree with the hon. mover in everything he has said. He has stated that shipping difficulties are difficult and are likely to become more difficult. From what we know of America having decided to allow war material, etc., to be delivered as far as the Red Sea, it means that their ships will pass our shores; they will go up north loaded to the Plimsoll line and will come back in ballast, and will be pleased to get a few hundred tons of pyrethrum as a cargo to take back to America, which is a very big buyer. This is also a bill which favours the large producers and influential producers as against the smaller producer. It is also in favour of the older producers as against the more recent producers.

I maintain that there is every logical reason to support my contention that this bill should be deferred and that the second reading should not be taken now. If it is, I shall have to be an obstructionist and move, even on the third reading, that the bill be rejected; otherwise, if it comes up in three months time, it will have my blessing. Those districts which sent representatives to the Nakuru meeting have not yet had time to receive a report from their representatives, and it is unfair to rush this bill through this morning. I hope I shall have the strong backing of this side of Council in my contention.

MR. COOKE: Your Excellency, I do not represent a constituency in which pyrethrum is grown, but I have been asked by several pyrethrum growers to endeavour to obtain from Government an assurance on one or two points.

The first point is that pyrethrum growers feel that when the quota is decided upon, preference should be given to the working farmer rather than to the person who may be an absentee landlord or may be a member of a syndicate residing perhaps in Nairobi, Mombasa or some other town. I understand that there is very good reason for this request. It is that pyrethrum is essentially a crop in which personal supervision is necessary, and it is felt that the farmer living on the land will give that personal supervision and thereby retain the good quality of the pyrethrum which, I understand, is absolutely essential if the markets are to be retained.

The other point is this. It has been suggested to me by several pyrethrum growers that in future no forest land should be leased for pyrethrum growing, because it is felt that a lot of forest land is leased by people who are members of a syndicate and do not take any real interest in the land or pyrethrum, except as a means of getting rich quickly. What the hon. Director of Agriculture said this morning about restriction of output rather supports my point, that forest land should not in future be leased for pyrethrum growing.

One point I think my hon. friend omitted to make. That is, if there is restriction it is a very good way of

[Mr. Cooke] obtaining a better quality of pyrethrum, because it would probably urge people to concentrate on quality if they were not allowed to grow it indiscriminately and as much as they liked.

LADY SIDNEY FARRAR (Nyanza): Your Excellency, I rise to support the Bill, as I understand it has been brought forward to meet a strong suggestion from the Pyrethrum Board as a possible way of restricting over-production at the present time.

As regards the question of putting the Bill back, I regret that I shall have to oppose the hon. Member for Trans Nzoia on this matter. Already, to my mind, the Board has shown very serious negligence in leaving the matter so late. If this over-production threatens them now it did last year, when it should have been faced, but I do not think that any ordinary grower realized it, and he was not given any definite statistics on which to realize that the position might become as serious as has now been outlined by the hon. Director of Agriculture. To my mind, there has been negligence somewhere; either the issues of licences should have been restricted before now or the Board should have made the facts public before now. Certainly the meeting held this week should have been held months ago. I think we all feel that it is a very regrettable thing indeed that we have no definite conclusions from the Board on which to argue to-day, but I do feel it would be a mistake to put any obstacles in the way of such conclusions should they lead to a restriction of production as visualized in one of the schemes they have put forward. In saying this I should like Council to realize I am not backing the scheme as such any more than any other scheme.

I feel very strongly indeed on this question of delay which has already taken place, and any suggestion of delay now. Although there may not be mentioned in the newspapers the condition of the weather, none of us can fail to notice that the rains are on us now, and this is the time we should be planning. Already three weeks have gone by of the time in which we should make up our

minds as to whether to plant more pyrethrum or to take it up, whether to get the land ready for wheat and other crops, or what we are going to do. To delay a further three months makes it doubly impossible to change over from pyrethrum to some other crop now desired; it will be too late.

There are certain points I should like to raise as regards the question of restriction. Once again I am not entering into the contention of restriction versus no restriction. I am talking of a unanimous resolution of at least 200 growers, which is a pointer by which we can be guided in this respect, that is in favour of restriction. I would, however, suggest that the hon. Director of Agriculture has power to issue or refuse licences, and that he should use that power with a certain element of differentiation, particularly as to aliens. The first point which is causing a great deal of ill feeling, particularly among men who are serving, is that they have left farms to be looked after by their wives or group managers, while farms in the hands of the Custodian of Enemy Property belonging to enemy aliens are growing pyrethrum. Some definite measures should be taken to see that those farms change over to some such crop as wheat, cereals or grass lands. I know that in this respect there is one rather worn-out argument, the action taken as regards sisal in Tanganyika, and I submit that that argument does not enter into this case. In the case of the suggested restriction of enemy grown sisal, the land was not suitable for other urgently required crops, but if land is good enough for pyrethrum it is good enough for cereals or good grassland, and could very well be changed over, which would employ less labour and less of the highly paid supervision being employed at present on certain enemy-owned farms, which could then be well used for supervising farms of men serving with the armed forces.

The second point has already been raised by the hon. Member for the Coast, that some preferential treatment, if it is possible to work it out, should be given the genuine mixed farmer, that should it be considered advisable to

[Lady Sidney Farrar] restrict either acreage or production the man who is putting in genuine development, and is going in for fencing, tree planting, soil erosion measures, and so on should be able to claim some additional privileges as regards additional acreage or production. This would meet the question of the absentee landlord and syndicate owned land.

MRS. WATKINS: Your Excellency, I should like to support the hon. Member for Nyanza in what she has said, more particularly about enemy owned shambas. I cordially agree with what she says; we need have no consideration for Germans and their property in this country. Our men should come first. It is, however, rather a different matter with the refugees. It is much more difficult about them, for they are as it were the victims of shipwreck, flung upon our shores and our mercy. I do not feel we can own half the world, administer it, fight for it, and not give shelter to those victims of catastrophes who flee to us, whether that catastrophe be in the course of nature, such as an earthquake, or of human agency, such as Hitler. These refugees are the first victims of Nazi lust and hate. They come with precious little capital, practically no possessions, so that I think it would be fairer only to change their farms over from one crop to another, pyrethrum to wheat for instance, if the land to be changed is suitable for wheat, and such points might be left to the discretion of the hon. Director of Agriculture.

I entirely sympathize with the hon. Member for Nyanza when she says that time is going on and the Pyrethrum Board ought to have taken this matter up long ago. If I may speak as a suffering coffee farmer, I would say that legislation rushed through without the support of the farmers behind it is apt to be more of a trial to the farmer in the long run than considered legislation supported by the farmer. I have here before me letters from constituents who also have farms up-country, and these farmers seem not to be in support of the proposed measure. I think it might be better, even if the delay is inconvenient, to postpone the measure for another

month and to get the full support of the farmers before it goes through. I am not a pyrethrum grower, but a coffee farmer, and I can only say that legislation rushed through without the support of a majority of coffee people has caused intense bitterness and injustice. I should be sorry to feel that they were in the same position as we coffee planters are placed. They would have my sympathy.

I gather from one of our members that there is a large Brazilian beginning of pyrethrum growing, and I do submit that if we are going to restrict ourselves we shall find opposition in Brazil, because if they replace some of their coffee with pyrethrum they are closer to America than we are and we need to slip in quickly, so that if the American ships go to the Red Sea with munitions and, as the hon. Member for Trans Nzoia said, go back in ballast, they would take pyrethrum or sisal. I think there is reason for a short delay.

DR. WILSON: Your Excellency, as this Bill was introduced at the request of the Pyrethrum Board and as I happen to be chairman of the Board, I should like to state as quickly as possible that I am in support of the Bill, and to take up one or two points which have been mentioned. I do not wish to trespass on the province of the hon. mover, because I am sure that he can answer most of these points more effectively than I can. I may say at the start that I am not here to defend the action of the Pyrethrum Board.

In this amending bill there is only one alteration of the law which is of any great importance, and that is the proposal to give the hon. Director of Agriculture power to limit the quantity of pyrethrum flowers any grower may deliver. At present he has the power to limit planting. The Board believes that the limitation of the licensed acreage is not a certain and effective means of securing restriction of the total quantity; that is to say, it is not a practical method of getting at the final definite figure of total production. We believe the continued prosperity of the industry does depend on arriving at a definite figure of production from time to time, and I am glad the hon. mover made that

[Dr. Wilson]

point, that the present talk of restriction may be only a temporary measure, and that we do hope from time to time as the demand increases that we will supply more and more pyrethrum from Kenya. But I should like for a moment to say that the hon. member for Trans Nzoia spoke as though it was a question of landing hundreds of tons in America and it was immediately sold. The whole trouble, as the Board and most growers know, is that the market is strictly limited.

One might have expected an outcry against giving Government this extended power for the control of a farming industry; but actually, I believe, I am convinced that there is a very general demand for this power to be given to the hon. Director of Agriculture to control production. The only difference of opinion is exactly how that power is going to be exercised and along what lines we shall work.

I do wish to suggest that this discussion has got a bit off the point, because all we are discussing now is an enabling measure to give the Director of Agriculture power to restrict in a certain way; the question of how it is going to act and whether he will act on this alteration of the law, that is all for further discussion. This Council at the moment is merely discussing this enabling alteration, so that the Director of Agriculture may, if it should eventually prove desirable, have this power of restricting along certain lines.

We have been accused of not giving the growers sufficient notice, and admittedly the thing had to be done in a hurry. At the end of every pool year there is a chance to look over the question of licensing, and then the Director of Agriculture has the power to issue or refuse licences and to modify licences under the present law by acreage. Now it is proposed, if this Bill goes through, that he will have power to restrict deliveries. We had to wait until the end of the pool year before we took definite action; and I would add this other remark: that things developed rather quickly and that until comparatively recently we were not so anxious about the future as we are now.

As regards urgency, there is urgency because the matter is urgent, but that question has been answered already by a pyrethrum grower. I am quite sure that hon. members need have no real fear and anxiety in granting the hon. Director of Agriculture this extension of his power. In support of that assurance, I just want to say this: that at the end of the meeting to which he has referred at Nakuru, which was a very well attended meeting of pyrethrum growers—they told me it was one of the biggest ever held at Nakuru—a proposal was put forward, as he said, that five specially selected representative growers should sit with the Pyrethrum Board as a composite committee to discuss the line along which this restriction, which everybody was agreed should be carried out in some form or another, should be carried out. Well, the meeting unanimously adopted the suggestion that the hon. Director of Agriculture should sit as chairman of that composite committee, with a casting vote. That may or may not be a reflection on the confidence pyrethrum growers feel in the Pyrethrum Board and its present chairman, but it most certainly indicates that they have the greatest confidence in my hon. friend.

The other point I do not consider I need mention, the question of aliens and genuine farmers. That is for the hon. mover to deal with if he wishes. But I do look on this Bill as the logical outcome of the two previous Pyrethrum Ordinances of 1935 and 1938. The success of the previous legislation by which Government assumed control of pyrethrum growing with the help of an advisory or executive body of pyrethrum growers has been so great that the industry now, I am told, has topped the list of Kenya's exports. That success is so great that quite naturally it raises the immediate danger of over-production, and this Bill is merely intended to provide what we consider the most reasonable and practical means by which restriction may be introduced.

LORD FRANCIS SCOTT (Rift Valley): Sir, I rise to support the bill before Council, and I think I am justified in doing that as I represent by far

[Lord Francis Scott]

the largest number of pyrethrum growers in this country in my constituency. The meeting held recently was held at short notice, and I think it was unfortunate that longer notice was not given but, in actual fact, I am told by people who were present that it was one of the most representative meetings ever attended by farmers in this country. The room at the Nakuru Hotel was absolutely packed so that there was not room for everybody to get inside. At that meeting, I am informed, some extremely good speeches were made by gentlemen who my informant could not tell me the name of, so that it shows they were people not of the ordinary run of stereotyped politicians in this country.

I understand that it was the unanimous wish of the meeting that some power for restriction should be instituted, but it was also their wish that the method of carrying out that restriction should be deferred until their elected representatives from that meeting should have met the members of the Pyrethrum Board under the chairmanship of the Hon. Director of Agriculture. I consider that is a very fair and sensible way of dealing with an industry.

All I wish to say now is that I should like to associate myself with the remarks made by the hon. Member for the Coast and the hon. Member for Nyanza. Whether that can be done in practice, to give preference to working farmers or not I am not prepared to say, but the principle is right. There should certainly be no more forest land given out for the growing of the crop, and I consider that two notably large alien estates which grow a big acreage of pyrethrum should be restricted.

There is one thing I would like the opinion of the hon. mover on: if it is decided that the lower grades of pyrethrum should be drastically restricted, does this Bill provide that that can be done? That is all I wish to say, but I support the Bill.

COL. GROGAN (Ukamba): Your Excellency, it is not often that I find the hon. mover's arguments unimpressive, but I must admit that in this particular case I am entirely unconvinced. The

main principle on which these arguments for restriction are based is the supposition that the atmosphere or soil of Kenya have some peculiar properties which invests the pyrethrum with a quality which cannot be found elsewhere. That can hardly be so in view of the fact that pyrethrum is grown all over the country in every type of soil and also throughout quite a considerable range of altitude, general rainfall and so on. I would ask the hon. mover to remember that quite adjacent to us is a place called the Belgian Congo, and in the Congo there are immeasurable areas of land that enjoy all the benefits of properties and qualities that the pyrethrum areas of Kenya enjoy.

I am quite consistent in this matter. I fought from the beginning against controls. I believe they are entirely wrong, and we are going to have a very serious amount of trouble in this country if we persist in regarding this as a bonanza crop instead of one falling into the ordinary rotation of land on a certain class of farm. At the moment, it is inadvisable to take any further steps in limiting production, firstly on account of the point raised by other hon. members, namely the fact that the shipping problem is an acute one, and recent events are going to give us access to a very large amount of American shipping which presumably will bring more this way than it will take back the other way. Another point looming on the horizon is the possibility of Japan, the main supply of the markets of the world other than ours, being out of the picture. It seems important, therefore, that we should take every step to maintain as big a production as we can.

I think the proper objective of the pyrethrum industry—which is quite a wrong term; it should not be described as an industry but as a crop—is that we should go on producing as hard as ever we can until it comes down to the mean price at which it is adequately protected against synthetic competitors. Its production will inevitably gravitate towards the type of land best suited for its production. At the present time we are faced not only with normal farmers growing pyrethrum as a rotation crop but with a whole flood of pyrethrum

[Col. Grogan]

gamblers, and we want to draw a sharp distinction between ordinary rotation farming and pyrethrum gamblers, of whom there is a very large number. The sooner they are pushed out of the picture the more healthy the industry will become, and the only thing which will do that is for the price to come down in the ordinary way of competition to a level at which it can be profitably grown as a rotation crop by people most beneficially situated to grow it.

This move, which is only an extension of the previous moves, is based on the supposition that it is a bonanza crop with the dimensions of a monopoly. It is an attempt to bolster up another monopoly in this country comparable with other monopolies. If we have these monopolies imposed on us from outside we cannot help ourselves, but I cannot see any reason why we should concur in the establishment of one inside. I think the only limitation which there ought to be, the only protection, should be in respect of quality, and this country should not be allowed to export any pyrethrum below a certain quality. We shall then be able to maintain the lead we have in the markets of the world based on quality which, in my opinion, has nothing to do with climatic or soil conditions as distinct from other countries but is owing to the special care taken in the growing and preparation of the flowers.

MR. GARDNER (Conservator of Forests): Your Excellency, I have already this morning allowed some incorrect statements about forest reserves to go uncontradicted, and I do not wish there to be further misunderstandings in this matter of pyrethrum growing. The great majority of people growing pyrethrum on licence in forest reserves are actually neighbouring farmers. In only one or two cases are they commercial people, and in these cases the land is being worked as efficiently, or more efficiently, than the majority of other licences. And it has served a very useful purpose in getting our land cultivated so that we can reforest, and it is being done in the majority of cases by neighbouring farmers or farmers from nearby districts.

MR. BLUNT: Your Excellency, some of the speakers who have opposed this Bill, I think, have not quite appreciated what the Bill sets out to do. It sets out to provide that if the industry wishes for restriction of deliveries it can have it. The position already under the present existing ordinance is that if the Pyrethrum Board advises me that they wish acreage of classes of individuals, or particular individuals, reduced, that acreage can be reduced. This Bill merely serves to provide another means by which restriction may be brought in if there is a widespread desire to do it that way, and the investigations of the Board into the question have shown that the restriction of deliveries would be more satisfactory control than restriction by acreage.

The hon. Member for Trans Nzoia suggested that this has been sprung on the industry and that nothing was known about it until a week or so ago. The industry has its own appointed board of which the majority of members are elected, and that board surely represents the general views of the industry. But that board, although it has very strong views on the way in which this restriction should be brought in, did not act entirely on its own. It convened a meeting of the whole number of pyrethrum growers to hear their views and to give every grower who could get there the chance of expressing his view as to whether restriction was desirable and, if so, how it was to be brought in. That meeting then appointed five people to confer with the board, and adopted a resolution that the form of restriction which was decided upon by those five growers and the board should then be referred to all the growers, and only if a majority of growers approved of it would the industry accept it. I suggest that that is sufficient safeguard to ensure that the industry gets the form of restriction which it desires.

The same hon. member referred to my remarks about the shipping difficulties. What I think I said was that shipping difficulties are preventing deliveries to certain markets which are developing satisfactorily. We have actually been marketing pyrethrum in many other countries than America, and all those

[Mr. Blunt]

markets in different parts of the world are developing satisfactorily, but I believe that at this moment there is at the coast pyrethrum waiting to go to markets for which no shipping is available. On the other hand, I said the position regarding American shipping might deteriorate.

The hon. Member for the Coast suggested that Government give an assurance that preference would be given to the smaller grower, the working farmer, the man who was properly supervising the growing of pyrethrum. It is, I suggest, not for Government to give that assurance—that is a matter which the industry will decide—but I may say that I entirely agree with his views on that point, and the scheme which the Board has had under consideration was designed to protect that particular class of man at the expense of the larger grower.

The point was then raised regarding enemy aliens growing pyrethrum, and I know that this is a point which has caused a great deal of heart-burning among growers. But I should like to give them the actual figures. According to returns received from growers as to the quantity of pyrethrum acreage planted, there are 59,000 acres at the moment. I do not think that figure is quite correct, people are a bit optimistic in reckoning their acreage and some of it undoubtedly is not planted, but there is a large acreage planted. The total acreage grown by enemy aliens is considerably less than one per cent of the total in the country. It is less than 450 acres. Therefore, though on principle it is of importance, in practice it is of small importance in the consideration of this problem.

Another point regarding enemy aliens is this. Perhaps some hon. members are not aware that even though the estate of an enemy alien is carried on, any proceeds from the sales of crops from that estate do not go to the enemy alien but are held by the Custodian of Enemy Property until the end of the war, and may then be used to be set off against properties held by Britishers in enemy countries.

The noble lord, the hon. Member for Rift Valley, asked for an assurance that the present bill would permit of restriction by grading if that was thought desirable. I assure him that the existing ordinance permits restriction to be made in that way. There is a section in the existing law which enables rules to be made to provide for the prescribing of the grades of pyrethrum which shall be accepted by the agency. I think that covers his point.

The hon. member for Ukamba pointed out that in the Belgian Congo and elsewhere there is a considerable area of land suitable for the production of pyrethrum of good quality. That is perfectly true, and pyrethrum of excellent quality is being produced in the neighbouring territories. But the total that is produced from the Congo is something of the order of seven or eight tons a year at the moment.

As I said before, I trust that this restriction is certainly not going to be a permanent feature of the industry, and that within a year or two the expansion of markets will be able to take care of the expansion of production in this and other countries. I also expressed the view that pyrethrum at a lower price would leave the industry in a sounder and healthier position than it is as present. I had in mind then exactly the kind of thing the hon. member has elaborated, that it should fit into the rotation and not be considered as a single plantation crop.

I would like finally to ask those hon. members who oppose this Bill what they suggest should be the position if no form of restriction is brought in and if during the coming year, as may well happen, 12,000 tons of pyrethrum are produced. The market will never absorb 6,000. It is suggested that the other 6,000 tons which have been produced should be burnt or thrown into the sea? Would it not be better not to produce them?

The question was put and carried.

ADJOURNMENT

Council adjourned till 10 a.m. on Friday, 18th April, 1941.

Friday, 18th April, 1941

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Friday, 18th April, 1941, His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 17th April, 1941, were confirmed.

PAPERS LAID

Mr. Rennie laid on the table:—

Standing Finance Committee Report on Schedule of Additional Provision No. 4 of 1940.

ORAL ANSWERS TO QUESTIONS

No. 1.—POST-WAR PROBLEMS

MR. COOKE asked:—

1. Apart from the small committee established some time ago what practical steps (a) is Government taking and (b) does Government propose to take, to deal with the re-employment of European and African soldiers and personnel who will be discharged at the end of the war?

2. How many sittings has the committee referred to above held to date and when is it likely to report on this urgent matter?

3. Does Government propose to adopt any of the suggestions regarding post-war problems of unemployment made by me in the memorandum submitted at Government's request?

MR. RENNIE:—

1. I will answer the first and third part of the hon. member's question together.

An announcement has already been made that the Government has decided to appoint a committee to consider the problems of reconstruction that will arise after the war. That committee will clearly have to consider the question of the civil employment of ex-servicemen and will, no doubt, take note of the hon. member's memorandum together with other suggestions that may be put forward.

2. The answer to the second part of the question is four.

The chairman of the committee hopes to issue an interim report in the near future.

No. 21.—MAIN ROADS POLICY

LORD FRANCIS SCOTT asked:—

(a) Will Government state what is their policy with regard to the improvement of the main roads of the Colony?

(b) Can money be made available to bring the main trunk roads up to a standard that can carry modern heavy fast traffic without constant deterioration?

MR. STRONACH:—

(a) The policy of Government with regard to the improvement of main roads is expressed in the Report of the Central Roads and Traffic Board contained in Sessional Paper No. 3 of 1938.

(b) There is no prospect, during the war, of finding the capital sums necessary to carry out this programme, but if other difficulties can be overcome, it is proposed to make some money available to improve the trunk roads which have been damaged by heavy military traffic.

MR. SHAMSUD-DEEN: Your Excellency, arising out of the question, I would ask the hon. Director of Public Works if he thinks it fair, in view of the statements he has made, to charge full licence fees to transport people for a whole year when roads are closed for three, sometimes six, months a year?

MR. STRONACH: I hardly think it is my part to answer that particular question.

No. 22.—EXCISIONS OF FOREST RESERVES

MR. COOKE asked:—

With reference to Oral Answer No. 63 of 1939, paragraph 3, will Government state the position with regard to the suggested excision of 20,000 acres from the Southern Mau or other forest reserve for sub-division into farms for European farms?

[Mr. Cooke]

And with further reference to this answer will Government state whether it is their policy to permit non-natives to cut down one acre of forest for every acre destroyed by Africans?

If this is their policy will they say how they reconcile it with their oft declared policy to preserve the natural resources of the Colony?

If this is not their policy will they say why the excision has received the approval of Executive Council and why it has been recommended to the Secretary of State?

MR. RENNIE:—

The reply to the first part of the question is that since the provision of 20,000 acres from the south-western Mau Forest Reserve as an additional area for the accommodation of ex-resident labourers is not a matter of urgency, the proposal to excise a similar area from the Forest Reserves for alienation for European settlement is being held in abeyance pending further consultation with the Highlands Board.

The reply to part two of the question is in the negative, and part three of the question does not, therefore, arise.

As regards the fourth part of the question, the consent of the Highlands Board to the excision of 20,000 acres for the accommodation of ex-resident labourers was conditional on an equivalent area—not necessarily in one block—being made available for European settlement. It was purely in the hope of arriving at a final solution of this difficult problem that the excision in question was recommended to the Secretary of State with the approval of Executive Council.

MR. COOKE: Will Government withdraw what they said in the particular question I have quoted? It distinctly says that 20,000 acres will be alienated to natives if and when 20,000 acres were alienated to Europeans.

MR. RENNIE: The hon. member is making a statement and not asking a question.

MR. COOKE: I did first of all, and quoted part of it to help my hon. friend, who does not seem to appreciate it.

HIS EXCELLENCY: The answer made it clear that the whole question to which the hon. member drew attention is now being considered.

LORD FRANCIS SCOTT: It is not a fact that the Highlands Board have recommended to Government that this question should be left in abeyance?

MR. RENNIE: The answer is in the affirmative. Since this particular reply was drafted the Board has had a meeting in the last two days and recommended that all excisions be held in abeyance.

COFFEE CONTROL OVERDRAFT

MR. LOCKHART: Your Excellency, I beg to move: Be it resolved, that a further sum not exceeding £30,000 be made available from the revenue of the Colony to guarantee a maximum overdraft to the Kenya Coffee Control of £30,000 each with the National Bank of India, Ltd., the Standard Bank of South Africa, Ltd., and Barclays Bank (Dominion, Colonial and Overseas).

Hon. members will remember that at the last session a resolution in these terms was approved to the extent of £60,000 for the purpose of enabling the Coffee Control to make an interim advance of coffee growers against deliveries of their coffee and prior to the sale proceeds of coffee being received. It was found that, in order to keep up the flow of interim payments to the extent required to enable planters to continue with the cultivation of the new crop, £60,000 was an under-estimate in view of the rate at which sales were effected, and urgent representations were made that a further interim distribution was required. The matter was represented to Your Excellency who, in Council on the 26th January, approved as a matter of urgency the extension of the overdraft to that extent. There was, of course, ample security in the coffee in hand. The overdraft was eventually liquidated, and a little while ago the Coffee Board's account was actually in credit. A further interim distribution has been made, and the present overdraft is about £20,000. However, it is proper to

[Mr. Lockhart] introduce this resolution to report the position to Legislative Council and obtain the covering approval of hon. members to the overdraft.

MR. HARRAGIN seconded.

HIS EXCELLENCY: I would just like, as I have now put the question, to make this reference. Before the debate starts I would draw the attention of hon. members to the fact that, as they know, a judicial inquiry has been appointed to take place into certain aspects of the Coffee Control. I therefore hope that in any remarks made during the debate that will be borne in mind, and that nothing will be said in any way prejudicial to the impartial hearing of that inquiry.

MRS. WATKINS: Your Excellency, I feel rather diffident in speaking on this at all partly because, as you have stated, a great deal of the matter is *sub judice*, and partly because I was assured before this session came that there was nothing about coffee to be spoken about. So I have had very little time in which to get my figures. I would like first of all to give an assurance that I am not going to refer to anything that is *sub judice*, but there are a great many things which are not and those I should like to put before Your Excellency and this Council to-day.

It is, perhaps, a rather unusual spectacle to see a farmer stand up in public and try and dissuade Government from giving a further loan to us farmers, who may need it very badly before this time next year. The loan itself is a very helpful and generous suggestion on the part of Your Excellency and Government, but it is a pity that the body administering the loan makes us oppose the loan itself. Yesterday, as I sat listening to the speech of Your Excellency, it was borne in upon me once again that you must deal only with the representatives of the coffee industry. There has been so much confusion about coffee affairs that I would like to make one or two statements—they will not take more than a quarter of an hour and they may illustrate the question now before Council.

Some years ago we had the Coffee Planters Union. In due course it became

the Coffee Board, to which we send delegates. Quite early on in the history of the Board the question of plural voting came in—some called it the acreage vote, in that one man who had 30 acres had one vote and one man with 300 acres had 10 votes. There was a great deal of discussion about this at the time, and a classic reply was made which I will recall to the memory of Council. Mr. McLellan Wilson was then member for Kiambu, and one man defending plural voting said "why should not I, with 300 acres of bearing coffee, have more voting power than my neighbour with a few acres and a hundred shenzi eggs? Mr. Wilson's answer was: "Your vote is the same because you are a member of the British constitution". That was a classic reply, I am sorry to say that it was forgotten, and later plural voting came in. Even the chairman of the Board rather deprecated it. This is actually what he said—I will read it because it is a quotation:—

"Though loth to depart from the democratic principle of one man one vote the Board felt that in common fairness it could not consider as equally valuable to the industry a registered planter with one-eighth of an acre of coffee and a registered planter with 1,100 acres under coffee."

That is either a hypothetical case or a gross exaggeration. No one with an eighth of an acre is going to take the slightest interest in coffee affairs, and there are comparatively few farmers of under 100 acres.

Let us look at the actual practical result of plural voting. It meant this. One man, who is rather rich, has 300 acres and could outvote his four or five neighbours with 100 acres or so, but who have as much experience and as much at stake as he has. Then something worse came. Agents who control large blocks of coffee for absentee land owners have power of appointment and could control 20, 40, even 60 votes. I leave it to you to see what power could be wielded by such a dictator in the coffee industry, not necessarily an owner but just a dictator.

Since plural voting began, the whole of the coffee representation has gone

[Mrs. Watkins] into a rapid decline. People feel that if they come to a meeting and outvote opposition man to man, the acreage vote can be brought in to outvote the majority of farmers present, so they feel it is better not to waste miles of petrol and leave their farms to attend meetings. So that practically it is representation of the coffee industry by the big owners and agents only, and the little man is without representation.

There is a good deal of confusion about two things. We hear a lot about the K.C.P.U.—it is often taken as the Kenya Coffee Planters Union. It is not—it is the Kenya Planters Co-operative Union, quite a different thing, which includes planters of maize, pyrethrum, all sorts of things. It was started some years ago as a trade organization, and we were asked if we would like to join to get things cheaper. A number of us joined, and paid ten bob. There was no annual subscription, and nothing to remind us that we were still members long after we had ceased to confine our purchases to the Union, and it was rather a rude awakening the other day for most of us who had forgotten that our names were still on its list of members to hear figures quoted to show that membership as representative of the coffee farmers. It is entirely a trade organization. You might as well assume that the Army and Navy Stores advice should be taken on all Service matters. Not only coffee planters but maize and pyrethrum planters are in this Union.

There is another association—it is very confusing, all these initials—the Coffee Plantation Owners Association. That, as it indicates, is composed of owners and men who have invested capital in coffee plantations. This association was dormant, but in the last three months its membership has grown from 30 to 200 members. Why has it grown? Because we feel we have got to hold together against plural voting and other grievances. If you still think, Your Excellency, and this Council that the representatives who are now representing us are the only people who can, I ask you to notice these figures. The Coffee Plantation Owners Association membership is nearly 200 now, and there are 800

farmers in this country. Perhaps the figures of the recent Kiambu by-election may be illuminating. People may say in this Council that Kiambu only represents part of the coffee industry. Perfectly true, but the hon. Director of Agriculture yesterday gave me figures which may interest hon. members. The coffee acreage of Kiambu is one-third of the whole country, 34,000 out of 91,000 acres. The crop, however, is exactly one-half of the whole country's crop, except in buni, in which we do not compete. When it came to one man one vote, a strong opponent of the Coffee Board and the present control was elected to represent the coffee interests of Kiambu. It was no mean majority. I think it is an answer to the demand for true representation if we can only come to it again. That is all about representation.

There are one or two things still puzzling us. One is about our own coffee crop. We know that it is the best coffee in the world. It is used to blend inferior coffees. Recently, an entomologist came through the district after travelling all over the world inspecting plantations and crops, and said it is outstanding. But figures of the Coffee Control show that out of 9,386 tons delivered to the factories this year only 24 tons were allowed to pass as first class by our testing and grading people, and only 197 tons were allowed to pass as second class. Most of it has been put in the fourth and fifth class. If these figures are not accurate or the grading is not accurate, there is this fact: there have been 30 successful appeals this year. We feel that if the Coffee Board, which does not represent us, would allow the "blind" tasting of our coffee the results would be very surprising. At present the liquorers know which plantations the coffee comes from. We want it tasted blind, especially as some of the coffee passed as fourth class out here, which has been appealed against and still put in as fourth class has been sent as a sample to London and passed there as first class.

We have a feeling that the Control Board is trying to keep the pay-out low by keeping the grading low. If the board is doing this to protect the whole of the industry by giving them a low pay-out,

[Mrs. Watkins]

I think it would be kinder to say so and not leave every farmer with the perpetual disappointment of a lower grade than his coffee deserves.

It is reported in the terms of reference of the Control Board that the Board has nothing to do with the financing of coffee. Nothing to do with the financing of coffee. Yet yesterday, when listening to Your Excellency's speech, I heard that we could not expect help with finance unless we accepted control. May I say at once that I am not against control, but only the present form of control. In any case, however, from that quotation I take it that Government had not considered financing coffee, but from Your Excellency's speech I believe you are now considering it. I shall be glad to know if this is so, but until matters which are now *sub judice* have been elucidated we might be allowed to postpone this loan. That, I think, would be better.

To summarize the whole position. We want control, or we want a Vigilance Committee, and there I join with the pyrethrum growers in their confidence in the hon. Director of Agriculture, because if we could have proper elected representatives under an independent chairman like the hon. Director of Agriculture we should be quite all right. We could then see our industry through the war days and better bear our heavy taxation which is to come.

The second thing we want Government to know is that plural voting in these days of democracy is out of date. I am not going on with that subject, but perhaps Government will hold some sort of referendum or help us to get back to the constitutional procedure of one man one vote. We have been fighting this thing for years and trying to find a constitutional way out of our difficulty, for we feel rightly or wrongly that we are not represented on the Coffee Board by the people whom the majority of us would have chosen, and now, when the emergency is upon us which has far outgrown anything we could have foreseen when we allowed plural voting to go through, we look home to the source of democracy, the mother of parliaments, to find what they would do when the

man they selected is not the man they want for the present emergency. We find that what they do is to sing "Rule Britannia" in the lobby of the House of Commons and ask Mr. Chamberlain to resign and put in Winston Churchill. Who shall say that that is undemocratic? Who shall say that the British Parliament must stick to their choice when the emergency has outgrown the man? If the British Parliament could do that we thought we could. We had a rather noisy meeting at Ruiru and asked the chairman of the Coffee Board to resign, which he did not, and so we could not follow constitutional practice.

I am sure that Your Excellency and Government do not want to have this loan issue spent without knowing how it is going to be spent, according to the democratic principle of the majority saying what shall be done, and all I ask Your Excellency and Government to do is to postpone this loan until these things to which I cannot refer to-day have been elucidated and until you have seen how you can help us to return to the real representation required here. If Your Excellency cannot do that, I would ask for a reasonable amount of time to put before Council, in another session, a coffee policy which Kiambu and the rest of the country will come in and support. We are not bolsheviks, we want to be constitutional, but when we are told that Government can only deal with our representatives, then we ask for representatives who do represent us, not those elected on a dictatorial vote, and until we can have properly elected representatives I suggest that the loan be postponed *sine die*.

MR. NICOL: Your Excellency, I have no doubt that this motion which we are discussing may be a very necessary one, but I regret that as a matter of principle I cannot support it.

There is a committee in existence duly nominated by this Legislative Council which goes under the title of the Standing Finance Committee. Now, sir, I am a member of that committee and, as far as I can see, the Standing Finance Committee as such do not appear to be consulted on proposed financial measures. In effect, what appears to happen is that Your Excellency takes counsel of your

[Mr. Nicol]

Executive Council to decide on a question and then, in that true despotic manner to which we are gradually becoming accustomed here, you bring forward such a motion as this and with the weight of the steam roller push it through. The first intimation I received of this proposed measure, or commitment, or proposed commitment or liability, call it what you will, was when I saw this motion on the Order Paper on Wednesday. I suggest that with the Standing Finance Committee as such, it would have been only right it should have been consulted and possibly have a case stated, or have been told the motion was coming forward and what the implications were. The hon. mover said it was on 26th January that Your Excellency took the decision in Executive Council to consent to this additional liability. From 26th January to 18th April is quite a long time, and I think we might have been told something about it.

The Standing Finance Committee, as far as I can see, to-day is nothing more than possibly a slight check or audit on small matters of expenditure, but we are rarely faced with anything connected with major policy, and this motion we are discussing is in the nature of a major policy if we extend the liability of the Colony by some £30,000. Whatever your security is, the Council is entitled to anticipate that a committee appointed by it to watch the finances on behalf of the Council should know something about it.

It may, of course, be argued that on the Standing Finance Committee there are four, or possibly five, members who are on Executive Council. But I suggest that that is not a sound argument or, if accepted, is not the least bit complimentary to those members of the committee who do not happen to be members of Executive Council. As I say, this proposal may be a very necessary one and desirable and all that, but I do suggest that Your Excellency should begin to realize that the Colony and members of this Council are getting more and more tired with the despotism evinced by Your Excellency's Executive Council.

MR. SHAMSUD-DEEN: Your Excellency, the subject matter of the motion

we are discussing is such that I feel as though some sort of technical subject is being discussed of which I have very little knowledge, for the reason that coffee is a forbidden fruit to Indians. Adam and Eve were forbidden to go near only one tree, but in this Colony 50 many trees such as coffee, wheat, tea and pyrethrum and others are forbidden to Indians. That is why I am not very interested in the motion. But when it comes to a matter of the general community, of which the Indians form the greater part, being asked to foot the bill and be surety for something it is about time that I said something on the subject.

Your Excellency, coffee is a very high priced commodity (laughter), and I feel there is something wrong somewhere if, in spite of this high price, the country is called on to advance a loan and guarantee an overdraft to the coffee industry. From what I have heard from the hon. Member for Kiambu, there is no doubt about it that the whole thing has been rather mishandled and requires close investigation, but in view of the warning by Your Excellency as regards the commission of inquiry which is now sitting, all I wish to ask is whether it would not be a wise thing to leave this matter over until the findings of the commission are known?

MR. COOKE: Your Excellency, I feel I cannot support this motion unless there is a radical change in the composition of the Coffee Control Board. When my hon. friend the Financial Secretary introduced the original motion, he told us or he indicated that he felt confident that that £60,000 would be sufficient, and I think the expression he used was "unless the worst happens". Apparently the worst has happened, and my hon. friend now seems to ask us to throw good money after bad. When gentlemen or bodies of gentlemen or boards assume dictatorship, the only justification is success. There may be a great deal to be said in favour of efficient dictatorship, but I cannot imagine any argument in favour of an inefficient one.

From the very start there have been protests by responsible people in this country against the composition of the board, responsible people interested in

[Mr. Cooke] the coffee industry, and thus they put themselves in a very strong position. I have the greatest respect for the efficiency and financial acumen for my hon. friend the Financial Secretary, but if he will allow me to say so the effect of his remarks is to show that he does not know the difference between a coffee bush and a cabbage and his knowledge of marketing cannot really be called profound. We had another gentleman deputising for him, a very able gentleman, but I understand he has for some time lost the confidence of a great many of the coffee producers of the country. But, worst of all—and I hope I am not saying anything to offend against the commission now sitting or anything *sub judice*—Government did, I think, commit the enormous impropriety of appointing a gentleman to the board financially interested in the export of coffee.

If Government consents to reorganize this board, I hope they will appoint as chairman some gentleman who has time for the job. My hon. friend, whose ability no one will question, has multifarious other duties to perform, and this is just another instance of the tendency of Government to form a sort of panel of very intelligent gentlemen, of about half a dozen, and to draw on them for every board and committee in this country. It is time that Government learnt or recognized that those gentlemen are not the only repositories of wisdom and efficiency in this country.

There is one point I want to make. It has been said in Your Excellency's address that unless the Coffee Control Board remains this overdraft guarantee will be withdrawn. That seems to me to be holding a pistol at the heads of the coffee producers. It is a dangerous thing to hold a pistol at the heads of British people, and especially a dangerous thing for a dictator to do so. Government cannot have it both ways. My hon. and learned friend the Attorney General no doubt holds that it was *intra vires* in suggesting that Your Excellency should create this board. That is granted if the board is really necessary for the war effort, but it stands to reason, irrespective of not of whether you have the Coffee

Control Board, you must finance coffee to keep it going as Government proposes to finance wheat. Either it is necessary to the war effort or it is not. If it is not necessary to the war effort, then this regulation 654 is *ultra vires*. If it is necessary, the coffee industry should be financed willy-nilly, whether the Control Board continues or not.

LORD FRANCIS SCOTT: Sir, I rise to support the motion before Council. If this is turned down it will be a most disastrous thing for the coffee industry, and I think we would have to carry severe responsibility for such an action.

So far, I have only heard one valid argument put up in criticism of the motion before Council. That was by the hon. Member for Mombasa as to why this proposal was not brought before the Standing Finance Committee. Why it was not I do not know, and I think it certainly should have been.

With regard to the other criticism I should like to say, speaking as a coffee planter in the Kiambu area with interests in an estate, not a large one—it has 108 acres of coffee—I should like to say that I have every confidence in the gentlemen who are now controlling the industry, both the Coffee Board and the Coffee Control, and I am quite convinced myself that if we had not had this control we should not have been able to dispose of our coffee this year as advantageously as we have. Further, this year there has been a comparatively small crop; in a good year we are likely to have a very large crop, and the difficulties of disposing of the crop will be far heavier than they have been this year. I think it absolutely essential that there should be this control. If we do not have it we shall be at the mercy of the people who, in the course of their business, legitimately will buy coffee as cheaply as possible and sell as expensively as possible.

I trust Council will pass the motion now before hon. members.

MR. ISHER DASS: Your Excellency, I rise to oppose this motion. It is a fact that I am not directly interested in coffee growing or selling or have anything to do with the Coffee Control Board, but on a very serious matter of principle I have made up my mind to oppose this motion.

[Mr. Isher Dass]

The first reason is that I have been a substitute member of the Standing Finance Committee in the absence in India of the hon. member Mr. Pandya. For the last six months we never heard or read in the paper or had any communication from Government that the question of guaranteeing a further loan of £30,000 with each of the three banks for the Control had been suggested or brought before the Standing Finance Committee and discussed. In fact, when the question of such a big amount is involved, such a question should have been placed before the committee and the views of its members ascertained before the motion was moved in this Council. That is one principle.

The second is that everyone will appreciate that the loan is made in a time of emergency and particularly when the position is not a very happy one. I sincerely believe the hon. Member for Kiambu was of the same opinion, that she has nothing to fear as to the question of the loan being available for the industry as a whole, but the objection is that, in view of a certain agitation, rightly or wrongly, in the papers and by parties concerned, Government thought fit to appoint a commission of inquiry under the chairmanship of a very able person; that commission is shortly to sit, and until it has completed its inquiry and submitted its final report, in fairness to the commission themselves and the taxpayers it is indecent that any further loan should be placed at the disposal of the same Control Board members, because in the Official Gazette I see that the members of the Coffee Control Board have expressed their desire to have this commission. If that is the case, and they are anxious that the whole matter should be inquired into, then in their own interests and the interests of the taxpayers it is only just that the request of the hon. Member for Kiambu should be acted on. She asked that the loan should be suspended for the moment, and at the next session of Legislative Council the whole question of coffee policy be discussed.

The hon. Member for the Rift Valley has expressed alarm that if the motion is not passed some terrible things will

happen in this country. I do not agree with him and am not so pessimistic as to believe that in the next three months, by which time the inquiry will have been concluded and a report submitted, something terrible will have occurred which will upset the whole of the country. I do not believe such is the case, and I do not believe the hon. member is so pessimistic and despondent himself.

The request of the hon. Member for Kiambu for the coffee policy to be discussed at the next session is not only reasonable but should get a very strong backing. The hon. member won the recent by-election by a considerable majority on this same issue, so that we have to take it for granted that the opinion of the electors of Kiambu was the same opinion expressed by the hon. member. In view of that overwhelming majority with which she was elected, Government in all fairness to those constituents cannot ignore such a reasonable request. Therefore, as we have heard this morning, that all matters which come before us should be dealt with in a just and faithful manner, I think Government would be acting in a just and faithful manner if they suspend the motion for three months and await the submission of the commission's report, when this matter could be finally discussed and some agreement come to.

There is one more point. Government must have noticed or it has been brought to Your Excellency's notice recently, that in the local Press there has been a tremendous amount of correspondence against coffee control. The position is this. (I am not directly interested, but as a member of Council I am interested in the welfare of the country, and if there has been such an amount of correspondence in the Press and Government has thought fit to appoint a commission of inquiry, I think the way the whole position has been handled is not quite the proper way. If we believe in free trade and free competition and a free market, and as a matter of fact all coffee growers are highly educated people who have a knowledge of marketing, I believe that if they feel themselves there is no necessity for any control it is high time then that Government should consider

[Mr. Isher Dass] the matter seriously. That is the reason I am in favour of the suggestion of the hon. Member for Kiambu being accepted and in the next session the coffee policy being discussed. It will do more good than harm, and Government will be in a position to know the views against control and the arguments advanced for it, and in a better position to know where they stand. In view of all this, I believe Government will not be so unhelpful as to refuse this demand and allow the motion to come up to-day.

COL. GROGAN: Your Excellency, it appears to me that a very large amount of this discussion is entirely beside the mark. One can understand a considerable amount of latitude being allowed to the hon. member making her maiden speech, which I listened to with great interest, but what is the issue? Everybody who has spoken agree with the principle of control, and coffee control involves orderly marketing which involves finance, and the issue is whether in the interim, while the price of the crop is in fact being obtained, what amount of interim accommodation of finance is required? and apparently it is an extra £30,000. That is all the argument. I submit that most of the discussion has nothing to do with the particular issue before Council.

MR. RENNIE: Your Excellency, perhaps as chairman of the Standing Finance Committee I should say a few words in answer to the remarks made by the hon. Member for Mombasa and the noble lord the hon. Member for Rift Valley.

The hon. Member for Mombasa somewhat unwisely, I think, based his argument—that the Executive Council had been very despotic in this particular instance—on a very flimsy foundation, namely that this particular motion had not been put to the Standing Finance Committee before it came to this Council. I could, perhaps, take him up on the question of whether, in view of the fact that the principle of the guarantee had already been accepted by Council and that the Standing Finance Committee, unlike Executive Council, has no statutory powers, the action in not bring-

ing it up to the Standing Finance Committee could be defended. I will not however, take up that argument. I merely mention, as I have already mentioned to the hon. member when he has advanced similar arguments in Standing Finance Committee itself, that I endeavour always to consult the committee in financial matters. I gave the hon. member an undertaking to that effect some time ago, and have endeavoured to carry that undertaking out. Unfortunately, since my return to duty, in the past few weeks I have been overwhelmed with work, and the fact that this had not been referred to the Standing Finance Committee escaped my notice. For that omission I apologize to the hon. member and other members of the committee.

COL. KIRKWOOD: Your Excellency, I rise to support the motion before Council.

I must confess that the discussion this morning is rather bewildering. We have had the hon. Member for Kiambu, which she claims is the largest coffee area in Kenya, refusing—that is what it amounts to—this gesture by Government to find another £30,000 to finance the Coffee Control Board. Coffee control has been accepted by the coffee industry, Government have stepped in and done their duty under the control. I should like to make it clear that in practice and on general principles I am against control, but control is on, and until such time as the coffee producers wish to do away with it it is my duty to support control and the motion before Council.

There is another aspect, and that is that this matter, as pointed out, has not been before the Standing Finance Committee. I do not think it is hardly fair for the hon. Chief Secretary to say that he apologizes for the slip. It is a serious slip, surely, when a matter of £30,000, which should have gone to the committee, has not been put before them, but the cause of that is probably that we have a European Elected Members Organization, of which the majority of us are members, not all of us, and some are members of the Standing Finance Committee and of Your Excellency's Executive Council: I maintain that it was the duty of those members who are on your Executive Council to have

[Col. Kirkwood] drawn your attention—for this matter must have been discussed at that Council—to the fact that it had not been put before the Finance Committee, of which two of the Elected Members Organization are members as well as being members of Executive Council. I should like to hear from them that they did so object.

As I have stated before in different terms, there are hon. members on this side of Council who are European elected members-cum-Government officials, and they are to blame. I state here and now that the Elected Members Organization as such is a farce and delusion and a snare.

I would point out while I have the opportunity that this is a measure for controlling and assisting an agricultural industry, but I very much regret that Government has not seen its way up to now to bring in a measure of support for the maize industry.

HIS EXCELLENCY: Would the hon. member resume his seat? The hon. member is not, I think, making his maiden speech (laughter), and I cannot therefore give him the full licence that has been given in certain cases already, and I must ask him to confine his remarks to this motion.

COL. KIRKWOOD: I still maintain that what I have said is in order. This is class legislation, I will put it that way, legislation in favour of one industry and one only. I do hope that some assurance will be given during this session that assistance and control for the maize industry, which has been discussed *ad infinitum* in this Council, will be forthcoming.

MAJOR CAVENDISH-BENTINCK (Nairobi North): Your Excellency, my hon. friend on my left was determined to get me on my feet, and he has succeeded in doing so.

In the first place, I should like to deal with the points regarding the Standing Finance Committee. I am afraid I rather disagree with anything so far said on that subject. I will fight to the last ditch as far as is humanly possible to retain powers over finance by this Council. This

Council has the first and last say in questions of finance, and the Standing Finance Committee is only a sub-committee of this Council to which this Council refers matters for advice. Unfortunately, in the Standing Rules and Orders a practice has crept in to which I have always objected, that Your Excellency can utilize the Standing Finance Committee of the Council to give Your Excellency advice without this Council's knowledge of what was referred or advice given. That really is unconstitutional, but it does not affect the argument before us to-day. I personally should strongly object as a member of Legislative Council to being ruled by the Standing Finance Committee. For questions of detail but not of principle to be referred to that committee before coming to this Council I have no particular objection to, but to say a matter referred to this Council should in the first instance have been referred to the Standing Finance Committee I do not agree with, because as members of this Council we are at liberty to refer any matter to the Standing Finance Committee, to alter figures, or not to refer matters, and those powers I maintain we should jealously guard, in that they represent the legislative powers over finance which are given under the British constitution to every legislature in the Empire.

Now, coming to this matter of a sum of money to be agreed in order to guarantee overdrafts at the three banks to finance the purchase of coffee by a Control Board or to be able to pay out to the producers of coffee advances for coffee given the Control Board pending the receipts from the sales of such coffee, having heard the various objections and having also been present at various meetings, and having read various letters in the Press, I really begin to wonder whether perhaps I am not disposed to oppose this motion. This is a democracy, under which people are allowed to run their own affairs. I am not aware that coffee is particularly necessary to the war effort. If the coffee dealers and those who grow coffee think that they can do better for themselves uncontrolled, I am rather inclined to say "Let them try". On the other hand, I think responsible

[Major Cavendish-Bentinck] members of this Council have also got to ask themselves the question before they can agree to do that, whether they have really done their best in the interests of what is really a very big industry in this country. I believe that what Government did and what a number of us in this Council supported Government in doing, was genuinely an attempt to do the best for that industry.

I think there is a little bit of misapprehension in the minds of the people engaged in that industry as to the world position of coffee to-day. I do not think they are, perhaps, quite aware of the fact that there are unprecedented difficulties—perhaps they do not quite appreciate them—in shipping, in finding markets, etc. Nor do they quite appreciate, I think, that normal methods of commerce, normal methods of dealing with these products, are to-day unable to function. Therefore I do think it has been the duty of certain responsible officers of Government and certain persons who, perhaps, have had more opportunities of realizing what the situation really is, to try and help that industry to the best of their ability.

It has been stated in the course of this debate that it is always the same people who are pushed on to boards created to investigate and run these particular types of complicated questions. I am not aware that any member of the Coffee Control Board is a member of any other board of a similar type. The people were selected as being those most qualified—

MR. COOKE: On a point of explanation—

HIS EXCELLENCY: What point of explanation?

MR. COOKE: The hon. member is trying to controvert what I said. Surely the chairman, the hon. Financial Secretary, is a member of various other boards?

MAJOR CAVENDISH-BENTINCK: That is so, but it is not unreasonable to have the Financial Secretary, who is in a fairly responsible position, on a board for which Government is producing very large sums of money. But he takes the advice of four other gentlemen not

on any other board, as far as I am aware, everyone of whom has a record which justifies some trust being placed in him by people connected with the coffee industry.

If, I repeat, I could be satisfied that the majority of the coffee growers of this country do not wish any control, then I think the sooner control is removed the better (hear, hear), and I should like to see this time next year whether those people are as happily situated proportionately as they are to-day. I have no hesitation in warning them that they will not be, but that is their business, not mine. I therefore feel, in view of this discussion and in view of the result of the by-election recently, that as we are a democracy and as coffee is not a necessity to this war, that perhaps we had better remove the control and see what happens. I think we could do so with a perfectly clear conscience, as we have done our level best to save people against themselves.

CAPT. GHERSIE (Uasin Gishu): Your Excellency, I feel that the history of this particular motion has been most confused this morning. I am sure that nobody has any wish to abolish the question of control where public funds are concerned, and certainly nobody has any desire to deprive the coffee industry of the proposed loan. On the other hand, I do feel that the hon. member for Kilambu put forward a very reasonable request, namely that the adoption of the motion be postponed. The hon. member does represent, after all, a very large proportion of the coffee producers of the Colony, and I think some attention should be paid to her. Unless the hon. Financial Secretary can convince us that there is some extreme urgency for the introduction of the motion now, I would suggest that it be postponed.

MR. LOCKHART: Your Excellency, to deal first with the speech of the hon. Member for Kilambu. She said that owing to the short space of time she had had to consider this question, she had not come armed with any figures. Well, as I have only had since the beginning of the debate to consider the question of a full dress debate on the subject of coffee control—which does not really

[Mr. Lockhart] arise from the terms of the motion—hon. members will be relieved to learn that I have no figures either, and did not propose to quote any. Not only did I not expect a full dress debate on coffee control, but it is not a subject which lends itself to consideration in a full dress debate at all. It is concerned with the consideration of a very considerable number of facts and facts, moreover, which are not accessible to everybody, and some of which it would, in the process of selling the coffee crop of the country, not be very desirable should be accessible to everybody.

The question is really only one which can be considered by quite a small number of people. I think it has been said by an experienced authority that not more than eight people were ever able to get around a table to consider a question with the hope of arriving at a lucid conclusion. From my experience of public affairs that is not a dictum which I should dissent from very much. These things can only be considered by a small number of people who get around a table and examine all the facts and aspects, and it is necessary people should be appointed and, having been appointed, that conferences should be placed in them.

The hon. Member for Kilambu spent a considerable part of her speech in dealing with the method of election of the Coffee Conference which again elects the Coffee Board, and with this question of plural voting. The method of election was arrived at many years ago, I understand and I always supposed by the coffee industry itself, and on an acreage basis. I am speaking from memory only, for it is some time since I looked the subject up, but I always understood that acreage in the first place determined the number of representatives from each district who came to the Coffee Conference. If you are considering the interests of any district or area in what is after all a matter of bread and butter, the extent to which they produce their particular commodity and the crop must, surely, have some influence on the say which they have in matters affecting the industry.

The hon. member referred to the fine old democratic principle of one man one vote—and presumably also one woman

one vote, but we are not dealing with the matter of a citizen as a citizen with some stake in the country. We are dealing essentially with a matter of the economics of an industry, and while I am not prepared to pronounce on the question as to whether a man who has 500 acres is entitled to have a greater say in the matter than a man with 100 acres, it is perfectly obvious that the first man is affected five times as much by any decision which may be arrived at.

MR. COOKE: It is a very fallacious argument.

MR. LOCKHART: Do I understand the hon. member is doubting my arithmetic? (Laughter.) It may be a fallacious argument. I think it is a reasonable argument. The election of the number of delegates from each district is fixed on an acreage basis. When they are to be elected, the provision made is, I understand, that all registered coffee growers in a district vote for the number of delegates prescribed for that area. The vote is in fact by a show of hands. There is provision that voting may be by acreage, but I am informed that voting by acreage has only taken place once and in respect of one district. If that is true, it seems to me that the method of electing delegates to the Conference is not really as undemocratic or unreasonable as all that. Anyhow, that is the method the industry laid down, and until by motion in this Council, or in some other way, some amendment is made to provide another method of electing delegates to the Coffee Conference, I fail to see how Government can do other than accept them as being the delegates to the conference and the board they elect as the Coffee Board. With regard to the appointment of the Coffee Control, while it is true that this was not criticised at the last Coffee Conference and that what had been done was endorsed by the Coffee Board—which includes, incidentally, official members, among them the hon. Director of Agriculture—really the question of the composition of the Coffee Board has very little to do with the question of the composition of the Coffee Control.

Your Excellency referred to the inquiry which is now taking place and to

[Mr. Lockhart] certain allegations made against the Control but, in point of fact, that has nothing to do with the question at issue. If the result of the inquiry proves that some, or all, of the members of the Control are incompetent, interested, or otherwise, it has really nothing to do with the points at issue which are, first, is control necessary at all? and, if so, what form should it take? The hon. Member for Klambo stated that she was in favour of some form of control, but she said, not in its present form. She did not explain what form it is suggested control should take, but in the hon. member's manifesto to the electors at the recent by-election—which she rightly said must be paid some attention to in this matter—she said she was in favour (I am quoting from memory, and she will interrupt me if I am wrong) of some form of control which dealt with the allocation of shipping, quotas and profits. As the hon. member was elected it must be assumed that that is the form of control which commends itself to the majority of voters who voted for her.

It is very dangerous to make a prediction, particularly in public where one's words are taken down, but I do venture to predict that neither the hon. member nor anyone associated with her will produce a form of control which achieves the three purposes the hon. member laid down in her manifesto and which will vary in any fundamental degree from the form in which the control exists now.

The hon. member referred in one place to the question of grading of coffee. I think the figures she quoted appeared in a letter in the Press, in which complaint was made about grading by a liquorer. It is necessary in any pooling system for the allocation of the coffee to the various classes of the pool, and that can only be done as far as I know by means of grading. As the hon. member knows, there is provision for appeal to a panel of liquorers, and the letter written by some coffee planter to-day said he had appealed to a panel which confirmed the board's grading. Well, that is very unfortunate, and he is dissatisfied. Many people who lose cases in the lower courts,

appeal to the higher court, and lose there, are also dissatisfied. But I do not know what can be done to meet them. The suggestion which seems implied is that the hon. member said, that the Control Board influences liquoring in order to de-grade the coffee, is quite without foundation. Nor does it matter to the board in the least how anybody's coffee is graded at all, not the slightest. The grading merely determines the division of the proceeds between the planters themselves, and a fair division is all that is aimed at.

The question raised by the hon. Member for Mombasa regarding reference to the Standing Finance Committee is one which has already been dealt with by the hon. Chief Secretary. It was also referred to by other hon. members, but there is nothing more that I can say about it.

I should like to disabuse the mind of the hon. member Mr. Shamsud-Deen that coffee is sold at a very high price and that it is a crop the producers of which are so prosperous that no kind of assistance is required at all. That is very far from being the case.

I turn now to the views of the hon. Member for the Coast. It may, perhaps, surprise some hon. members to find him rising to address Council on the subject of coffee control, as I am not aware that his constituency is very thickly populated by coffee growers.

MR. COOKE: On a point of explanation, I was approached by a great many coffee growers to raise the question, and the hon. gentleman has doubtless received literature on the subject?

MR. LOCKHART: Yes, I have received literature on the subject, and I am quite aware—indeed, the hon. member informed me himself—that he has recently spent a week-end in a coffee growing constituency, and I gathered that he had made some sort of prolonged and deep study of the question to arrive at his present conclusions. (Mr. Cooke: Quite right.) Although it is true, as the hon. member suggested, that I do not know the difference between a coffee bush and a cabbage—and certainly in parts of the Kiambu area there was very little difference in their appearance not

[Mr. Lockhart] long ago!—I have had to study the question of coffee marketing for more than one week-end, and I cannot accept the views put forward by the hon. member.

He said that this was a case of throwing good money after bad. I should like hon. members to ponder on that observation—

MR. COOKE: It occurred to me it was a case of throwing good money after bad, and I stick to that.

MR. LOCKHART: It would not have presented that appearance to him if the hon. member had taken the trouble to listen to what I said, which was in effect that the whole amount of the advance had been recovered, and again, that the board at one stage was in credit, that the present overdraft was £20,000 and that will shortly be redeemed after sales have taken place.

The hon. member suggested that I have not the time to give to this question and to the operations of the Control, and he interrupted the hon. Member for Nairobi North with regard to the composition of the committee. Perhaps I might explain that, in the case of the Coffee Control as in the case of many others of the embarrassingly numerous controls which the Supply Board has had to undertake—I say had to undertake, for we should never have embarked on any unless there was a compelling reason for so doing—as chairman of the board itself I am ex officio chairman of any sub-committees, but the executive work is, of course, carried out by someone else; in this case it is carried out by a full time member who is deputy chairman. It does not matter what you call anybody, but very largely in deference to the democratic instincts of the coffee planters—who might resent the title "Coffee Controller"—we call him deputy chairman. He is the executive officer with a full-time job, and I should like to say it has been carried out with the most admirable efficiency. However, as chairman, while I cannot assume other than the responsibility which any head of department must assume towards this Council on matters which fall within his sphere, I cannot assume more than that

for the executive work of the Control. I am, in accordance with ordinary administrative practice, consulted when important decisions have to be taken, and as far as decisions which have been taken I have been consulted and take full responsibility, both here and elsewhere.

The hon. member then said that Government had made a threat—I think he used that word, if not he implied it—to the industry in regard to the provision of funds, and said no public finance would be granted unless the present form of control is retained. That is not the correct statement of the case—

MR. COOKE: On a point of explanation, I do not think I said those words. Your Excellency in your address indicated that unless control was enacted no money would be available for coffee control. That is the point I endeavoured to make.

MR. LOCKHART: That is a fairly simple point. The hon. member says that if there is no coffee control no money will be available for coffee control. That seems to follow.

MR. COOKE: It does not seem to follow. I am loth to interrupt, but as I pointed out if this regulation is *Intra vires* it alters the whole position. If the regulation is *ultra vires* Government cannot control coffee. If they control coffee they must support the coffee industry with finance. That seems commonsense.

MR. LOCKHART: It may be commonsense, but I don't get it! I do not understand what the hon. member is talking about. I will, however, explain what the position is.

The position at the outset in regard to control was made clear by Government and by the Supply Board, which, as the hon. Member for Nairobi North indicated, considered this matter at the greatest length and had quite interminable discussions on the question. No single thing that the board has dealt with was gone into so thoroughly and discussed so closely with the interests concerned as this. Our attitude at the beginning and to-day is quite simple, and it is this. If there is any justification for this control, that it is necessary, it is

[Mr. Lockhart]

because the industry is confronted with a grave crisis, with a serious difficulty in the marketing of coffee. We considered that if that is so, there should be sacrifice all round. We considered that in the case of the planter the proceeds of the whole crop should be pooled and distributed with due regard to quality, so that if one planter's coffee crop was shipped and another had his left behind the sacrifice falls on all and not the whole of it on the unfortunate man whose coffee has been shut out. We feel that with the difficulties of marketing the taxpayers should come forward and assume some responsibility for financing production until the crop has been disposed of, which may take a very long while, and we feel, thirdly, that the coffee trade whose business it is to market the crop should have some reduction applied to their normal commissions and some control applied to marketing profits.

That, sir, I submit is a reasonable attitude to take. If the coffee growers are told, as I believe they have been, that the coffee trade will market their crop without any difficulty at all, very well. If they believe it and are prepared to accept the position, by all means let them do so, but I do not think it would be reasonable in that case to expect Government to come forward and commit the taxpayers' money in the financing of the crop under those circumstances. Let us have sacrifices all round, and we are prepared to play. Further, of course, it would not be in accordance with our responsibility to this Council to entrust—after all, £90,000 is as far as we have gone this year, and in the coming season, I must warn Council, we may need a larger sum—it would not be in accordance with our responsibility to entrust the administration of that sum except to an officially controlled agency.

While on this question of equal sacrifice, I think one misconception which influences a good many coffee planters has arisen in this way. One must admit that if there were a free market as against the pooling system, it is quite possible that certain parcels of coffee would obtain a better price than they obtain under the present control system.

It is not only possible but quite certain that some would. Of course, every coffee planter—well, not every, but a certain number—would assume that they would be the fortunate people who would get the better price for a particular sale to a particular individual. I do not think they entirely appreciate that everybody producing the same class of coffee would be equally confident and after that particular sale. That fact is not likely to be lost on those people whose business it is to buy. But the point at issue is: Is there any other way of controlling the market by which the total proceeds of the crop could be as much as they would be under the present control?

The point is the size of the cake which has to be divided. Alterations in the operation of the system of control for the division of that cake the board has always expressed itself perfectly prepared to consider. There are alternative methods of dividing: we think the present one is the most fair, but are perfectly prepared to listen to representations on that point. I say again, if Government is satisfied that the main body of producers in the industry do not require control at all, neither Government nor the Supply Board wishes to continue it, and I should like to say that no one would be more heartily glad to get rid of it than I should.

The question has been raised of post-production. The hon. member for Usin Gishu was the last hon. member to refer to it. There is an urgent reason for the passing of this resolution to-day, and the urgent reason is, as I have indicated, that in point of fact the guarantee of the overdraft by Government has been given and the overdraft has been paid, and it now stands somewhere in the order of £90,000, and what we are asking hon. members to do to-day is to pass this resolution in order to show that they think that was a wise and proper thing to do.

The question was put and carried by 31 votes to 5, 4 hon. members not voting.

Ayes.—Messrs. Blunt, Boulderson, Brown, Major Cavendish-Bentinck, Mr. Daubney, Lady Sidney Farrar, Messrs. Fazan, Gardner, Capt. Gherrie, Col. Grogan, Messrs. Harragin, Hebdon.

[Mr. Lockhart]

Hodge, Hosking, Izard, Dr. Johnstone, Col. Kirkwood, Messrs. Lacey, Lockhart, Col. Modera, Messrs. Montgomery, Mortimer, Nicol, Northrop, Rennie, Sir G. D. Rhodes, Lord Francis Scott, Messrs. Stronach, Tomkinson, Dr. Wilson, Mr. Wright; 31. Noes.—Messrs. Cooke, Isher Dass, Sheikh Hamed bin Mohambed bin Issa, Mr. Shamsud-Deen, Mrs. Watkins; 5. Did not vote.—Messrs. Kasim, Pandya, Patel, Sheriff, Abdulla bin Salim; 4.

CONSERVATION BOARD

LORD FRANCIS SCOTT: Sir, I beg to move: Be it resolved that a Conservation Board be appointed immediately for the purpose of conserving the assets of the Colony and Protectorate in respect of water, soil and forests, and of enforcing the application in practice of the legislation enacted for this purpose in all parts of the Colony and Protectorate.

In moving this motion I trust that, unlike the motion on which we have just spent so much time, it will be non-controversial and have the support of everybody in this Council. At various times I think everyone has expressed their views as to the necessity for the conservation of these assets of the country. I know that in war time many projects which are of benefit to the country and which would be very desirable, have had to be put in cold storage and cannot be carried on with at the present time. Most of those, however, affect what I may call the superstructure, whereas these fundamental assets of the country to which I refer are the foundations on which everything else has to be built up, and they cannot be allowed to deteriorate whatever the situation is with regard to the war or any other circumstance.

We have got, I believe, sufficient legislation to deal with this question, though perhaps some of that legislation may have to be amended and strengthened. But what we want is the practical application of that legislation, so that these assets of the Colony are not only preserved but are improved. In your address the other day, sir, you said good progress is being made with such staff as is available, and you further said that

the matter might be dealt with by the committee which proposes to deal with post-war reconstruction. Good progress is being made in certain parts by certain people, but it is not being made in other parts and by other people, and what is required is that that progress should be made everywhere by everybody, of whatever race they may be, and steps have got to be taken to see that is done. That is the underlying objective which I have in moving this motion to-day.

I do not consider that the committee on post-war reconstruction would be a suitable body to deal with this matter, if it is going to deal with the sort of matters which I visualize it is intended to. This is a matter which has got to be dealt with by people who understand the problem and who are prepared to give their time to see that the problem is tackled in the right way on the spot. It has been suggested again that this proposal would cut across existing authorities who have been constituted under the legislation to which I have referred. That is not my intention at all. My intention is that this body should be formed in such a way that it shall strengthen the hands of those officers who have been given the responsibility of doing executive work in regard to that legislation. I refer in particular to the hon. Director of Agriculture, who has been given such wide powers under the Land and Water Preservation Ordinance; to the hon. Director of Public Works and the Water Board; and so on. The last thing I want to do is anything which might make their position difficult or in any way go against their authority.

I know that we have in this matter the goodwill of many senior officers of Government. I know the hon. Chief Secretary has taken particular interest in this matter, and I am quite certain that as far as lies in his power he does mean to see something done. We all know that the hon. Director of Agriculture is also keen on this matter, but I do not think he has time to fulfill all that is required. I am speaking from memory, but I think that under the Land and Water Preservation Ordinance he can appoint a deputy to act on his behalf, and it was the intention that he might carry out a

[Lord Francis Scott] lot of executive work. I think it essential such a person should be appointed, and that he should be given the full authority of Government to go around the country and insist that proper works are carried out by everybody concerned, whether senior Government officials or recalcitrant settlers. All should come into line to put things right which for long have been going wrong. I believe such a person cannot be found in official circles, because it would put any official in an invidious position unless he happened to be a man of such senior position that he could exercise such authority. I do not think anyone is available in that way. Further, I consider that for that particular post an unofficial should be selected, who must be a man of sufficient position and seniority, knowledge and experience to carry the confidence and respect of all those with whom he comes in contact and with whom he would have to see that the work is done. I have someone in mind, but I cannot mention any names at the present moment.

What is required, and which I hope this motion may bring into effect, is complete co-operation between all concerned, whether they are officials or unofficials. All have got to pull together in this matter, and have got to see that the damage being done shall be stopped, and that the clock shall be turned the other way and good constructive work carried out. Only a few days ago I was speaking to an officer of the Public Works Department who is generally accepted as an expert on the water question. He had just been reporting on certain streams in my constituency. Speaking of these water supplies, he disclosed to me the trouble is due to destruction of soil in some of the land around the upper waters where forests have been destroyed, the land has been allowed to be washed away, and squatters allowed to cultivate down to the edge of the stream, with the result that much soil has gone into these streams and completely altered the actual formation of the stream itself, with great detriment to the flow of the water to the people lower down.

Two of the chief causes of the low water are the very large amount of trans-

piration taking place during the day, and also leaks in the foundations of the streams when much water goes underground and never gets down to the lower riparian owners. The question of transpiration can be rectified, or anyhow ameliorated, if proper steps are taken to control the use of the soil in the upper reaches of these streams. The question of leaks in the foundations is another matter which can probably only be dealt with by some piping. I was told recently that it was difficult to get any piping, but I made inquiries and was told that is not altogether the case, that some can be got in the country and that a considerable amount can be got from South Africa. I do submit that in any part of Africa water is the most important and fundamental necessity for the life of the country and for farming. Therefore money should be made available to provide funds for this necessary piping where it can be proved that there is a necessity for it.

When we come to the subject of money, it may be said that we should not spend any money at this time, but that any surplus which we have should go to the Imperial war effort. I think we all agree that we want to do all we can to help the Imperial war effort, and we have agreed in this Council to hand over our surplus funds for that purpose at the end of the year. At the same time, I think one has got to keep a sense of proportion in these matters. While it is necessary to curtail expenditure in many directions, as I have already pointed out we cannot afford not to provide money for these fundamental objectives and preserve our water and soil assets in the country. If you think of it, take a sum like £100,000, if you sent that to help the Imperial war effort it would finance the war for possibly ten minutes, whereas £100,000 spent in the country to help these fundamental and absolutely necessary assets would go quite a long way and do a great deal of good. I only ask people to bear it in mind and have a sense of proportion in that respect.

With regard to the constitution of the board which I had in mind, my idea was that the hon. Chief Secretary should be chairman, and that the directors of the

[Lord Francis Scott] departments chiefly concerned should be members; that is to say, the hon. Directors of Agriculture and Public Works, and the Conservator of Forests, because in all these matters soil, water and the forests are all intermingled and cannot be dealt with in watertight compartments, but all must inter-lock if we are going to achieve what I hope we shall set out to achieve with real determination. On the other side, I suggest that there should be three or four unofficials interested in this particular form of work, who have knowledge and experience of the different parts of the country and will give practical help on such a board. I do not think we need bother in any way as to whether there will be an official or unofficial majority, because I trust that the whole board will work together with one object in view, that is, to see that definite steps are taken, practical steps, to put this very serious position right.

We cannot put it right all at once. What we want to do is to stop anything which is going wrong at the present moment and turn it around so that by degrees we have not only restored the position of this country so far as the water, soil and forests are concerned but that we greatly improve them. That is the whole object of this resolution, that having got the necessary legislation we will now see that that legislation is put into practice and that everybody is made to do their part wherever they are, whether in native reserves or settled areas, to see that things are put right, because we cannot afford any longer to let them go wrong.

I believe the hon. Chief Secretary is going to suggest different wording of the resolution. The actual wording I do not mind so long as the spirit is there which I have indicated, and the determination to see that something is done and done quickly and done efficiently and properly.

LADY SIDNEY FARRAR: Your Excellency, I rise to second the motion. I would also like to second the opening words of the noble lord in proposing it. I feel sure this motion will receive unanimous support, but the noble lord has already propounded the principles

behind it. As regards details, I suggest that we should regard the position of this advisory board as a form of Home Guard in this country. Thanks to the efforts of our young men, European and African, we have broken the menace of Italian invasion in this country. There still remains a more insidious and equally dangerous threat to the country, the threat of soil erosion, and I feel that it is part of the war effort of every single man and woman of every colour and creed in this country who has a stake in the land to join the home guard in the defence of this land which we have freed from the threat of this other invasion.

The suggestion of this advisory body is one to meet our belief that the man on the spot, the man who is actually working his land, who is in daily contact with the land and watching what is happening around him in his district or province, is the man who can give the best possible advice to the executive body and put into operation the actual objectives of soil conservation.

MR. COOKE: Your Excellency, I have not very much to say, and as I have been saying more or less, perhaps stronger, for the last three years what the hon. mover and seconder have now said, I strongly support this motion. The only thing I am afraid of is that it is not quite strong enough. I think what is required, and I have said this many times before, is a Land and Water Board, because land and water are so inter-related that I think they must be considered together. But I find myself in complete agreement with the hon. mover on this very grave problem, and support it, with that reservation that is not going for enough.

MR. SHAMSUD-DEEN: Your Excellency, there cannot be two opinions about the conservation and preservation of the natural assets of this country—soil, water, and forests. I thought that perhaps the hon. members representing native interests would have something to say on the subject, but in view of the fact that they have not expressed an opinion I would say that, in the opinion of some people, it is the method of preserving the soil that may be open to question. I have

[Mr. Shamsud-Deen] had conversations with native cultivators in the vicinity of Nyeri district, and they fear that with the method they have been asked to adopt; of growing grass of some kind, so extensively in their gardens there will be nothing left to grow their crops on. I was also told of the compulsory method of growing this particular kind of grass, which looks like sugar cane and they said that one of its characteristics is that it would not allow anything else to grow near it. It was used to form terraces to prevent soil erosion.

Therefore I submit, when it is suggested there should be unofficial persons appointed to look after the board's work, a great deal of care should be exercised, for whoever has to do it will get more done by persuasion than otherwise, as I was, for instance, told that the women cultivators in the district I mentioned refused to have anything to do with this grass and there were considerable demonstrations. I hope that this particular point will be borne in mind by those who will have to arrange the constitution of this board.

MR. RENNIE: Your Excellency, at the outset I would say that Government is in complete accord with the intention behind this motion. Any steps that can be taken that would lead to the better conservation of the soil, water, and forests of this country are steps which Government welcomes.

There are one or two points, however, which I would mention before going on to suggest an amendment to the motion. I am advised by the hon. and learned Attorney General that the name "board" suggests a body with statutory powers, and since the noble lord made it clear that it is not his intention to suggest that this body should have statutory powers which would over-ride the statutory powers already given to certain authorities, the word "committee" appears in the amendment I am going to suggest.

The noble lord has mentioned this particular problem as one of great urgency and, so far as Government is concerned, it realises that it is one of the most important problems which we

have to deal with at the present time. I myself have probably given more consideration to the problem of soil conservation in the past few months than to any other problem before me and, so far as the Administration is concerned, only a fortnight ago the Provincial Commissioners discussed this very subject, and we decided on further steps we might take to make, as far as we could, every single person in each of the provinces more soil conservation-minded than that particular person is at present. Speaking to the Provincial Commissioners on the subject, I was speaking to people who were already converted and who had been working along these lines for years, but in this particular matter I feel we want more than converts—we want fanatics.

So far as the particular motion before Council is concerned, I would suggest that it be amended on the following lines:

"Be it resolved, that a committee be appointed forthwith for the purpose of co-ordinating in an advisory capacity, with a view to the more effective conservation of the water, soil and forests of Kenya, the efforts of the various authorities empowered under existing legislation to deal with the natural resources of the Colony and Protectorate."

That amendment will, I hope, bring out one or two points that do not appear in the noble lord's motion, namely, that this particular committee will be advisory and will have no statutory powers to over-ride powers already given to certain bodies. It, however, makes it clear that the intention behind this particular motion is the same as the intention behind the motion of the hon. member, namely, that we should take more effective steps to conserve the soil, water and forests of Kenya.

As regards the composition of the committee, the noble lord has made certain suggestions, and those suggestions will be taken into consideration by Government when dealing with the question. He has suggested that I should be chairman of the board. Well, I would welcome my appointment to this particular committee—it would enable me, I think, to

[Mr. Rennie] give attention to the subject in a way that I should like. (Mr. Cooke: One more committee.) I therefore beg to move this amendment.

MR. HARRAGIN seconded.

HIS EXCELLENCY: I understand from the noble lord that it is possible he would accept his motion being amended in these terms?

LORD FRANCIS SCOTT: If Government will support the spirit underlying my motion, I am prepared to accept the amendment, but I hope it will not be too much advisory but that a good deal of executive action will be taken to see that the bodies referred to carry out the duties entrusted to them in a practical and thorough way.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I was only too anxious to support the motion in its original form. My first inclination is to oppose the motion in its amended form, for this reason: that we have too many "advisory" boards. In this particular instance I cannot help thinking that there are going to be clashes of interest, and if every time the Director of Agriculture or Conservator of Forests says something ought to be done and the Chief Native Commissioner says there will be trouble if it is done, nothing will be done, and that is what we have suffered from hitherto. My hope was that a live authority would be appointed, and after hearing both sides of the case would give orders and see that something positive was done. The hon. Chief Secretary is, I know, interested in the problem, and has expressed his willingness to take the chair, and as he is a senior Government officer capable of giving instructions I withdraw my objections. I have stated them because I think everybody on this side feels as I do in regard to these "advisory" committees.

MR. COOKE: Your Excellency, is the amendment open for discussion?

HIS EXCELLENCY: Yes.

MR. COOKE: I am sorry I cannot support it, because it washes out all the good in the original motion. I am afraid, with all due respect to my hon. friend

the Chief Secretary, that he is one of those very busy men on every committee and board in this country, and I do not think he would have the time to devote to this very grave problem. Although I heartily agree something must be done, I cannot agree with this amendment.

The question of the amendment was put and carried.

DEBATE ON ESTIMATES, 1941

QUESTION OF PROCEDURE

MR. COOKE: Your Excellency, I beg to move: That this Council considers that the procedure during the Estimates debate on 19th December, 1940, was so gravely irregular that the 1941 Appropriation Bill was never legally passed.

Council will be relieved to hear that I am going to be very brief, and I have only two points to make. The first is that unless and until the Standing Finance Committee's report has been legally debated and adopted the Appropriation Bill cannot be read. My second point is that, in effect, the Standing Finance Committee's report was not legally debated and was not legally adopted.

The Standing Finance Committee (composed as it is of the more eminent and respectable members of this Council) is really a super-select committee, and the rules which apply to select committees apply *mutatis mutandis* to the Standing Finance Committee. I think it is clearly laid down in Standing Rule and Order No. 82 that until a select committee report has been moved and adopted, the third reading of a bill cannot be proceeded with. Therefore, I say that unless the Standing Finance Committee's report had been legally debated and adopted, the Appropriation Bill cannot be moved or passed. In case there is in anybody's mind in this Council any doubt on the question, I happen to be in the happy position to be able to quote the most eminent authorities on procedure we have had in recent years in this Council. One is a former Chief Secretary, Sir A. de V. Wade, and the other is no less a person than the hon. Member for Rift Valley. I say "no less a person", because my hon. friend

[Mr. Cooke] defended Government's action in the public Press.

To go back for a moment, I hope I am not digressing, in 1936 there was a certain excitement in this country over the income tax question, and Government found itself at the end of the year of not having made up its mind whether the tax should be imposed or not. It was therefore impossible to get the Revenue Estimates through before the end of the year, and it was decided to divide the Standing Finance Committee's report into two parts, and to deal first with the Expenditure Estimates. It was clearly stated then—and any reference to Hansard, 1936, will make it clear, it was raised by the hon. Member for Trans Nzoia—that the procedure was one that should not be connived at, but it was defended by the Chief Secretary and by the hon. Member for Rift Valley when they said that it was necessary—this was the term used—that the expenditure side of the Standing Finance Committee's report should be passed before the Appropriation Bill could be considered.

Was the Standing Finance Committee's report passed on 19th December, 1940? I say no. Council will remember that my hon. friend the Chief Secretary committed a grave irregularity when he, without suspending Standing Rules and Orders or asking Council, rather, to agree to that, moved the motion that the Standing Finance Committee report should be adopted. I must explain that the report must be laid four days on the table. In this case it was laid only two days. Hon. members will recollect that one or two members spoke, including my hon. friend, and then it was discovered that this irregularity had been committed. It was pointed out by myself, among others, that the debate should start again but, in spite of that, the debate was proceeded with. It may be argued that the debate was proceeded with by general consent of Council, but the motion to suspend Standing Rules and Orders was moved by the noble lord, the hon. Member for Rift Valley, and seconded by the hon. Member for Nairobi North and put by Your Excellency, but never carried. If there is any

doubt in the minds of anybody about that, reference to Hansard of that particular period will prove that I am right. Even if it is admitted—I for one do not admit it—but even if it is that the general feeling of Council was that the debate should proceed, it was an irregularity, because the motion had never been moved—it was moved when Standing Rules and Orders had not been suspended, and was therefore out of order, so that in effect my hon. friend never moved the adoption of the Standing Finance Committee's report at all!

Those are the only two points I wish to make. I understand that the hon. and learned Attorney General is going to reply, and I hope he will not indulge in *ipse dixit* or invective but give me an honest reply to an honest point. I have asked two plain questions, and I think they are susceptible of two plain answers.

MR. SHAMSUD-DEEN: Your Excellency, I have pleasure in seconding the motion, and am sorry that I cannot give a similar promise of brevity as was given by the hon. mover. I have a lot of things to say on this subject, and I shall begin by saying that, in the minds of some people, this seems merely a frivolous sort of motion to obstruct the procedure of Council. In my opinion it is not so. I think it cuts at the root of the whole principle of democracy, in the fight for which to-day thousands of lives are being lost. I think the principle is such that it must be discussed very seriously indeed.

These Standing Rules and Orders, as far as I can see, probably have not the power of law behind them, but they form part and parcel of the whole machinery on which the work of this Council is based, and I submit that the disregard of those Standing Rules and Orders, which is increasing, is bound to lead to very disastrous results. As I said, it is the principle of democracy that I think is in danger of being improperly observed in this Council. This flagrant breach of the definite rules for the conduct of the debate—made by ourselves, laid down to give all members an equal opportunity to express their views—shows a departure from the laid down and accepted principles of democracy or bureaucracy, and the tendency is that

[Mr. Shamsud-Deen] of drifting dangerously towards becoming more an institution based on autocracy.

I confirm what happened on this occasion, and ask Your Excellency's permission to read from Hansard, which is a very favourable record of what happened. I was almost physically gagged when towards the end of the debate I wanted to raise a point of order. I had hardly uttered the word "I" when I was silenced, or gagged, by Your Excellency, by being told "Will the hon. member kindly resume his seat? The debate will continue".

There have been two very serious breaches of Standing Rules and Orders in this present case. First of all, I think Standing Rule and Order No. 52 (v) makes it imperative—and there are very few sections so imperative as this. It says:

"The Colonial Secretary, or such other member as the Governor may appoint, shall give four days clear notice of his intention to move the adoption of the report and shall at the same time give notice of any amendments to the report which he proposes to move."

There are two questions: one is that four days' notice shall be given, and the second is that the adoption of the report of the Standing Finance Committee shall be moved. The four days' notice was not complied with, nor was the adoption of the report moved. From the record in Hansard, it appears that while the hon. Member for Mombasa was proceeding, the hon. Member for Rift Valley raised a point of order and said:

"Rising on a point of order, I suggest that we are out of order in debating this motion. The suspension of Standing Rules and Orders was not moved to enable this report to be debated."

Then Your Excellency mentioned that you

"understood from the hon. Chief Secretary that an arrangement had been come to with hon. members that the report should be debated to-day but, none the less, we should have formally recorded that arrangement in Council by the suspension of Standing Rules and Orders".

No such "arrangement" ever came to my notice, and as far as I could ascertain from a few members of Council no such arrangement was ever intimated at all. Even if that were so, I do not think that these Standing Rules and Orders should be disregarded in the way they have been on this occasion.

At a subsequent stage the noble lord, the hon. Member for Rift Valley, did formally move:

"I beg to move the suspension of Standing Rules and Orders", and the hon. Member for Nairobi North seconded, but that was not put to Council, unless the Clerk of Council made an omission in the minutes. To my recollection, it was not put, and there was no suspension of Standing Rules and Orders, nor was the motion for the adoption of the Standing Finance Committee report put.

Again, I submit that we have become rather accustomed to too much of the moving of suspension of Standing Rules and Orders. When such a suspension has been moved, and is approved by a majority of votes of Council, it may mean that the whole lot of Standing Rules and Orders can be suspended, and that might mean that a bill could go through all its stages at one shout—first, second and third readings, no committee, no Standing Finance Committee, and the thing at one word passed. That brings me to the point that in future I think that whoever moves the suspension of Standing Rules and Orders will have to say what Rule he wishes to be suspended; otherwise we shall be treading on very dangerous ground.

I am rather jealous of preserving the principles of democracy, and I wish to say that in this Council I have seen quite a metamorphosis of procedure in the last twenty years. I have had the pleasure of being a member for nearly twenty years under some half-dozen governors and half a dozen acting governors, and I submit that the real cause of the whole trouble is the very method that Council is presided over by the Governor, which is entirely wrong. That is why the present position has arisen. On a previous occasion, when one of Your Excellency's predecessors was absent in Mombasa

[Mr. Shamsud-Deen] and one of the senior members of Government was presiding, he erred—at any rate in my opinion and that of several members—in giving a particular ruling, and we had to report him to the governor. If Your Excellency errs, to whom are we going to report?

As I have said previously, the whole thing is anomalous. The Governor of the Colony occupies three positions: he is the representative of His Majesty the King, he occupies the position of Prime Minister as being the head of the party which is in the majority of one only, and he is also the Speaker of the Council. I know of no party in England holding office for an interminable period with just a majority of one member which has the powers which are given to the Governor for steam rolling any subject discussed in the case here. Of course, in England they act strictly on the principles of democracy.

HIS EXCELLENCY: I do not wish to interrupt the hon. member unduly, but the question we are debating is whether or not the 1941 Appropriation Bill was legally passed or not, and I would ask him to confine his remarks to that issue.

MR. COOKE: On a point of explanation, is it not the customs in the House of Commons to allow a reasonable latitude so long as hon. members are not being deliberately obstructive?

HIS EXCELLENCY: I do not know whether the hon. member is querying a ruling from the chair?

MR. SHAMSUD-DEEN: That is why I said it is rather embarrassing to have to discuss a subject in the presence of the Governor without trying to insist and fearlessly express views with perfect liberty, as with the presence of the Governor the atmosphere that prevails in this Council is that of awe rather than a free debate. If Your Excellency does not wish me to allude to that I will not.

These Standing Rules and Orders are based on the procedure of the House of Commons which mean something or nothing at all. If they mean anything at all, I submit that any bill passed without due regard to these Standing Rules and Orders has not been

legally passed. That is my contention in brief. I had to say a lot of things, but we come back again and again to the same position: that in this Council there is not the same atmosphere of freedom that I have seen in the House of Commons and other assemblies in the British Empire. There is more an atmosphere rather of awe, and we are not at liberty to discuss things freely. On one occasion one of Your Excellency's predecessors relied on frequent shouts of "Order, order", until some members of this Council brought to his notice that they were not going to be treated like school-children, when he called us into his chamber and told us the best way to get on. I must say, however, that does not apply as far as Your Excellency is concerned. I think you have given members of this Council as much latitude as possible, but if we begin to ignore and overlook serious irregularities of this nature, whereby a Bill, especially of the nature of the Estimates, has been passed without the report of the Standing Finance Committee being moved or the Standing Rules and Orders being suspended, I think unless it is checked in time there is no knowing where we will land ourselves.

MR. HARRAGIN: Your Excellency, if hon. members will look at the motion before them, it is in fact as follows: "This Council considers that the 1941 Appropriation Bill was never legally passed". Well, I have listened in vain for the hon. mover to quote me some legal authority for this extraordinary proposition but, as far as I can remember, the only two authorities whom he quoted were a former Chief Secretary of this Colony and the noble lord, the hon. Member for Rift Valley.

MR. COOKE: Your Excellency, my hon. friend seems to be labouring under some delusion. I proved that it was necessary, according to Standing Rules and Orders—at least I tried and certainly gave facts—that unless and until Standing Rules and Orders have been moved it was not legal to pass the Appropriation Bill or to consider that bill, and I quoted a certain amount of authority. I thought I would clear that point up.

MR. HARRAGIN: It would be interesting to know what the hon. member, in his last address to Council, was speaking to. If he was speaking to a point of order, I should like to know what order or rule of this Council has been offended against, and if he was speaking on a point of personal explanation, then he should confine himself strictly to an explanation of his own conduct. I suggest there was no question of his own conduct under discussion.

MR. COOKE: On a point of explanation I was referring to Standing Rule and Order No. 82.

MR. HARRAGIN: Standing Rule and Order No. 82, may it please Your Excellency, has something to do with the third reading of a bill, which I was not aware we were discussing.

MR. COOKE: My hon. friend has not studied his brief, quite obviously. My argument was that the Standing Finance Committee was really a committee of Council, similar to a select committee, and it is clearly laid down that the same rules and procedure shall apply. If these rules apply to a select committee, my point was that they must also apply to the Standing Finance Committee. It seems to me such a plain, commonsense point of view.

MR. HARRAGIN: As this will go on interminably, I merely repeat that we are discussing to-day whether the 1941 Appropriation Bill was ever legally passed or not. The first answer I will make to the hon. member is that the proper place to bring this matter in issue would have been the Supreme Court of the Colony, and it is still open to him so to do, and if in fact any law is passed, or pretended to be passed—because it would never be passed if it was not done legally—or ever pretended to be passed, there is provision made whereby it can be brought in issue before a court of law, which will decide whether the head of a department—it may be the Director of Public Works or anyone else—has expended money illegally.

With that, strictly speaking, if it were not that the hon. member would accuse me of rudeness, I would sit down at once, because as far as I am concerned

this is quite an inappropriate body to discuss a very technical and legal matter, but as the hon. mover mentioned various other matters in the course of the discussion of a legal matter, I would like to clear up one or two points with regard to procedure which takes place in this Council.

It is perfectly true, and it must be so, because it was so ruled from the chair, that by some slight omission Standing Rules and Orders were not in fact suspended when the adoption of the report of the select committee was moved in Council. That omission was noted by the hon. Member for Rift Valley, after various hon. members had spoken, and I suggest it was rectified because we find that he got up and moved as follows—I am reading from the minutes:

"The hon. Member for Rift Valley moved that, with the consent of His Excellency, under Standing Rule and Order No. 108, Standing Rules and Orders be suspended in order that the debate on the report may be resumed".

Surely those simple words, which had the approval of Council, can only have one meaning, namely, that in fact Standing Rules and Orders should be suspended for one object, and one object only—in order that the rule which it had been pointed out had been offended against, that four days' notice should have been given before the report was debated, should in fact be dispensed with. The moment that rule is dispensed with, with the consent of this Council, "it was deemed to have passed" according to the minutes I submit that the debate was then rightly proceeded with: As to whether the debate was correctly proceeded with or not, again we find that we are governed by our own Standing Rules and Orders. As the hon. mover must be well aware, in all matters of procedure under No. 44 (4) it is the President or Chairman "whose rulings shall be final". The moment Your Excellency has given the ruling, for the time being it is and must be the final word in this matter.

With regard to the next point which the hon. member made, which was that the question was never actually put—I

[Mr. Harragin] am reading from Hansard—His Excellency said:

"Fortunately, in a matter of this sort, I think we are always at liberty, with the general leave of Council, to adopt a particular procedure. I gather that it is the wish of hon. members that we should proceed with the debate as originally proposed but, since the noble lord has pointed out that the position should be regularized I formally put the question that Standing Rules and Orders be suspended to enable us to continue this debate this morning."

So there you have the question actually put.

The next point presumably made by the hon. member was that it never actually went to the vote: "those in favour say Aye, those against No." I think he will be the first one to agree that in point of fact every single member of this Council intended that the debate should go on that day. The debate had been arranged after careful collaboration with all interested parties— if there are parties in this Council— and it was agreed that the debate should take place without let or hindrance that day, so that it was really—and if the hon. member would be generous enough in his reply to say so—it was really the intention that day that the debate should go on. It was merely a formality which had been omitted, and the formality which had been omitted I suggest was rectified by the noble lord representing, so to speak, for the purpose of argument, the opposition, and naturally it would have been accepted by hon. members on this side of Council, so that it must be agreed that it was an entirely formal matter.

As the hon. member is aware, we are guided to a great extent—I think he almost admitted it himself—by precedents in the House of Commons. I can give the hon. member innumerable examples in the House of Commons where the question is never put to the extent of having it voted upon. It has often happened, not only with motions of this description, but also on third readings of bills, which has received quite obviously the approval of the whole

House of Commons—it is read out in exactly the same way, it is put in exactly the same way, as was put by the chairman of this Council, but no vote is in fact taken, and you see a record in what corresponds to the minutes of the House of Commons to our minutes here that it was passed *nem. con.* So that in fact we were following the precedent of the highest authority in the British Empire. I would like to qualify that and say this: that of course it is never done in that way if there is thought to be a single dissentient in the House of Commons—and the usual manner in which dissent is voiced is by the same saying, "No"—the moment the member sees that the debate is going to proceed without a division. Upon that being done, it is incumbent on the Speaker of the House of Commons to put the motion formally to the House in order that the members may vote upon it. So that the hon. member can rest assured that we are following the highest precedent possible in dealing with formal matters in that formal way.

It is a matter of opinion as to whether the hon. member would, in fact, have voted against the debate going on, and I think that on reflection he will agree that he never really intended to stifle the whole proceedings of Council and was really very relieved that we were able to get rid of it that day instead of having to return on the following Monday.

Those shortly are the points taken by the hon. member, and I submit and assure him that as far as the Appropriation Bill is concerned of course it was legally passed, that whatever happened before the Appropriation Bill was presented to this Council has nothing whatever to do with the bill itself. Assume the debate on the report was as irregular as possible, nevertheless the procedure adopted with regard to the Appropriation Bill was correct, and the ordinance is perfectly good law. As an example of what I mean. Since I have been in this Council, on two occasions—and the hon. member was present, I think, on one—we have passed the Appropriation Bill without even passing or submitting the select committee's report to this Council, it being an understood thing

[Mr. Harragin] that if there was any amendment made later after the discussion on the report there would have to be an amendment to the Appropriation Bill, but no one then thought or dreamt of questioning the Appropriation Bill merely because some preliminary which is usual but is nowhere laid down by law was not carried out. The hon. member has referred to law, and his seconder was generous enough to admit that these Standing Rules and Orders did not have the force of law or cannot be quoted as law, and when you go before the Supreme Court it is quite useless referring to the Standing Rules and Orders of this Council, so that as a point of law he can rest assured that the Appropriation Bill was legally passed and, for his sake, and in his interest, he should not waste money in the manner I indicated earlier by taking a case before the Supreme Court, as I am afraid he will be mulcted heavily in costs.

I do not think I can draw into the question raised by the hon. member Mr. Shamsud-Deen with regard to his point that this was supposed to be a democratic government but that the rights of the individual were being overridden by the President. The particular point that was being discussed of a member's rights being overridden was, which I should imagine, one of the weakest examples which could possibly be given in this Council. Whatever the procedure was, and I have endeavoured to show it was in fact correct, but assuming it was not, the procedure on that day was the procedure which 99 per cent of this Council wished to be followed, and if that is not ruling by the will of the majority I do not know what is. If the hon. member could suggest that whereas the majority of Council did not wish the debate to proceed, yet it was forced on them, there might be some substance in his argument, but it seems to me a little peculiar that he should have chosen what I think was the best possible example of everybody being happy and pleased at the matter being set right and able to get on with the business of the day, and to say that it was highly irregular or despotical is, I think, unfortunate.

I do not think I can usefully add anything to what I have said. I merely state that this Council again showed its approval of what had taken place when it passed the minutes of the 19th December last the day before yesterday, and the fact that the hon. mover himself did not query the minutes, although the question was deemed to have been carried, means that forever he has placed himself out of court on this question.

MR. COOKE: Your Excellency, a few days ago I discussed this motion of mine with a few friends, and they asked me what kind of a case I thought I had. I said an excellent case, and I knew that my hon. and learned friend also knew I had an excellent case. But I said I was afraid that he might indulge in specious and clever argument. I have been rather disappointed with his argument. He has appealed unto Caesar and unto Caesar he shall go.

My hon. friend talks about the law. Nobody knows better than he that the technicalities of the law are technicalities which centuries have proved to be necessary for the protection of accused persons and others, and what he calls the technicalities of the procedure in this Council are technicalities which centuries of British Parliament have found necessary for the proper conduct of business. He referred to debates in the House of Commons and motions never being formally put. Of course, that is so on certain informal matters, but if he can tell me of any finance bill when the House of Commons has taken it for granted that the motion was carried I shall apologize most humbly to him.

My hon. friend admitted one argument of mine. He said that Council generally consented to Standing Rules and Orders being suspended. I give him that point. I had already: Even if they did, the correct procedure was, and I pointed it out at the time and you will find it in Hansard, that the hon. Chief Secretary should have begun all over again because the motion had never been formally put, and to this day it never has. It is quite idle to argue, quite idle, that the Appropriation Bill could be passed before the Standing Finance Committee report has been debated and passed.

[Mr. Cooke]

Now, I am afraid the hon. gentleman has neglected many points I could deal with, but he has delivered himself entirely into my hands with the last remark he made. I was waiting for it. The hon. gentleman quoted from the minutes which, he says, had the approval of this Council. Of course they had the approval of Council, we certainly confirmed the proceedings, nobody can deny that; they are in black and white, but they do not confirm the legality of the procedure. And that is the point. The hon. and learned Attorney General, I submit, has put forward his best arguments, and I submit they cannot carry any weight. I would gladly have withdrawn my motion if he had approached me. He says I might approach the High Court, but of course I am adopting the correct procedure in bringing it up here. If he had approached me and asked me to withdraw it after a discussion I would have done so, but now I must ask that it go to a division to see what the feelings of Council are.

The question was put and negatived, by thirty votes to three, two not voting.
Ayes.—Mr. Cooke, Col. Kirkwood, Mr. Shamsud-Deen: 3.

Noes.—Messrs. Blunt, Boulderson, Brown, Major Cavendish-Benjineck, Mr. Daubney, Lady Sidney Farrar, Messrs. Fazan, Gardner, Capt. Gherie, Messrs. Harragin, Hedden, Hodge, Hosking, Sheik Hamed bin Mohamed bin Issa, Mr. Izard, Dr. Johnstone, Mr. Kasim, Messrs. Lacey, Lockhart, Col. Modera, Messrs. Mortimer, Northrop, Pandya, Patel, Rennie, Sir G. D. Rhodes, Sheriff Abdulla bin Salim, Lord Francis Scott, Mr. Stronach, Mr. Tomkinson: 30.
Did not vote.—Mr. Isher Dass, Mrs. Watkins: 2.

Council adjourned at 1.30 p.m.

Council resumed at 3 p.m.

WAR RISKS INSURANCE (AMENDMENT) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the War Risks Insurance (Amendment) Bill be read a second time.

This is a very short bill, necessary in order that existing practice may be legalized beyond dispute. In effect, the Insurance Board have been charging insurance on the particular goods mentioned in the bill. This has also been done in Uganda, but the point was raised by an advocate in Uganda with the possibility that it might be taken to court. Although both the hon. Attorney General of Uganda and myself agreed that the charge was legitimate, nevertheless we thought it wise to avoid litigation by a retrospective amendment. An example of what we are getting at will make the matter clear. Take manufactured soap. The actual amount of manufactured soap a manufacturer has in his possession at any one time is probably a few hundred pounds, but in fact he has on his premises caustic soda, oils, essences, boxes and nails for packing the soap in, which increases the value of his stock to well over £1,000, the insurable amount.

This amendment makes it clear that in future all these stocks which are used for the purpose of making manufactured soap, though they are not kept for sale, in the form of caustic soda, will be insurable under this ordinance. This amendment follows the English Act and also the ordinance which has been passed in Uganda and has been made retrospective.

MR. BROWN seconded.

LORD FRANCIS SCOTT: Sir, I was asked by some people if the opportunity could be taken on this occasion for one or two points to be explained for the public. You may say it is a little bit out of order, but there are only two small points. One is on the question of goods insurable, in the form of produce which is intureable under this ordinance. It has been suggested by some sisal and coffee planters that they are having to bear a rather unnecessary burden owing to the fact that they are unable to dispose of their crops. The other point I was asked to get information about for the public benefit was, if there is any balance at the end, is it intended that it should go to Great Britain for assistance there or go into the general revenues of the Colony?

MR. LOCKHART: Your Excellency, with regard to the point raised by the noble lord about produce, I think he mentioned coffee. Of course, the longer the crops are held, to that extent the burden of insurance increases; it applies on a larger scale to sisal. Actually, coffee has been sold and shipped so far fairly promptly; whether that will be so later on is another matter, but there is a very large number of other commodities, and also imported goods on which the turn-over is very much slower than this. The board has not considered the matter in connexion with coffee, but they have in connexion with sisal, in regard to which there was an application from the Sisal Growers' Association. We felt we had met the sisal people to the extent of sisal being valued only at production costs and not sale costs. Now that the reduced charge for war risks is only Sh. 3/50 per cent, the actual commitments are not very heavy.

Regarding the other point as to the distribution of the balance, it depends on the policy, which has not yet been settled, as to whether or not the balance of the fund is re-insured with the United Kingdom. If it is, of course any balance will be taken by the Treasury, as they will have re-insured. If it is not, the disposal of any balance will be a matter when the time comes for the participating governments.

COL. KIRKWOOD: Your Excellency, I have got to make a confession. That is, when I allowed this ordinance to pass through Council I made a mistake. I maintain that every member of the Council made a grievous mistake. There were then no war risks, and there are none now, and at the close of six months a motion should be moved to expunge the ordinance from the statute book. It is quite possible it will not be the first ordinance I have had to remove. Under this ordinance just under £80,000 has been taken out of circulation from the commercial community of Kenya and Uganda—some £50,000 from Kenya and the balance from Uganda. There has been piracy and robbery, and we should not use that money for any other purpose but send it back to the source from which it came when the ordinance comes to an end; that is, to the commer-

cial community who have contributed this money to the insurance scheme to cover their so-called war risks, and they should have that money refunded less the expense when the business is wound up. Otherwise it will be commercial dishonesty, and I hope there will be no talk about the money going to Imperial or any other funds.

Ever since the ordinance was passed there have been nothing but complaints, not only in Nairobi but in my own area. The majority of the commercial firms, especially the smaller ones, are having very great difficulty indeed to make two ends meet. Stocks are unobtainable, permits to import are, God knows why, refused. Why we should control the question of importing goods from the Empire or England is beyond me. It is up to the Controller of Shipping at home if there is any arbitrary power to be exercised to prevent certain stocks or quantity of goods coming into this country, principally from England. I have had numerous letters from business firms in England appealing for a measure of support, and they can take all the orders I can send. I quite realize what they want. They have goods and want to sell them, and if they cannot get the money they cannot pay for the war at home. It is farcical the numerous controls we have which simply make life unbearable and unprofitable, and there is no rhyme or reason why a permit is necessary to import either from England or the British Empire. It is for the people you give the order to decide whether they deliver or not, and the Ministry controlling shipping to say whether it can go or not. Go into the shops in Nairobi, and you will see in one after the other empty shelves, and certain classes of goods are unobtainable in Nairobi to-day. God knows what it will be in six months' time.

For that reason this ordinance is a menace. I confess my mistake openly, and if I had realized it, I would have opposed it tooth and nail. I have come to the conclusion after mature consideration and hearing all sides of the question from people supplying the money that it is a very grievous imposition, especially on the smaller firms in Kenya. If nobody else will, at the end of six months

[Col. Kirkwood]

I will move to have the ordinance expunged.

MR. ISHER DASS: Your Excellency, I have been asked by the Indian commercial community of Nairobi to take advantage of this opportunity to bring to the notice of Government one point. If Government is contemplating, as has been said from the chair, the question of introducing an excess profits tax, then immediately this insurance should be abolished. A large sum of money has been contributed under this insurance scheme, and the commercial community, under the new taxation, will be called on to pay a very heavy tax to the extent of 60 per cent. Therefore it is not practical or fair that the same community should be called on to pay double taxation at the same time.

MR. HARRAGIN: Your Excellency, little did I think when I agreed to introduce an amendment to the definition of goods in the War Risks Insurance Ordinance that I should be called on to debate the action of some committee who will not give permits to bring goods into the Colony. These permits are not issued under the War Risks Insurance Ordinance, and so I have nothing to say about it. I have no doubt that all that has been said will be considered by those who are interested in the matter, particularly those who are looking after the commercial community, who I might mention in passing were the people entirely responsible for persuading Government to pass the War Risks Insurance Ordinance.

The question was put and carried.

BILLS IN COMMITTEE

MR. HARRAGIN moved that Council resolve itself into committee of the whole Council to consider, clause by clause, the following amending Bills: Criminal Procedure Code (Amendment) Bill, Local Government (Rating) (Amendment) Bill, European Officers Pensions (Amendment) Bill, Non-European Officers Pensions (War Service) Bill, Water (Amendment) Bill, Native Liquor (Amendment) Bill, Vagrancy (Amend-

ment) Bill, Interpretation and General Clauses (Amendment) Bill, Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Bill, Pyrethrum (Amendment) Bill, War Risks Insurance (Amendment) Bill.

MR. BROWN seconded.

The question was put and carried.

Council went into committee

Native Liquor (Amendment) Bill:

MR. HARRAGIN: Mr. Chairman, I beg to move that clause 4 be amended (a) by renumbering the clause as 4 (1) and (b) by adding thereto the following new sub-clause—“(2) No person shall, without lawful excuse, be in possession of any implement, apparatus or utensil designed or adapted for the distillation of native spirituous liquor”.

This amendment is being moved as a result of points made during the debate on the second reading, one by the hon. Member for Trans Nzoia and the other by the hon. member Dr. Wilson. It will be remembered that in the amendment which I first suggested I had inserted the words “with the consent of the district commissioner”, and the hon. member Dr. Wilson questioned whether, as we were making it unlawful, anyone should be in a position to give consent to an unlawful act. The point is that as we are saying no one shall be in possession, there are one or two people such as chemists and those who manufacture paint who have to have utensils and apparatus which could be adapted very easily for making spirituous liquor, and that is why to meet the hon. member's point I have put in the words “without lawful excuse”. The other point made by the hon. Member for Trans Nzoia has also, I think, been met by the amendments.

COL. KIRKWOOD: Your Excellency, I rise to thank the hon. member for meeting my suggestion in the debate on this bill.

The question of the amendment was put and carried.

The question of the clause as amended was put and carried.

Vagrancy (Amendment) Bill:

MR. BROWN moved that clause 6 be amended (a) by inserting the following paragraph immediately after paragraph (i)—“(ii) by inserting the words ‘or upon any premises without the consent of the owner or occupier’ between the word ‘employment’ and the word ‘having’ in the second line of subsection (2) thereof;” and (b) by renumbering paragraphs (ii) and (iii) as paragraphs (iii) and (iv) respectively.

The question was put and carried.

The question of the clause as amended was put and carried.

Pyrethrum (Amendment) Bill:

MR. BLUNT moved that clause 3 be amended by deleting from the last line of paragraph (d) the figures 1935/36 and the word “or” and inserting after the figures 1937/38 “or 1938/39”.

COL. KIRKWOOD: Mr. Chairman, I am rising to oppose any alteration to the bill at all, as I am opposed to the bill in the absence of knowledge I am not in possession of. I am not against the principle of it, I am in favour of control, seeing that the producers ask for it, but they have asked for their comments to be considered, so that I am in order in quoting the report of the meeting of the Pyrethrum Growers Association at which the hon. Director of Agriculture was present. At that meeting this resolution was passed:

“That this meeting of pyrethrum growers is of opinion that the time has arrived when it is necessary in the interests of the industry to control production, and requests the board to take the necessary steps, which first must be approved by a majority of the growers.”

This bill has not been referred to the growers at all.

HIS EXCELLENCY: I do not wish to interrupt the hon. member, but we are not dealing with the principle but with a particular item, that for certain purposes 1935/36 should be eliminated as a standard and 1938/39 inserted.

COL. KIRKWOOD: But that is not what the pyrethrum growers ask for. It

is not clear what they will finally decide, and I understand that the hon. Director of Agriculture as the chairman still has to meet these people and the committee which was appointed.

HIS EXCELLENCY: Would the hon. member resume his seat? The point I wish to make is that we are concerned with whether or not the clause should go through as drafted or as amended. I do not know whether the report you are going to read deals with the question of dates; if so, I shall be glad to hear it.

COL. KIRKWOOD: On general lines only, we should not put dates without the wish of the board. The step must first be approved by the majority of growers. The hon. Director of Agriculture has not met the growers yet. The second resolution passed was, after many suggestions had been put forward for this control to be effective:

“That this meeting elect five pyrethrum growers to confer with the board in drafting a scheme or schemes to be submitted to the pyrethrum growers for approval.”

You are putting through a bill and altering a clause without consulting them to see whether they approve or not. As I pointed out before, there is no co-operation between the Agricultural Department, the Pyrethrum Board, and the pyrethrum growers. They called a meeting on the 14th, and the advertisement was dated the 7th, giving one week in which to attend, and these two resolutions were passed, and they are in principle definitely against any legislation at all on pyrethrum until they have been consulted. They have not had time to meet the Director, and we pass legislation over their heads, whether they want it or not. I am only asking that people in the industry should have the opportunity for deliberations. If I were assured that this bill would go to a select committee and not be rushed through for the next two or three weeks, to give them time to meet and discuss and put up their propositions to the Director of Agriculture, I would not mind, so that people would know what they want and not find they are too late. I think that is a reasonable request.

LORD FRANCIS SCOTT: Sir, I think my hon. friend is under some misapprehension as to what was wanted at that meeting. They wanted legislation to go through which would enable control to be carried out. What they did not want was detail of how that control was to be carried out until they had had an opportunity of putting their point of view to this committee. For instance, as to whether it should be by percentage of the flowers delivered or whether it should be by grades, whether part of the area should be free and the rest of the area controlled, and many other things of that sort. It was not that they did not wish the bill to go through, and I have it on the authority of one of the members of the committee—they want the bill to go through to give them power afterwards to work out methods they think should be enforced.

The question of the amendment was put and carried.

The question of the clause as amended was put and carried.

MR. HARRAGIN moved that the Native Liquor (Amendment) Bill, the Vagrancy (Amendment) Bill, and the Pyrethrum (Amendment) Bill be reported with amendment, and the remainder of the bills without amendment.

The question was put and carried.

Council resumed its sitting

HIS EXCELLENCY reported the bills accordingly.

THIRD READINGS

MR. HARRAGIN moved that each of the eleven bills be read a third time and passed.

MR. BROWN seconded.

The question was put and carried, and the bills were each read the third time and passed.

ADJOURNMENT

HIS EXCELLENCY: We shall have to meet again in connexion with the bill of which I spoke, to impose an excess profits tax, and I therefore adjourn Council to a date to be notified later.

Council adjourned accordingly.

Tuesday, 17th June, 1941

Council assembled at the Memorial Hall, Nairobi, at 11 a.m. on Tuesday, 17th June, 1941. His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

OATH OF ALLEGIANCE

The Oath of Allegiance was administered to—

J. C. Mundy Esq., Commissioner of Income Tax, Temporary Nominated Official Member;

W. A. C. Bouwer, Esq., Uasin Gishu Electoral Area, Acting.

MINUTES

The minutes of the meeting of 18th April, 1941, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY MR. RENNIE:

Colonial Audit Department Annual Reports for 1938 and 1939 with Kenya Despatch No. 53 thereon.

Game Department Annual Report, 1940.

Kenya Police Annual Report, 1940.

Labour Department Annual Report, 1940.

Registrar General's Annual Report, 1940.

BY MR. LOCKHART:

Schedule of Additional Provision No. 1 of 1941.

BY DR. PATERSON:

Medical Department Annual Report, 1940.

BY SIR GODFREY RHODES:

Report on Administration of K.U.R. and H., 1940.

BY MR. STRONACH:

Public Works Department Annual Report, 1940.

BY MR. MOATMER:

Land Grants Return, January-March, 1941; and Lands and Settlement Department Annual Report, 1940.

BY MR. DAUBNEY:

Veterinary Department Annual Report, 1940.

NOTICES OF MOTION

The following notices of motions were given:—

BY MRS. WATKINS: "Be it resolved that a select committee be appointed to consider the desirability of amending the Coffee Industry Ordinance, 1934: (a) to take away the power which is given to the Board under section 3 (13) to make by-laws governing the election of delegates to the conference; (b) to empower the Governor in Council to make rules under section 18 governing the election of delegates to the Conference; (c) to provide that such rules shall not entitle any owner of a coffee estate to more than one vote."

BY MR. LOCKHART: "Be it resolved that a sum not exceeding £40,000 be made available from the general revenue and other funds of the Colony to guarantee an overdraft to the board of management of the Uplands Bacon Factory with the Standard Bank of South Africa Limited, for the purpose of acquiring the property and conducting the business of the factory for the benefit of the pig-producing industry of the Colony; and be it further resolved that a cess be levied on all pigs dealt with by the Pig Control of such amount as may be fixed by order of the Governor in Council from time to time, such cess to be applied in reduction of the overdraft guaranteed by Government and to such other purposes as the Governor in Council may direct."

BILLS

FIRST READINGS

On the motion of Mr. Brown, the following Bills were read a first time:—

The Excess Profits Tax Bill.

The Patents, Designs, Copyright and Trade Marks (Emergency) (Amendment) Bill.

The Local Government (Municipalities) (Amendment) Bill.

The Widows and Orphans Pension (Amendment) Bill.

The Estate Duty (Consolidation) (Amendment) Bill.

The Non-European Officers' Pensions (Amendment No. 2) Bill.

and notice was given to move the subsequent readings later in the session.

MR. BROWN moved that Standing Rule and Order No. 64 be suspended to enable the War Loan (Amendment) Bill and the Museums Trustees (Amendment) Bill to be read a first time.

MR. RENNIE seconded.

The question was put and carried, and Standing Rules and Orders were suspended.

On motion of Mr. Brown, each Bill was read a first time, and notice given to move the subsequent readings later in the session.

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 18th June, 1941.

Wednesday, 18th June, 1941

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 18th June, 1941, His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 17th June, 1941, were confirmed.

ORAL ANSWERS TO QUESTIONS

POINT OF ORDER

MR. COOKE: Your Excellency, I beg leave to ask Question No. 29 standing in my name:—

"Is Government aware that in a speech made at St. George's Day dinner in Nairobi on 26th April, Mr. M. F. Hill, Information Officer, expressed views on a political issue which is a matter of serious controversy in the Colony at the present moment?"

Was Mr. Hill expressing the views of Government or merely his own private views?

If the latter, is a paid Government official permitted to express his political views in public?

If not, what disciplinary action has Government taken or does Government propose to take against this officer?"

MAJOR CAVENDISH-BENTINCK: Your Excellency, arising out of the question, on a point of order: in view of the fact that it is a somewhat personal question and makes unnecessary mention of a name as well as the office, it does not conform to (i) and (vii) of Standing Rule and Order No. 22.

MR. WRIGHT: Your Excellency, arising out of the question of a point of order just made, will Government not take the opportunity of making it plain to the hon. Member for the Coast that such questions are sheer gratuitous offensiveness?

HIS EXCELLENCY: Would the hon. Member for Nairobi North refer again to the sections of the Standing Rules and Orders?

MAJOR CAVENDISH-BENTINCK: It occurs on page 4, (i) and (vii) of No. 22. (i) says: "A question shall not publish any name or statement not strictly necessary to make the question intelligible." It was quite enough, I submit, to put "Information Officer" without the name of the individual concerned.

MR. COOKE: Before you give your ruling, Sir, may I make an explanation?

I should like to inform Council that I previously complained to the hon. Chief Secretary about allusions made by the Information Officer about myself personally in one of his communiques to the Press, and when he did it the second time I took the opportunity of making it public.

MAJOR CAVENDISH-BENTINCK: The question has no relation whatever to that.

HIS EXCELLENCY: With the agreement of the hon. member, I should like to take a little time to consider this point of order and give a ruling later. In the meantime, the question and answer which has to be given could perhaps be given on a subsequent day?

MR. COOKE: Yes, Sir.

No. 30—DRAFT ESTIMATES, PROCEDURE re

BY MR. COOKE:—

"When the draft Estimates have been referred by Legislative Council to the Standing Finance Committee, is it or is it not necessary that Council should consider and adopt that Committee's Report before the Appropriation Bill may be introduced and passed?"

MR. RENNIE: It is not legally necessary that Legislative Council should consider and adopt the report of the Standing Finance Committee on the Estimates before the Appropriation Bill is passed, though for obvious reasons it is desirable that such a course should be followed.

No. 31—ARMY DEFERRED PAY

BY MR. COOKE:—

"With regard to the answer to my Question No. 34 of 1940 on the subject of Army deferred pay, in which I was informed that the matter was under

[Mr. Cooke] consideration, will Government say what progress has been made, during the six months that have elapsed, in this urgent and important matter?"

MR. LOCKHART: The Government has been advised by the military authorities that the War Office has decided that no compulsory scheme of deferred pay is acceptable.

No. 36—WAR RISKS INSURANCE

BY MR. ISHER DASS:—

"In view of the point raised by me in the last session of Legislative Council for the suspension of the War Risks Insurance Ordinance if and when the Excess Profits Tax were brought into existence, will Government state if the Ordinance will be suspended on the introduction of the Excess Profits Tax Ordinance, as it will afford a relief to the commercial community?"

MR. LOCKHART: It is not proposed to suspend the War Risks Insurance Ordinance. No connexion is seen between the Excess Profits Tax and War Risks Insurance, and Government has no evidence that the commercial community desire War Risk Insurance to be discontinued.

UPLANDS BACON FACTORY

GUARANTEE OF £40,000 OVERDRAFT

MR. LOCKHART: Your Excellency, I beg to move:—

"Be it resolved that a sum not exceeding £40,000 be made available from the general revenue and other funds of the Colony to guarantee an overdraft to the board of management of the Uplands Bacon Factory with the Standard Bank of South Africa Ltd., for the purpose of acquiring the property and conducting the business of the factory for the benefit of the pig-producing industry of the Colony; and be it further resolved that a cess be levied on all pigs dealt with by the Pig Control of such amount as may be fixed by order of the Governor in Council from time to time, such cess to be applied in reduction of the overdraft guaranteed by Government and to such other purposes as the Governor in Council may direct."

The first question in which hon. members may be interested is why it should be necessary to ask this Council to undertake any financial commitments in regard to this factory at all. The position is that, arising from the war, it is necessary to supplement the existing opportunities to provide for the increased production of bacon and pig products. This factory, as hon. members know, is the largest and best-equipped factory in the country, but in part because of the fact that there was no certainty that any extensions could be used after the war and in part for other reasons connected with the financial structure of the company, the company were not themselves in a position to deal with those extensions. The issue involved and the best method to deal with it was very carefully considered. Whatever else can be said about this project, it cannot be said that the proposals were either hasty or ill-considered, and it was decided by the Settlement and Production Board and also by Government when brought before it that there were really no means of dealing with the matter except to obtain control of the factory.

Coming to the financial arrangements, one of the difficulties is that a very large farm has formed an integral part of the company's assets for many years, and it was very difficult to separate the two, but the financial agreement finally arrived at was the purchase of the whole of the assets for £31,500, with an agreement of sale of the farm less 250 acres of land for £17,500, which leaves the net cost of the factory and land necessary at £24,000. Capital is being subscribed for this acquisition to the extent of £10,000 from outside sources. £3,000 are being put up by the Kenya Farmers Association, £3,000 by the Kenya Co-operative Creameries, £3,000 by the Pig Control, and £1,000 by the Native Pig Finishing Station at Nyeri. Provision is required for extensions to the factory, and arrangements have been made with the bank, subject to the approval of this Council, for a capital grant to be guaranteed to a limit of £25,000, and a further £15,000 (I do not think they will require it all) on current account to purchase stock in trade and finance debtors and so forth; which means a total liability of £40,000. Against that there is an asset represented not only by the property but by the

[Mr. Lockhart] business, and the safety margin—in my view, an adequate safety margin—of £10,000 invested in the business.

It might have been possible to have dealt with this by the formation of a co-operative society, but it is rather a tedious business, particularly in war-time, to get agreement between everyone concerned, and there would have been grave delay if we had dealt with the matter that way. Government therefore stepped in, not perhaps legally, but in the commonly accepted sense of the word, as trustee for the future owners of the factory who will be, we hope, the pig producers of the country. In the meantime, a board of management has been appointed, and arrangements are well forward for taking over the factory from the 1st July, and all that is now required is the authority of Council to guarantee this amount.

MR. BROWN seconded.

LORD FRANCIS SCOTT: Sir, I rise to support the motion. I am very glad that at long last this question has been brought to finality, and while there may be some criticism that there has been undue delay before the matter was settled there is an old saying "Better late than never." I am very glad it has been settled and, speaking as a pig producer myself, I believe this will be very greatly to the benefit of the pig industry of the country.

MR. NICOL: Your Excellency, as far as I can see, Government cannot lose on this proposal. In fact, one might say that from the Colony's point of view it is a really good investment. In any case, the industry is such a valuable one that in my opinion it is only right that Government are acting on the terms of the resolution. I beg to support the motion.

DR. WILSON: Your Excellency, I think the hon. mover is aware that when this particular farm or piece of land was alienated there were special conditions regarding natives then resident on that farm. I understand this piece of land has changed hands since that date and these special conditions have been forgotten in the meantime. As the land has now come back to Government, it may be possible to get an assurance that those natives will

have due consideration paid to whatever rights they possess.

MR. SHAMSUD-DEEN: Your Excellency, owing to the war it is necessary to increase the production of pork and so on. But the principle is open to question as to Government getting mixed up with private enterprises. I shall, however, raise no objection owing to the fact that it is part and parcel of the war effort, though ordinarily I should have said quite a lot on the subject.

MR. ISHER DASS: Your Excellency, I do not wish to add anything to what the hon. member has said, with the exception that since Government is entering into a matter of private enterprise and it will be a sort of control over the industry by Government, it is absolutely essential, in order to control pig production, that there should be some sensible people put in charge and not pig-headed people, (Laughter.) Otherwise there may be complaints afterwards from the growers as in the case of pyrethrum and coffee, where control is in the hands of Government. I hope this will meet with favourable consideration.

MR. RENNIE: Your Excellency, I might say a word or two in connexion with the point raised by the hon. member Dr. Wilson. This particular question of the natives on Uplands Farm has already received the consideration of Government. I myself have spent some considerable time over it, and it is one of the most difficult questions I have had to deal with. Finality has not yet been reached in the matter, but the point which the hon. member raised will be kept carefully in mind when further consideration is given to it.

The question was put and carried.

ADVANCE TO WOOL CONTROL, PURCHASE OF 1940 AND 1941 CLIPS

MR. LOCKHART: Your Excellency, I beg to move:—

"That this Council approves of an advance amounting to £76,500 being made from the general revenue and other funds of the Colony and Protectorate of Kenya to the Wool Control free of interest for the purpose set out in the Schedule hereto:

[Mr. Lockhart]

Schedule

To finance the purchase of approximately 1,100 bales of the 1940 clip pending reimbursement by the Ministry of Supply .. £16,500

To finance the purchase, transport, and storage of the balance of the 1940 clip as yet unsold and the whole of the 1941 clip .. £60,000

£76,500

The position is that an agreement was made with the Ministry of Supply for the sale to them of the Kenya wool crop for 1940. The agreement was that payment should be made as and when the wool was shipped from Mombasa. The period of the agreement expired on the 15th April of this year, and the Ministry have said that they do not require any more Kenya wool and are unable to renew the agreement.— Acting in good faith and in fact on the instructions of our local Wool Control, a matter of some 1,100 bales of wool were shipped to Mombasa between November and the end of January, but owing to the alteration of certain shipping priorities it was unable to be sent before the 15th April. In this the growers are in no way responsible; and I emphasize that they actually railed the wool on our instructions. We had to accept the position as far as the Ministry were concerned, but we did urge that the least they could do was to buy the 1,100 bales, which they have agreed to do at the price of 9.116 pence per lb. It is now the middle of June, and we hope to get shipment before long, but there will be delay, and we are anxious to get last year's pool cleared up. For that reason hon. members are to-day asked to agree to an advance being made to the Wool Control of £16,500, which we shall get back from the Ministry of Supply as soon as shipment is made. As far as that is concerned, that is a perfectly safe advance, and the only reason for asking for it is to get last year's pool wound up and the growers paid out.

Now we come to a rather more difficult question—of the wool on the farms and the new clip coming forward. Here

we feel that this is a case where Government must step in, and the proposal is that we should buy the wool and store it and dispose of it as opportunity offers. The agreement with the Ministry of Supply, in common with other Empire agreements, was 30 per cent over the pre-war price, but as we are acquiring a production which no one really wants and with the object of allowing the farmers to be maintained, we propose to revert in the payment to the wool growers for the local clip to pre-war level, which is approximately 55 cents per lb. f.o.r. at grower's station. At that price we propose to buy the wool. As for the disposal of it, it cannot go to the United Kingdom, the only place where Kenya wool is known, and there will be great difficulty as long as the war lasts in getting rid of anything but a small proportion to local markets, where we can sell about a fifth of the clip. We have every intention of selling it at world price, that is 30 per cent over the pre-war price, which will give us a small profit towards expenses and so on. If means can be found, as we hope they may, for increasing level of consumption, then so much the better and so much larger the margin, but I must say that while I think there is a chance at the price we propose to buy of getting out of this transaction without a loss, it is quite possible, if we have to hold the wool for a very long while, it may involve some loss. But Government feel, and I trust hon. members will endorse the view, that it is a risk we have to take in these peculiar conditions.

It is proposed to make this advance from the Colony's funds as an ordinary advance account but, later on, assuming the Excess Profits Tax Bill becomes law, there will be a fund created by the excess profits tax, and we shall later ask hon. members to vote this advance from that fund. The position will then be that the purchase will be financed by the fund and as sales take place the proceeds will be paid back, and if there is any loss it will fall on that excess profits tax fund rather than on the general revenue of the Colony.

MR. RENNIE seconded.

COL. GROGAN: Your Excellency, one point of the hon. member's speech

[Col. Grogan] rather startled me when he referred to this wool as something nobody wants. In actual fact, of course, a very large proportion of the world wants it very badly indeed, but the point at issue is that they are not allowed to have it for the purposes of the war. It does not seem quite fair that those really who are engaged in the useful task of producing wool in normal times should not now be entitled to the present market value of the wool. If it means taking it over and liquidating the amount to put it into circulation, which is an essential part of the functions of a government, I do not see why the people should not get the full value of that produce, and the suggestion that the rest of the community, by liquidating one of the frozen assets of the country, should put itself in the happy position of possibly making a profit, seems entirely wrong. I think the section of the community which has produced the wool should get the full market value. Otherwise there is nothing to be said against this proposition.

COL. KIRKWOOD: Your Excellency, I am rising to support the motion, but I also agree with the hon. member who has just spoken and think that 50 cents per lb. is a ridiculously low price. (MR. LOCKHART: 55 cents.) It is a ridiculously low price; it is somewhere in the region of the value of cotton. I maintain that this wool should be locally manufactured into blankets, and it would be a great advantage to the natives and to the community if they could obtain them at a lower price than the blankets which are now selling in the Colony to-day, thereby saving shipping space and the risk of loss. I would ask if it is not possible to raise that price.

I congratulate Government in bringing this matter forward in this manner. It shows a willingness to co-operate with the producers of the Colony and the unofficial members, and is valuable assistance. Otherwise the wool will go into cold storage, as it were, and be of advantage to nobody and a terrific handicap to the producer. For that reason, I do heartily congratulate Government in moving in the matter. Personally, I do not think there is any risk at all of any

loss if it is handled in the proper way. I again congratulate Government in making the move they have done.

MR. LOCKHART: Your Excellency, in regard to the question of price, this has been discussed with a representative committee of wool growers, and while they, naturally, like everybody else, would like to get a higher price they did recognize the position, and did recognize, too, that this is only one crop among possibly others, running into very large sums of money indeed, which we may be called upon to handle during the present year, and the figure of 55 cents was accepted by them as being at any rate not unreasonable.

The hon. Member for Ukamba is quite right when he says there are people who want to buy this wool. Unfortunately, they are on the other side of the world, and we have no means of getting it there, and while the hon. members says we may in this scheme be putting ourselves in the happy position of making a profit, we may also put ourselves in the unhappy position of making a loss.

I feel that in a case of this kind, that if the wool growers do receive enough—I admit it is no more than putting them on a maintenance basis—it does keep the industry going, and we feel that with these future commitments before us it is as much as we are justified in doing. This has been accepted in what I should like to say now is a very reasonable spirit indeed by the representatives of the wool growers concerned. I repeat, they have accepted it in a most reasonable spirit.

The question was put and carried.

EXCESS PROFITS TAX BILL.

SECOND READING

MR. MUNDY (Commissioner of Income Tax): Your Excellency, I beg to move that the Excess Profits Tax Bill be read a second time.

The desirability of introducing a tax of this nature has been kept under careful consideration since early in the war, and when I moved the second reading of the Income Tax Bill in August last I gave a brief statement of the position at that time. There was then no evidence of such an increase in profits generally to

[Mr. Mundy] warrant the introduction of this legislation at that time. The hon. Member for Nairobi North suggested that if there was not to be an excess profits tax there should be some restriction of profits. I should like to say right away that I did not overlook that suggestion, but I believe an excess profits tax is the most suitable form of taxation to meet present conditions.

In the Income Tax Department I have records of trade profits which show that 1936 was the first year to show any real recovery from the disastrous trade slump of 1931. 1937 showed a further improvement, and 1938 dropped back slightly. 1939, however, showed a general all-round improvement in trade throughout the Colony, although there were still a few black spots; but the figures I have gathered for 1940 show that the profits for 1940 were more than double those of 1939. It is on this information that the introduction of a measure of this kind is so necessary.

I believe there has been some falling off in profits recently, although generally the level has been very well maintained. While it may be reasonable to estimate that a very substantial sum will be raised by this tax in the first year—it may approach a quarter of a million pounds—there is always the possibility of a trade slump when most of that money will have to be repaid, but if that is done it will be a most excellent thing for maintaining the trade and prosperity of the Colony, which I believe is of the greatest importance at the present moment.

The Bill superimposes excess profits tax on the structure of the income tax law. Income tax first came in in 1798, and very few people have grown up in this generation without knowing something about it. But an excess profits tax is a different thing. It was originated in Mr. McKenna's budget in 1915, and charged profits from the outbreak of the last war up to December, 1920, and very few people knew anything about it. So I feel that I must deal with this Bill at considerable length, and if I should waste any of the time of the Council it will be justified.

Although the old excess profits duty in England charged profits up to December, 1920, only, there were still a number of cases unsettled when I came to Kenya in 1937, and when it became necessary to introduce the new excess profits tax in England there was the long experience of the old excess profits duty upon which the new excess profits tax could be based. You will find therefore that many of the clauses which appear in this Bill have been taken from the United Kingdom law, and the reason why they have been so taken is because they represent what I believe to be the best way of charging an excess profits tax, and if the wording is elaborate and difficult the reason is there explained.

I propose to give a short outline of the Bill before dealing with it clause by clause, and in doing so I want to elaborate one or two of the more important principles involved.

First of all, I want to emphasize that this is not a tax on profits made out of the war. There lies behind it the general intention that there should be some limit to the amount of profits which may be made during a time of national crises whatever may have brought them about and irrespective of whether they would have been made if there had been no war at all. The basis upon which the tax is charged is, to ascertain a fair rate of profit made by a business in pre-war years (the standard profit) and the profit made during the war (the chargeable accounting period), and after making adjustments, such as for new capital introduced, to deduct the standard profit from the chargeable accounting period profit and to take some portion of the excess as the tax. It is proposed to charge all trades, businesses, professions or vocations for whatever period they may be carried on, and that means it will include both agriculture and gold mining. I believe that one of the best contributions we can make to the war effort and to post-war reconstruction will be to see that production in this Colony is maintained on a firm basis, and it is most important that these two industries should should not be hampered even by war taxation. That does not mean that in time of war a farmer or miner can be allowed to keep his excess profits for his

[Mr. Mundy] own private benefit. But if he is prepared to put these profits back into the development of the Colony or to increase production there is a case for making a concession, and a special provision has been included to meet such a case. It is always difficult to provide capital for mining and farming, and in many cases the finance has to come out of current profits, so that although the Bill taxes both, there is a provision in clause 6 under which any excess profits in mining or agriculture which are put back into development will be exempted. I think this will meet the point of view of all sections of the community, and not only will it protect those industries but will give a direct incentive to new development.

The next point of importance is the rate at which the tax will be charged. It is proposed to charge 60 per cent, and I will explain the reason. I think there are two alternatives: 100 per cent (that is, "take the lot"), or a rate which must be determined by reference to the effect the tax will have not on the individual but on the Colony itself. We had in the last war, experience of a tax which started at 60 per cent, rose to 80 per cent, dropped back to 40 per cent after the war, and wound up at 60 per cent. In South Africa the new tax started at 50 per cent, and has risen to 66½ per cent, and in Southern Rhodesia and New Zealand, as far as I know, it is still 60 per cent. In the United Kingdom it started at 60 per cent in this war and is now 100 per cent. I think it is fairly well known that the 100 per cent tax in the United Kingdom has been strongly criticized, and I believe that if it is not very suitable for the United Kingdom there can be no question of introducing 100 per cent here.

If that is accepted, the question is: How much of the excess profits should be left in the hands of the man who made it. I have no statistics or very strong arguments which would give the figure, but I think it should be decided by what capital is needed in industry at the present moment to enable it to carry on. I have the privilege of looking at the balance-sheets of many of the larger concerns in Kenya, and I do not find large

sums of money lying in the bank idle and ready to meet a tax of this kind. The price of goods has increased generally, there is shorter credit, expenses are heavier, and business needs more capital to carry on under present conditions. If businesses have to pay away 60 per cent of their profits and in addition income tax in some instances at Sh. 10 in the £, the total of the two taxes may approach 80 per cent. I believe that what is left will be needed to carry business on, and it will be a sound policy to leave the tax at the rate of 60 per cent to enable business men generally to consolidate their finances. At the same time, if trade is maintained, 60 per cent will bring in a substantial sum which will be available to go towards the cost of the war.

Turning to the Bill itself, it has been described as a highly technical document, and I suppose that is true. It is necessary to use a certain kind of language in it, and if hon. members find it as difficult to understand as I do to explain it, I feel sure I have their sympathy.

I will refer first to clause 16, which adapts certain of the provisions of the Income Tax Ordinance by enabling the assessment and collection of the tax and the hearing of appeals to be based on that law. The clause provides for the tax to be collected on an East African basis, and it will be collected by the present income tax staff, who will be under the same oath of secrecy; in fact, it will be possible to calculate both of the taxes at the same time. The forms will be similar, all notices will be served in the same way, and there is the usual farthing change in the shape of postage free on all correspondence! The whole of the normal procedure for assessing agents, managers, trustees, etc., will be retained. If an assessment is objected to, notice of appeal may be given, and the procedure of appeal from the Commissioner to a local committee, from there to the High Court, the Court of Appeal, and if necessary to the Privy Council will be retained, except for one variation. The tax is payable forty days after the date of service of the notice of assessment, and if it is not paid on the due date it will be dealt with in the same way as income tax. Section 79 of the Income Tax Ordinance is brought in to enable tax collected for

[Mr. Mundy] other territories to be paid over to them. The tax has therefore a foundation which should be only too familiar to everybody who will be called on to pay it, and this I think will save a considerable amount of trouble in the administration of the tax as a whole.

The variation in appeal procedure is under clauses 17 and 18, under which the Governor in Council may set up a board of referees, who will be required to fix arbitrarily amounts in certain instances which I will deal with in detail as I go through the Bill. The board's decision will be final, because it will not be concerned in any way with questions of law, and where questions of law are involved a taxpayer's full rights under income tax procedure will be maintained. Boards of this type have been set up in the United Kingdom and Southern Rhodesia, and as they will deal with all cases throughout the Colony it will enable equitable treatment to be given to everybody.

Coming back to the beginning of the Bill, clause 2 only deals with definitions, and I will refer to them as they arise in connexion with the different clauses.

The main charging section is clause 3: "where the profits arising in any chargeable accounting period from any business to which this Ordinance applies exceed the standard profits there shall . . . be charged on the excess a tax equal to three-fifths of the excess." This fixes the charge at 60 per cent. The subject of the charge is the profits of a business. If that business is carried on, for instance, by a partnership, the assessment will be on the business itself and not on the individuals, and the tax will be paid by the business irrespective of who owns it.

The profits chargeable are defined in clause 4, linked up with the definition of "business" in clause 2. It means that if you have a trade, business, profession or vocation on which you pay income tax, the profits come within the scope of the new tax. Income from investments is excluded unless the business is a business of dealing in or making of investments, and under clause 4 (3) all businesses belonging to the same person are treated as one. If a person carries on two businesses and makes a profit on one and a loss on

the other, the two will be lumped together, and it is on the net excess profits that he has to pay. He gets the benefit of the loss in the one business. I should like to mention here that, as identical Bills are being introduced into the neighbouring territories of Tanganyika, Uganda and Zanzibar, it has been possible to retain the East African basis which has been used so successfully in connexion with income tax, and this is of the greatest importance because it means that all businesses in one ownership in East Africa and not in Kenya alone will be lumped together for the purpose of this tax, so that a loss in Tanganyika, where they may not have had so fortunate a time as in Kenya, will be set off against profits here, and similarly as regards Uganda and Zanzibar. We shall charge on the net excess profits of all businesses in the same ownership in East Africa. That explains the proviso to clause 3, which has been put in so that a non-resident can be dealt with on the same basis as a resident. It contains one of those little proportion sums which the then Solicitor General, Mr. Willan, explained so lucidly when the Income Tax Bill was debated, and I do not think that I need elaborate it at this time, but what it means is that a non-resident will pay exactly the same amount as if he were resident in the Colony.

When the Bill goes to select committee I propose to move an amendment to clause 4 (3), to deal with businesses in Tanganyika which have been leased from the Custodian of Enemy Property. The Tanganyika Government wishes these businesses to be dealt with separately for the purpose of the tax, and it is a matter which solely concerns that Government, but it is necessary that we should have a provision in this Bill, because if a person resident in Kenya leases one of those enemy estates he will be charged under this Bill, although the proceeds will be shared with Tanganyika Government.

I have dealt with the profits which are chargeable with the tax. Clause 3 says "the profits arising in any chargeable accounting period," and in clause 5 there is the explanation of what is a chargeable accounting period. An accounting period is the period for which a trader normally

[Mr. Mundy] makes up his accounts. In most cases that is once a year, but if he should make them up for a shorter period than that shorter period is to be taken, but in most cases an accounting period is nothing more than a trader's year.

Clause 5 (2) then splits off from the accounting periods (the trader's years) the chargeable accounting periods on which the tax must be paid. Any profits made after the 1st July, 1940, come within the scope of the tax, so that if a trader makes up his accounts to 30th September, 1940, he pays tax on the profits of the three months from 1st July to 30th September. Sub-clause (3) goes on to say that in order to find out the profits of those three months we normally split the year's accounts on a time basis, so that we take one quarter as representing the profits of the three months, July to September. There is a provision under which the Commissioner is allowed in special cases to split the profits on some other basis; that is, if we get a seasonal business, such as a seaside hotel, and the profits were made in the first half of the year, it would not be fair to split them on a time basis, and in such cases we adopt whatever basis would give a fair result.

I have explained what profits are chargeable and what is a chargeable accounting period. This takes us to clause 6, which lays down the basis upon which the amount of profits are calculated. It starts conveniently by taking the income tax figure, and I think most people know how this is arrived at. Then there are a number of adjustments which have to be made to arrive at the excess profits figure. They are set out in succeeding sub-clauses. The first makes it clear that, unlike income tax, excess profits tax is charged on actual profit arising in a trader's year; there is no question of charging an assessment on the basis of income for the preceding year. The next sub-clause permits deductions in respect of debenture interest which under the income tax law is disallowed where it is paid by one non-resident to another non-resident. It was disallowed for income tax purposes for a special reason, but it is a proper charge for this tax.

The next sub-clause lays down that you cannot deduct any excess profits tax paid or charged. Sub-clause (4) eliminates two special income tax deductions. The first is the rather unusual one given specially in the income tax law of 1937 where plant and machinery are replaced. For the excess profits tax the deduction will be the difference between the written down value of the plant or machinery and its sale or scrap price, that is, the actual loss which takes place when any plant is scrapped, sold or replaced. The second sub-paragraph disallows the deductions for losses in other accounting periods which are allowed for income tax purposes because these are dealt with specially in clause 14. Sub-clause (5) eliminates another section of the Income Tax Ordinance dealing with reserve funds. Under the 1937 Income Tax Ordinance moneys put to a reserve fund in cash or easily realizable securities were not taxed, but when that Ordinance was amended in 1940 it laid down that if those moneys were brought back and used in the business they would then have to pay the tax. It is quite unfair for excess profits purposes to bring profits made between 1937 and 1939 within the scope of this tax, so that that particular section of the Income Tax Ordinance is eliminated in dealing with the excess profits figure.

Sub-clause (6) is merely a matter of machinery. A partnership has no residence, and in order to adapt the income tax procedure it is necessary to fix a place of residence. The simplest way is to say that the business shall be deemed to be carried on by a person not resident within the Colony, and I can assure hon. members that it will not make the slightest difference to the amount of tax which will be paid. Sub-clause (7) permits a farmer to make a new election as to how he will deal with the cost of permanent crops such as sisal, coffee, and so on, and whether he will elect to take into account the value of the produce on hand. Farmers have already made this election for income tax, but that election may be unfair for excess profits tax purposes, so they are to be allowed to make a new one which will be most favourable for this tax as compared with income tax.

[Mr. Mundy]

Sub-clause (8) contains the important provision dealing with development to which I have already referred. It provides that any excess profits expended on developing, improving or extending mining or agriculture shall be exempt from the tax. The amount to be allowed is to be fixed by the board of referees, and the reason for that is that we do not want to encourage extravagant expenditure merely because Government will pay 60 per cent of the cost, so it is for the board to lay down whether the expenditure is on proper development or not. The clause uses the words "expenditure incurred or to be incurred". This is most important, because if a person has made excess profits and wants to spend them on development he can go to the board and ask whether, if they are spent in that way, they will be allowed as a deduction for the purpose of the tax, so that he will be in a position to know before he spends the money whether it will be allowed to him, and he will be sure of his financial position.

Sub-clause (9) allows deductions for contributions to war funds. The reason is that quite a number of people making substantial profits have already made generous donations to war funds, and if they are not allowed to deduct them for the purpose of the tax they will have to pay another 60 per cent. I propose to move an amendment in select committee to alter the date to the 1st July, 1941, because in Uganda there is an arrangement under which the cotton ginners are to pay to war funds a contribution of Sh. 1 or Sh. 1/50 a bale on this year's crop, and they are not able to do that before the end of July, but we want to bring the whole of those donations within the relief. It would, however, be unfair to deduct these donations in computing the profits of the standard period, and I shall move another amendment in select committee to add the words "in computing the profits of a chargeable accounting period" at the end of the sub-clause, so that if any donations were made in 1939 they will not be deducted, because they would then decrease the profits in the standard period and we should be charging more tax. So they are only allowed in the chargeable accounting period and

profits of the standard period will remain at the full figure.

Sub-clause (10) is rather lengthy, but it can be explained quite simply. A number of businesses have already bought premises or new plant and machinery to meet increased war production, and in quite a number of cases the premises or plant will be quite useless to them when the war is over. This sub-clause allows them to have a deduction immediately for the probable loss in value of those premises and plant at the end of the war. For instance, if a company has put £3,000 into plant to-day for the purpose of carrying out a war contract, and as soon as the war is over it will be totally useless, it is possible for them to get an immediate deduction for the loss in value at a date to be fixed after the war. This date will be fixed by the Governor in Council and the reason is that we want to find a time when prices are fairly stable, and it will be possible to value the property without much difficulty or, if the taxpayer likes, he can realize it and bring in the actual loss on the property which he has suffered.

Sub-clause (11) deals with profit on long-term contracts which have to be spread over the time during which the contract is carried out. In some trades I understand the practice varies considerably. Some traders do not bring in the profit until a contract is completed, and others estimate the amount each time they make up their accounts. The object is to treat everybody alike. Sub-clause (12) deals with a company in which the directors have a controlling interest. That has been interpreted as a company in which the directors can control the majority of the voting power at the annual general meeting, which means that they have the power to pay themselves whatever salaries they like, so that in companies of this kind the directors are nothing more than partners, although they are trading under the style of a limited company, and we shall deal with them in exactly the same way as a partnership. I should like to refer here to the definition in clause 2 of a director, and point out that that includes a manager of a business who, although not a director, owns 20 per cent of the share capital of the company and is, in effect,

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a partner in the business. Under the sub-clause all remuneration paid to these directors who have the controlling interest will be disallowed both in standard and chargeable accounting periods. The effect is that it is any increase which will bear the tax, not the whole amount, but the increase as compared with pre-war years. Sub-paragraph (b) allows an adjustment to be made where directors cease to have control, so that once control is lost the remuneration must be allowed as a deduction, and the pre-war standard profits will have to be adjusted to give a comparative basis.

Sub-clause (13) prohibits any artificial transactions or the deduction of any excessive expenses. It is, of course, often easy to defeat the object of a Bill of this type. The disallowance of unnecessary expenses is important because there may be a tendency to be extravagant if 60 per cent is being borne by Government. It is possible to increase salaries to figures entirely out of comparison to what is being done, and under this sub-clause such extravagant expenses are disallowed. (14) merely provides for expenses to be spread over the period to which they relate. That is, if you pay insurance premia for two years in one year the amount may be split up at the rate of one premium for one year. (15) provides that no deduction shall be made for any money which has been borrowed for the purpose of investment. The reason is that income from investments is not liable for tax, so that you must not deduct interest on borrowed money borrowed for the purpose of investment.

That covers the whole of clause 6, which relates to the calculation of the amount of profits to be taxed. It has 15 sub-clauses and looks formidable, but in practice I do not think that more than one or two will apply to any particular business and in practice the calculation will be simpler than it appears. You take the income tax figure, make any necessary adjustments outlined in the sub-clauses, and that gives the figure for the purposes of the excess profits tax computation.

The next calculation to be made is that of standard profits, but before that can be done there is clause 8, which deals

with the calculation of capital employed in a business. What you have to do is to look at the assets of the business itself. Take a normal business, it has its premises, with the machinery, debtors, stock, and money lying in the bank. On the other side are the liabilities, loans, and trade creditors. The value of the business premises, plant, and debtors are to be taken at the figures as depreciated for income tax purposes. There is no allowance for depreciation on ordinary buildings, so that an ordinary building is taken at the actual cost to the person carrying on the business. In the case of a factory there is an allowance of 1 per cent, so that if the building has been in existence for ten years the deduction is 10 per cent from the original cost, leaving 90 per cent as the value to be taken. For plant and machinery, the rates vary, but the written down value for income tax purposes from the original cost is now well known. With debtors the value will be the nominal value less any bad or doubtful debts allowed for in income tax. Stock will be taken at the usual cost or market price now well recognized. The cash in bank will be the actual figure. Adding up all these values you get the gross value of the assets, and from that you take the liabilities, the loans, and creditors, which will give you the capital employed in the business at a given date.

Sub-clauses (4) and (5) merely fix the date on which income tax and excess profits tax are to be regarded as having become a debt due by the business or if relief is given the date on which the money repaid is to be regarded as an asset. Sub-clause (6) makes it clear that investments are to be excluded from the capital except to the extent to which they are pledged as security for money borrowed for the business. It also excludes moneys not required for the purpose of a business, which is important, because if a business leaves large sums of money lying on current account at the bank which are not fully employed in the business, the moneys lying idle will not be regarded as capital employed, so that there is nothing to be gained by leaving money in the bank. (7) provides that profits or losses are to be regarded as accruing at an even rate during the year for the purpose of arriving at an average of the capital, so that what you have to

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do is to calculate the capital at the beginning of the accounting period and at the end and take an average of the two, and that gives you the average capital employed in business during the year. Of course, if you add extra capital part of the way through the year, you will have to make a special adjustment. Sub-clause (9) deals with assets which are inherently unproductive. If a farmer planted cabbages he would expect a crop in a few months but if the crop failed you would not say that cabbages were inherently unproductive; but if he put money into coffee he would not expect a crop for several years, so that coffee can be regarded as inherently unproductive for those years. A little later I will illustrate how this sub-clause applies.

Having found out how to calculate the average capital, I come to clause 9, dealing with the important question of standard profits. In a normal case a taxpayer may elect, first of all, to take a minimum standard; secondly, what is called the statutory percentage on the average amount of capital employed; or, thirdly, the profits of the year 1939. If he makes no election, then he automatically gets the average of the profits of the three years, 1937, 1938 and 1939. I will deal with each of these separately.

In sub-clause (2) a minimum standard of £1,000 is prescribed, so that no business which makes less than a £1,000 profit comes within the scope of the Bill. If, however, the owner of the business works full time in the business for more than half an accounting period and increases the profit by his own individual efforts the board of referees may increase the standard up to £1,500. They may further increase it up to £6,000 for a partnership or a company in which the directors have the controlling interest and in which there are up to four working partners or directors. Secondly, there is the standard based on what is called the statutory percentage on the average capital employed in the business.

I have already dealt with the calculation of the average capital, and the statutory percentages are in clause 2 under the definitions. The principle is that the capital employed in a business ought to show some return before any

tax is charged, or if you add more capital to the business some allowance must be made for the earning power of that additional capital. In the case of all businesses other than mining the percentage which has been fixed is 15 per cent, except in the case of a limited company in which the directors have no controlling interest—that is, their remuneration can be deducted as an expense—the percentage is reduced to 12½ per cent. Where the business is that of mining and there is an asset which wastes more quickly than any other business, the percentages have been increased by 5 per cent to allow for the greater wasting of the asset than is the case in a normal business. If therefore £20,000 is the capital in a business and the percentage is 15 per cent, the standard will be £3,000.

The third standard is the profits of the year 1939. I have already said that that year was a good one for most businesses; it is the nearest period to the war years and will be a fair standard in the majority of cases. There will be a few cases in which a trader will make no election but leave the standard to be based on the average of 1937, 1938 and 1939. In sub-clause (5) there is an important concession under which any losses made in those years are to be ignored for the purpose of reaching the average. If you have a business making £9,000 profit in 1937, the next year a loss of £9,000, and in 1939 a profit of £6,000, the average taken is not one-third of £6,000 but of £15,000, by ignoring the £9,000 loss. There are thus four standards for the purpose of the tax. But that is not all. If any of the standards are not fair, the board of referees have the power to fix a greater standard as they think fit. There may be a case where the profits have been depressed owing to drought or for some particular reason, and the referees will be able to fix a standard having regard to what they think would be fair profits under normal conditions. This will prevent hardship in the case of new or immature businesses and will enable businesses to be treated with sufficient latitude to see that they have a perfectly fair deal.

Where any of these standards are based on the profits of a business and not, for instance, on the percentage on capital,

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there is a most important adjustment in sub-clause (7) to be made by reference to the average amount of capital employed. The principle is that if a business with, say, £10,000 capital made £2,000 profit in 1939 and in 1940 the business was expanded by the introduction of another £10,000 capital, it will be obviously unfair to compare the results of the two years without taking into account the earning power of the new capital, so that an addition is to be made to the standard profits by reference to the statutory percentage on that additional capital. If it is 15 per cent the standard of £2,000 would be increased by £1,500 at 15 per cent, which is about £1,500, so that the standard would be increased from £2,000 to £3,500, and the tax would be charged on any excess over that amount. It is here that an adjustment is made for assets which are inherently unproductive. If in the pre-war year £5,000 of the £10,000 capital was invested in coffee which did not come into production until 1940, on the application of the taxpayer we should say that of the £10,000 capital of the pre-war years £5,000 was inherently unproductive and we should treat the pre-war capital as £5,000 only and the increase as £15,000, so that the standard would be increased by £15,000 at 15 per cent, which is £2,250 instead of £1,500, to give a total standard of £4,250.

Paragraph (b) of sub-clause (8) contains a special provision for ginning in Uganda. There the industry is controlled by a price-fixing formula, and I am informed that for the season 1939-40 the price of cotton was about 10d. a lb., which is regarded as a normal one for the purpose of the formula. In both of the two previous years, though there may have been larger crops, the price was below that figure, and I am advised that in the view of Uganda Government a fair standard profit for the cotton-ginning industry would be that of the season 1939-40. This paragraph has been inserted so that the results of that cotton season may be taken to be the profits of 1939 and may be adopted by cotton ginners as the standard profits.

I have dealt with the profits chargeable, how they are to be calculated, what are

the chargeable accounting periods and what are the standard profits. After making all the necessary adjustments, the standard profits are to be deducted from the profits made in the chargeable accounting period and what is left over has to pay the tax at 60 per cent. That deals with the whole of the basis of calculation of the liability, and the remaining clauses of the Bill deal with special cases only.

Clause 10 covers changes in the ownership of a business, and I have explained, it is the profits of a business which are charged, not the individual, so that if there is any change in ownership normally the tax goes straight on, ignoring entirely the fact that there is a different owner. Similarly, if two businesses are amalgamated or one is divided, it is the same thing. I do not think it is necessary to go into great detail on this clause, because in many cases where the change took place before the 1st January, 1940, the taxpayer is given the option as to what should be done. Sub-clause (7) provides modifications where on change of ownership there are some exceptional circumstances under which the figures ought to be varied.

Clause 11 deals with interconnected companies. There are a number of large United Kingdom companies which register subsidiary companies in the colonies and usually finance them by loans or by allowing large sums of money to remain unpaid for goods supplied. But for this sub-clause these moneys would not be treated as capital employed in the business. In such cases, the tax will be assessed as though the whole of the assets employed in this Colony are the assets of the subsidiary company. Sub-clause (3) deals with groups of companies operating in East Africa. It means that if you have a principal company in the United Kingdom which has a subsidiary in Kenya and another in Uganda, it may apply to have them treated as one business, even though they are separate companies, and if there is a loss in one and a profit in the other, one can be set off against the other. I would make it clear that this sub-clause covers a principal company even though it is not resident in Kenya, and that the sub-clause is not restricted to companies resident here.

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Clause 12 provides relief where the excess profits tax is paid in the United Kingdom and other parts of the Empire. It is complementary to the United Kingdom law and gives complete relief from the lower of the two taxes charged. Clause 13 makes it clear that any excess profits tax paid may be deducted in calculating income tax, so that income tax is only paid on the net figure after treating excess profits tax as a business expense. If any excess profits tax is repaid, the amount repaid will be brought in as profit in respect of the year in which it is repaid. That is to say, you do not have to go to the trouble of reopening the income tax assessment for the earlier year, but you treat it as expenditure when it is paid and as a profit when it comes back.

Clause 14 provides for repayment or relief where the profits of a chargeable accounting period fall short of the standard profits. That is, if in the first chargeable period you have excess profits of £5,000 you pay the 60 per cent tax, or £3,000; if in the next period the profits fall short by £2,000 you are entitled to £2,000 at 60 per cent, £1,200, as a deficiency, and will get £1,200 out of the £3,000 repaid to you. I think this is most important, because it does mean that if there should be a deficiency the money already paid will come back into the business and help to tide it over when it needs money. I should like to link this clause with clause 21, because there you find a proviso that enables these reliefs to be given in respect of deficiencies for one year after the tax has ceased to be collected. If the tax ceases on 31st December, 1941, and a taxpayer had a deficiency in 1942 he will be able to get back the amount of the deficiency for one year after the law otherwise expires.

Clause 15 requires every person liable to pay the tax to give notice of his liability. It fixes the liability on the person carrying on business and the date the tax becomes due for payment.

I have already dealt with clauses 16, 17 and 18. Clause 19 brings in the usual penalty for contravention of the Ordinance.

There remains clause 20. The proceeds of the tax will not go into the general

revenue. There will be a liability for repayments until all assessments are finally determined, but any money to the credit of the fund may be loaned to His Majesty's Government in the United Kingdom or may be applied to such purpose as this Council may direct. The hon. Financial Secretary mentioned just now expenditure in connexion with the purchase of the Colony's wool clip. The intention is that the money should be used for some purpose to the benefit of Great Britain. It may be that by spending it in this Colony it may be doing greater good for the war effort than by transferring the cash home, and when the tax is finally wound up there will be, I hope, a substantial contribution towards the cost of the war.

MAJOR CAVENDISH-BENTINCK:

Your Excellency, in the first place, I would say that the majority of European elected members support in principle the objects of this Bill. But for present critical circumstances, the provisions of a Bill of this nature would be singularly inapplicable to a small new developing country like this. In this Colony it can be said that our main industries are those of agriculture (about which I shall have something to say later on) and employment, and a Bill to impose a tax on profits can scarcely be held to apply either to the agriculturist or employee. As regards industry, practically every industrial undertaking in the country is short of adequate modern plant and machinery, and this has become very apparent in our endeavours to fill war needs locally. As regards shareholders of trading concerns, they can be dealt with by steepening the incidence of income tax; if they do not reside in this country they are to-day caught in the United Kingdom.

However, we are not living in normal times. Profits cannot be devoted to new plant and machinery, because these cannot readily be obtained. We are part of an Empire which is fighting for its very existence, and every penny which can be devoted to war purposes is needed. Therefore we feel—and as has been pointed out by the hon. member Mr. Mundy, I personally feel and have felt for some time, that in cases where, owing to fortuitous circumstances, persons are

[Major Cavendish-Bentlck] so placed that they can or do make extra profits, or even large normal profits, the majority of such profits should be handed over as an extra contribution from such lucky persons towards war purposes. As regards the general sacrifices, however, necessary to pay for this war, these should be spread as evenly as possible in accordance with the ability to support the burden, and it is our belief in those principles which may lead us to oppose another Bill which appears on the order paper. This Bill, however, we shall support.

Undoubtedly a few people have made profits under and out of war conditions. Equally, not a few people have lost heavily owing to the war. Unfortunately, we can do little or nothing to help these, but we can insist that it is the duty of the more fortunate to contribute a reasonable proportion of their profits to the common cause. I do not say they are unwilling to do so, but in view of the circumstances it is probably just as well that we should render their duty obligatory.

The Bill before us has obviously been very carefully conceived and every attempt has been made to suit the Bill as far as possible to local circumstances and conditions. In this regard I feel it would be ungracious if I did not preface my remarks by paying tribute to the hon. member in charge and others concerned for giving opportunities during the drafting of the Bill to all concerned to discuss details prior to its introduction, and to the clear, lucid manner in which the Bill was introduced this morning.

But however carefully any Bill may have been prepared and no matter what thought may have been put into it prior to its introduction, in a draft Ordinance of this nature—which, with all apologies to the hon. member in charge, I must maintain is highly complicated and highly technical—it is inevitable that certain small shortcomings will become apparent and certain modifications or changes will be asked for in order to meet special circumstances. I understand that this Bill is to go to a select committee. I therefore trust that in the reply to this debate Government will give a categorical assurance that representatives of interested

organizations—chambers of commerce, chambers of mines, or of communities—who might wish to give evidence will be allowed to do so before the select committee, and will be given ample notice. A Bill of this nature affects so many people in so many different ways that I think all evidence should be welcomed before the Bill actually becomes law.

It is often said, when introducing a somewhat complicated measure of this kind, that most of the points which arise are in fact select committee points, and that it is a waste of time to bring them up in this Council. I am afraid I do not share that opinion. I think Council has a right to discuss proposed alterations prior to the submission of a Bill to select committee in order that such select committee should be in a position to have at least an inkling of Council's reaction to amendments which may be proposed. For that reason I am going to run through particular points that have already been raised in connexion with certain clauses of the Bill, and hope other hon. members will also this morning, or to-morrow morning, if the debate goes on for so long, let us hear of points which may have occurred to them, so that these questions can be examined by the select committee when it sits. I will now turn to the Bill itself.

The first point I wish to make arises in clause 2, which deals with interpretations. In this clause there is an interpretation of the word "business" which is said to cover every trade, business, profession or vocation. In other words, the Bill as it stands is to apply not only to businesses and traders, but to professional men generally. This being so, I would like to know what the interpretation of professional man or profession is held to be? In England, I understand, the excess profits tax legislation does not apply to professional men. In the United Kingdom, I also understand, despite the lapse of centuries the learned legal profession have failed so far to invent or arrive at a suitable definition of what constitutes a professional man, and whenever a dispute arises it becomes a matter for decision by case law. On the other hand, in Southern Rhodesia, and I believe South Africa also, special provision has been made for dealing with what are

[Major Cavendish-Bentlck] that given favourable conditions it may show a small return or a return taken over a long period of years. It is, however, essentially an occupation whose results are subject to wide variations, sometimes lasting over a period of years, due to exceptional susceptibility, firstly as to seasonal conditions, and secondly as to market fluctuations and world prices. For these reasons it is necessary that a farming undertaking, if it is to survive, should at certain times show a substantial profit to off-set the losses incurred, often over a long period. Therefore it is obvious that the application of an excess profits tax, even though averaged out, will be inequitable unless the average is taken over a far longer period than is taken in respect of any other undertakings, and I would suggest a minimum of seven or more years.

I would also like to know on what basis the computation of standard profits would be arrived at in regard to these professional men if they are to be included. There is a choice of methods suggested in clause 9 of the Bill, but some of these could not be made applicable to professional men, nor could sub-clause (7) of clause 9 be applied.

I therefore feel that some special clause is needed to deal with them if it is decided that they should be included, and I believe some such clause does exist in the South African and Southern Rhodesian Acts. I repeat, much depends on what is held to be a professional man. Doctors and lawyers obviously are. What is a commission or manufacturer's representative or agent? He has no capital, but under war conditions he may have made very large profits.

The next point I wish to raise arises out of clause 6 (8), which will be found on page 4 of the printed Bill. This sub-clause provides that "Where a person carries on a business of agriculture or mining the board of referees may, upon application being made to them in writing, authorize a deduction of such an amount as they may think fit on account of any expenditure incurred or to be incurred by the person carrying on the business in developing, improving or extending such business." This provision is probably satisfactory and equitable as far as it goes, and was referred to by the hon. member in charge as likely to extend or encourage development. Personally, I do not think it goes far enough. I am inclined to think that agriculturists should be altogether exempt from the provisions of this Bill. The essence of practically every farming undertaking is

that given favourable conditions it may show a small return or a return taken over a long period of years. It is, however, essentially an occupation whose results are subject to wide variations, sometimes lasting over a period of years, due to exceptional susceptibility, firstly as to seasonal conditions, and secondly as to market fluctuations and world prices. For these reasons it is necessary that a farming undertaking, if it is to survive, should at certain times show a substantial profit to off-set the losses incurred, often over a long period. Therefore it is obvious that the application of an excess profits tax, even though averaged out, will be inequitable unless the average is taken over a far longer period than is taken in respect of any other undertakings, and I would suggest a minimum of seven or more years.

I know that the reason for including agriculturists and agriculture is that it is considered desirable to cover tea and sugar organizations, some of which may have made substantial profits. If this is so, and should this Council or select committee decide that it is not practical to exclude agriculture, then I must submit that these other objections to the Bill as applied to agriculture which it would appear desirable to meet. In this connexion I would draw attention to the retrospective effect of this Bill. It is within the knowledge of members of Council that many, if not the majority of agriculturists have been through very difficult periods, and most of them are heavily indebted to the banks. The position now is or will be under this Bill that if, owing to our geographical position and the circumstances of the war, agriculturists are in a position to do better and make profits, if they devote such profits to improving their farms in the way of new buildings, new machinery and general expansion of their business, they will be allowed to count such disbursements as capital and deduct them from this profit under the provisions of this Bill. If, on the other hand, the bank in whose hands they may be, refuses to allow such disbursements and insists on redemption of an overdraft, as I read the Bill, 60 per cent of such repayment, which will then be considered in the light of excess profits, will be removed.

[Major Cavendish-Bentinck]

Again, I must stress the unfairness of this retrospective effect, particularly in the case of repayment of overdrafts. Profits may be, and in many cases definitely are, applied to reduction of overdrafts in accordance with contractual obligations, and it may well be that under the Bill as drafted farmers will find themselves called on to pay excess profits tax in cash which they have not got, may never have seen, and are not able to re-borrow.

I do not believe this would be in the interests of the country nor of the war effort, and I would therefore suggest that possibly the difficulty can be got over by the insertion in this Bill in some form and in the proper place of a provision under which all all debts, other than trade debts, which are legitimately used as capital should be treated as part of the capital employed in the business for the purpose of computation of standard profits. This possibly is not the correct method of meeting the difficulty, but it is a suggestion. I should like to put forward for what it is worth.

The next point I would like to take is that of agricultural co-operative societies. They do not exist for the purpose of making a profit, they exist for marketing, and in some cases for manufacturing, their members' produce, the intention being to market the produce or to manufacture it at cost and distribute such goods less cost for the members. So far as in any given period a co-operative society fails to distribute the total net amount available, it is because either the funds are required for improving or extending the business or it is considered prudent to create some reserve to level up payments to farmers to assist them in their individual finances. In either case, I suggest that the profits should not be taxable, and could only become taxable under a law applied for a relatively very short period. I therefore hope that the possibility will be considered of so arranging that profits of agricultural co-operative societies shall not be taxable or, failing this, that clause 6 (8) be amended to include development, improvements and extensions, including reserves for evening out pay-outs of agricultural co-operative societies.

Before leaving this clause, which deals with agricultural and mining activities, I would suggest that the business of sawmilling should also be included. I should, of course, disclose that I am Timber Controller for East Africa and chairman of the biggest timber combine in the country. I have, however, no personal financial interests in the matter. I would point out that the business of sawmilling has precisely the same claims as that of agriculture and mining. Much extra plant had to be bought by millers to enable them to complete military orders. I know there is special provision in the bill to meet this contingency, but nevertheless it is a point to be borne in mind. Millers are also dealing with a wasting asset as are the mining companies, and the past history of sawmilling in this country bears no small analogy to that of agriculture.

The next point to which I wish to draw the attention of Council arises in connexion with clause 9 (2), on page 9 of the bill. In this sub-clause, provision is made for granting special remission to a working proprietor of a business, and it is considered that the relief envisaged in this clause should also be made applicable to a working proprietor who happens to be absent on military service. In other words, that because a working proprietor happens to be a soldier to-day we can see no reason why he should be deprived of the facilities or assistance provided in this clause.

My next point arises in regard to clause 10 (3) on page 10. This deals with successions and amalgamations and changes in partnership of a business. Under (3) it is specifically provided that even though a business should change hands, "no regard shall be had or any consideration given in respect of the transfer of the business or any of the assets thereof" in computation of the standard profits. I quite see the reason for this provision. Obviously, if people can get out of paying excess profits merely by selling their business at an enhanced figure to a dummy company, or to relatives, friends, etc., the door will be left wide open to fraudulent avoidance of the excess profits tax. On the other hand, if a man genuinely buys a business now at a much higher figure than the value of the business prior to

[Major Cavendish-Bentinck]

the 1st day of January, 1940, it does seem unfair, pro-supposing it is a real, genuine deal, that he cannot compute the standard of profits on the basis of the capital he has paid for the business. This, I know, is a difficult matter, but perhaps in replying to the debate the hon. member in charge might explain what he has in mind, or possibly the select committee might try and find some solution.

The next point I wish to make arises out of clause 15, and more especially sub-clause (2), which will be found on page 15 of the printed bill. The first point I wish to make in connexion with this arises from the fact that the excess profits tax becomes payable within 40 days after the date of the service of the notice of assessment. A number of people who may become subject to this tax were quite unaware that the tax was going to be imposed, and may have invested their profits in increased stocks or used their profits towards defraying the increased cost of stocks, or may have put their money into war loan, and for various reasons they may now have some difficulty, if not great difficulty, in laying their hands on cash. It is therefore considered, more especially in the case of the first assessment, that this period of 40 days is too short a period of time and that it should be 90 days, and not 40.

For the same reason it is suggested that, in the case of the first assessment at any rate, the excess profits tax should be payable in East African war bonds or United Kingdom war loan bonds at par. This provision at par value is, I think, important, because people may between July and December, 1940, for patriotic motives have invested in war bonds, and it would be unfair to make them borrow from the bank at 6 per cent when they only get 2½ per cent on their investment. I know provision has been made to deal with contributions to war funds or charities, but that is quite another matter. I am now referring to investment of profits in war bonds.

The next point I wish to make, and it is the final point as regards specific clauses of the bill, refers to clause 20 (3) on page 16 of the printed bill. It provides that on the expiration of the

ordinance, when all excess profit tax due under the provisions of the ordinance have been repaid, the moneys standing to the credit of the excess profits tax fund shall be given to His Majesty's Government in the United Kingdom as a free gift towards the cost of the present war. As I have already said, our intention in supporting the bill is to extract money from those who, owing to various circumstances, have made big profits or extra profits under war conditions and to apply such moneys to relieving the United Kingdom in so far as is possible in respect of the costs of the war. That is the intention, and I may say that I have no intention of departing from that intention. On the other hand, it has been argued by Chambers of Commerce and elsewhere that it is unnecessary at this stage to be quite so specific in regard to the detailed utilization of this excess profits tax fund, more especially in view of the fact that the computation of the profits goes on for one year after the 31st December next following the cessation of hostilities and the final settlement might well take the best part of yet another year. Thus there will be a lapse of a considerable period of time, and it may be that when that time comes it may be found to be a greater benefit to the Home Government if we were empowered to utilize any moneys standing here locally than handing them over to the Home Government with one hand and at the same time perhaps asking for the money back with the other.

Those are the only points which I have to raise in connexion with specific clauses. I have, however, one or two further observations to make which are of a more general character.

In the first place, I should like to know what is the position of a man who may be a big shareholder in a growing and developing company here and who may have drawn his profits or salary, or whatever the remuneration may be, in shares, shares in his own company which may not be saleable, and are non-dividend paying, but which on paper may represent a considerable value.

Another question which has arisen requires, I think, some investigation, it is how depreciation funds which have been

[Major Cavendish-Bentick] invested should be treated in regard to computation of capital.

Another question is that of how companies registered in England and liable to United Kingdom income tax, and presumably United Kingdom excess profit tax, should be dealt with here. I realize that it has been carefully explained by the hon. mover, that protection is given against double taxation, but that is not the point. Are we to deduct moneys which would otherwise be going to the United Kingdom, where they are urgently needed, and keep them here, or would it really achieve the objects of the bill better and in a less complicated manner if we exempted such companies from the provisions of this measure?

There is one other small point which may be met in the bill, but I cannot see where, and that is the question of treatment of employees who receive their remuneration in the form of a salary plus share of profits. Does their share of profits rank as salary for the purpose of assessing the company concerned, or how are such deductions to be met?

Another point which has exercised the minds of quite a number of persons concerns the constitution of the board of referees. This is a very powerful body, there is no appeal against their decisions, and I would like to have some indication of what type of constitution Government has in mind.

In conclusion I think I should say something in regard to the proposal which has been made from various quarters, that this bill would be better framed were it on lines which provided for a higher rate of tax; that is, 80 per cent or 100 per cent on all excess profits but should also provide that only 50 per cent or 60 per cent of such tax should be regarded as available for the purposes of the bill and the remainder be looked on in the light of compulsory saving and should be handed back to contributors after the war at stated intervals over a period of years. A good many claims have been made for this proposal, but I would say that this matter has been carefully considered in various quarters and the conclusion has been reached on the whole that such a method of taxation would be clumsy, might prove unwork-

able in practice, and might not have the effect envisaged by its protagonists. The reasons which induced the United Kingdom to introduce their bill on those lines were not those usually attributed.

Actually, the United Kingdom did not introduce its Excess Profits Tax Bill on those lines, but it increased the rate of tax to 100 per cent of all excess profits at a later stage when it was found, as has already been mentioned by the hon. mover this morning, that in practice this 100 per cent excess profits tax had very undesirable repercussions. I think it is not unfair to say that the United Kingdom Government then got out of what became a political dilemma by treating part of the money which it acquired or was in process of acquiring as compulsory savings, but had they been able to put the clock back and start afresh they would have adhered to the original method of a straight tax of say 80 per cent. If people want to save they can save without Government stepping in, and the difficulties of accountancy and finding the money at stated intervals after the war might prove very serious embarrassments with little profit to the community or to individuals concerned.

In this connexion I would draw attention to the fact that everybody does continue to get relief under clause 14 of the bill for a further year after the war has ended. Perhaps, however, as there has been a good deal of discussion on this proposal, the hon. member in charge might inform Council as to his views on the idea of having a tax part of which is excess profits tax given for war purposes and part of which can be regarded as compulsory savings.

Your Excellency, these are the only remarks I wish to make, and I beg to support the bill.

MR. NICOL: Your Excellency, I welcome the bill naturally, and under to-day's conditions anybody who opposes this measure can, I think, be counted as nobody. (Laughter.) The only criticism, however, that I have to make is the delay, despite what the hon. mover said this morning, and I received a couple of days ago a letter dated 17th April from the editor of *East Africa and Rhodesia* in the postscript to which he says: "To-day's telegram, the Kenya's zealous Government is to introduce excess profits

[Mr. Nicol] tax only 82 weeks after I first proposed it in leader. Someone will get run over, and hurt if this reckless driving continues."

Well, we have been pressing for it hard, but there is the saving grace that the bill is retrospective to the 1st July, 1940, but now that it is brought in I also urge that in clause 15 (2) the time should be 90 days instead of 40 because, as the hon. Member for Nairobi North pointed out, it is a question of finding the cash. I also support the acceptance of war bonds in payment. One point, I think, must be borne in mind, and that is that the indications to-day are that the curve of profits is likely to have a downward tendency as far as East Africa is concerned.

I should like to congratulate the hon. mover on the lucidity of his introduction of the bill, but I should like to make one suggestion: that is, that his speech be published as a white paper for the benefit of all concerned. It would be so much easier for the man in the street to consider the implications of the bill if he has got the hon. member's speech to study.

In thinking over this bill, I had intended to suggest that 60 per cent should be dealt with as envisaged in the bill, 20 per cent to go to a Colony road fund and 20 per cent compulsory saving in war loan for reconstruction or as an equalizing reserve against bad times. I know that that idea has considerable support in certain quarters, but certain implications which I missed have been brought to light by the executive of the Association of Chambers of Commerce. As one of the few full-time commercial people in this Council, I have been asked by the President of the Association to emphasize the fact that it is the considered view of the commercial community that the present suggested 60 per cent should be left as it is. The hon. Member for Nairobi North has gathered the other points which the commercial community were worried about, and I entirely subscribe to what he has said.

There is some confusion in the question of this relief from double taxation. It has been suggested to me that by the formula laid down it does not afford the 100 per cent relief, and in effect

a company paying the home excess profits tax plus the Kenya excess profits tax will pay some 5 per cent more in taxation than is intended. Perhaps the hon. member in charge of the bill would make a categorical statement on this particular question, as it would clear up a certain amount of anxiety in some people's minds.

This bill is going to create an enormous amount of work for both the Inland Revenue Department, or Income Tax Department, and also for individual companies and, as is known, individual companies are to-day very short staffed, and they find considerable difficulty in view of that of conducting their own businesses. I do suggest that companies taxed at home should be able to present the income tax authorities here with a certificate from the home authorities showing that this tax has been collected at home, and that should satisfy the East African authorities. One of the reasons why I suggest that is because you get various differences and adjustments as between home assessments and assessments out here, and if you turn for one moment to clause 6 (9) of the bill there is provision there that any sum contributed prior to the 1st day of May, 1941, to the Kenya War Welfare Fund and Kenya Central War Fund should be allowed as a deduction. I am very glad to see that provision in the bill, but contributions to those funds in computation of excess profits tax in England are not allowed.

I therefore suggest that the home certificate should be acceptable to the East African authorities, more so as it is the intention to turn over the result of the collection of this tax to the Home Government for their use. A further point is that if this is not done there will be a certain amount of hardship and curtailment of trade caused, as it will mean tying up considerable sums of cash not only here but also in London. For example, if the excess profits of a company which is taxable at home are say £50,000, I think I am correct in saying that it has been reduced at home from 100 per cent to 80 per cent—say it is 100 per cent, it means that £50,000 is paid out at home and also within 40 or 90 days here 60 per cent or £30,000 has got to be found here. In other words,

[Mr. Nico]

it will tie up until there are various adjustments some £80,000. I think you will agree that great hardship is bound to result therefrom and probably cause unnecessary borrowing from the banks.

While on this point, in view of the general disorganization of mails and the difficulty of communication with London, and the passage of documents to and from here and England, those documents are liable to get lost. I suggest that we could perhaps simplify matters so far as the authorities are concerned, and it will so far as the commercial community is concerned, if companies taxable at home were able to turn over certificates of the tax to the authorities out here as proof of payment, because it is merely a matter of a book entry on the part of Government instead of occupying a terrific amount of time and energy on the part of the individual in trying to get relief from one source or the other, the more so as the tax at home is higher than the tax here. The same system might be applied to income tax certificates and dividend warrants, and inconvenience to companies operating here and taxed in London obviated.

Finally, I would just like to say that once again here is a bill on an East African basis, which is all the more welcome, as the adjoining territories are gradually coming along. I think, to the view of the necessity of closer union.

MR. PANDYA: Your Excellency, the Indian elected members are unanimously in favour of this bill. Human nature generally does not like to pay anything from their pockets, even for charitable purposes, but there are occasions when people will willingly give money, and in our opinion this is one of the occasions on which people should contribute whatever they possibly can towards the cost of the war effort.

The question has been raised as to whether the tax should be 60 per cent or a higher percentage. It has been explained by the hon. member in charge that anything higher than that would react and it would be unreasonable, and to those who are in favour of a higher figure I should like to say that, under the circumstances existing in this country, anything over 60 per cent would be

very unfair. We have just heard from the hon. Member for Mombasa that the Association of Chambers of Commerce thinks that 60 per cent is a very fair percentage in this country, and I hope this figure will not be increased.

The question has been raised by the hon. Member for Nairobi North as regards the point as to whether professions should be included in the bill. As they are included, the opinion of the Indian members is that they should remain included. Why we are in favour of professions being included is that this is war taxation, and in our opinion anyone with profits which have been made during or out of the war in excess of the pre-war period should pay a portion back towards the cost of the war; and secondly, even from normal profits at a time of national crisis it is only fair that a certain percentage should be contributed towards that cost. If you take those two principles, one of which was mentioned by the hon. member—he did not mention the other, because I suppose he agrees with me that in this country we are not making any war profits or are not allowed to make them by the hon. Financial Secretary under the Price of Goods Regulations—those Regulations however, do not apply to the professions, and therefore it would perhaps be fair to bring them under the first principle which I mentioned. But if we take the two principles as a basis of this bill, at this stage I think a fair case has been made out for professions to be included in the bill.

Coming to the point which was made by the hon. Member for Nairobi North as regards the exclusion of agricultural co-operative societies, and also the saw-milling industry to a certain extent, though he did not ask for exemption of the latter, as far as agricultural co-operative societies and agriculture are concerned in my opinion, if we apply those two principles I have mentioned to this bill, there is no case whatever for the exclusion of those industries from the operation of the bill. It must be admitted that while there was a case for treating them with a little more consideration than the traders, there is no case whatever why the extra profits they make should not be paid over to the war

[Mr. Pandya]

effort. I am not in favour of the exemption suggested by the hon. member, and I hope the select committee will not agree to widen the favourable terms already given to the agricultural industry in the bill. Perhaps if we go further into that matter, even as far as traders are concerned, the principles are not very different from those which the hon. member mentioned in the case of agriculture. In the agricultural industry you get crops such as coffee, sisal, tea and sugar which could not in any circumstances be called agriculture in the particular sense of the word but they are just as big businesses as any other trade or industry in the country, and there is no reason why they should be treated in any other fashion. The question and necessity for further investments in that industry applies equally to trade. As everyone knows, prices have gone up due to war conditions in other parts of the world, and a trader has got to increase his capital in order to maintain his business. The 40 per cent he is able to keep may not be enough. On this account I do not think a reasonable case has been made out for the exemption of any particular industries or professions from the bill.

When it comes to the question of agricultural co-operative societies, I could not possibly imagine what difference there could be between a business carried on by a trader of a similar type and such a society. If they do make any profits at all, they should be treated in the same way as any other business.

So far as clause 15 (2) is concerned, the period of payment, I support the hon. member's suggestion that it should be 90 days instead of 40 days, and the reasons are obvious. It is very difficult to pay the excess profits tax from the earnings locked up as capital, and a reasonable time has got to be given in order that a man may be able to make payment. I also support the idea of accepting war bonds in payment of the tax, and I think it is in the interests of Government in order to get payment much quicker that that should be allowed. In the beginning of the year a trader may have made a certain profit which he should be allowed to invest in war bonds in order to pay the excess

profits tax. If that is not allowed he may invest in goods and not be able to sell his goods at the time he has to pay the tax. I hope both the commercial community and Government will agree to payment in that way.

With regard to the point made by the hon. member in charge about the use of the fund, in view of the fact that refunds have got to be made, though I do not anticipate that the fund will be fully paid back, but if that happens which nobody can foresee, what would happen in regard to the motion moved by the hon. Financial Secretary this morning, that £76,000 be loaned to the Wool Control, and when the refunds have to be made there is not sufficient money in the Excess Profits Tax Fund to meet it? Will Government then take the responsibility of using revenue or consider it a loss to the taxpayers?

The last point I wish to make is in regard to the constitution of the board of referees. We do not yet know what constitution Government has in view, but as this tax will be very largely paid by the trading community I am quite sure Government would consider the appointment of a business man to that board and that whatever people are appointed one of them should be an Indian, in view of the fact that a large number of businesses are run by the Indians in this country.

I support the bill.

MRS. WATKINS: Your Excellency, speaking on behalf of the coffee industry I am sure that we should be only too willing to help towards the great war effort out of our excess profits, though I do not think there will be many this year, but as far as the coffee farmer is concerned I am sure that he is too proud to want to be exempted from such a tax on any excess profits that might arise. I do think, however, that agriculture should be allowed to have a slightly larger cycle than one year; probably three years is a reasonable cycle, and have a different period for assessing normal profit and also losses and excess profits. A lot of coffee bears every second year, and we shall get a lot in this year to pay off overdrafts. If it is more, we should rather like to come in on this, and would rather like to feel that we are patriotic enough not to pro-

[Mrs. Watkins]

pose that the agricultural community be excluded.

MR. LÖCKHART: Your Excellency, the only point which I could perhaps take away from the hon. member Mr. Mundy to reply to, is the question of the excess profits fund, and the hon. Member for Nairobi North also referred to the possibility of excluding from this bill companies who were assessed for excess profits tax in the United Kingdom.

The hon. member probably realizes that the two proposals are in some degree contradictory. On the one hand, he wants to retain here the proceeds of the tax, and to pay them over to His Majesty's Government in the United Kingdom; on the other hand he does not want to collect here at all but to leave collection to the Treasury at home. As the hon. members say, it will be a very long while before this fund is finally wound up, and if it is wound up in circumstances in which it will be manifestly difficult, if not impossible, to pay over the balance of the fund or if we did so we had to seek relief in some other form, it is reasonable to suppose that His Majesty's Government at that time would waive their right to the fund or would come to some adjustment. I suggest that it would be very ill-advised at this stage to make any amendment to that section of the ordinance on those lines.

On the point raised by the hon. member Mr. Pandya, it is quite true there exists theoretically the possibility that the fund might not only be expended but even go over to the other side, but I cannot see why refunds to which taxpayers would be entitled should be refused merely because no balance is left in the fund.

COL. MODERA: Your Excellency, the hon. Member for Nairobi has covered a number of points which I should also like to stress, but I will not take up the time of Council. There is one point, however, which I should like to labour, and that is the question of professions being included.

One is glad to hear that members of professions—medical, accountancy, legal, architects, and so forth—will have an opportunity of attending before the

select committee to urge their case as to why they should be excluded. Normally, I for one would have thought that they should be included, because we are after all considering, as I understand it, profits in excess of standard profits and gained as the direct consequence of the war. It has been urged that a professional man's capital is a wasting asset because his capital is professional ability. However that may be, it would seem normal that they should be included too, and perhaps the hon. mover will tell us when he replies why the professions were excluded from the English legislation. There must have been some very good reason for the professions not being included in that legislation upon which this bill is founded. There is a good answer to that question and, if we can be told, it will serve as a good guide in arriving at a decision as to whether professions should be excluded or included in this bill.

COL. KIRKWOOD: Your Excellency, I will start off by drawing your attention to what I consider an irregularity and an offence against No. 43 of the Standing Rules and Orders. I am referring to the remarks of the hon. Member for Mombasa, when he started off by saying that anybody who opposes this bill can be counted out as a nobody. He is very well aware that I am somebody, and I informed him and all elected members at their meeting that I intended to oppose the bill on principle, on what I consider to be a conscientious principle, and that is a constitutional issue. The unofficial members on this side of Council are not getting adequate control over the finances of the Colony. As a colony, the way it is governed is becoming farcical. On a previous occasion when the Income Tax Bill was brought into this Council, I took occasion to speak then on the same lines. Otherwise I am not a leopard to change my spots like a lot of my hon. friends. I would like to know why the hon. Member for Mombasa was not called to order under Standing Rules and Orders in making remarks which were personal and ironical—he did not mention me by name.

MR. NICOL: If any remarks which I made were objectionable to the hon.

[Mr. Nicol]

Member for Trans Nzoia, I certainly apologize to him, but I was not speaking of any one person or individual inside this Council at all. I was speaking in general terms. If I did say anything which has upset my hon. friend, I am very sorry and hope he will accept my apology.

COL. KIRKWOOD: I accept it very freely, he has not hurt me a bit. (Laughter.) It has hurt the hon. Member for Mombasa in exposing his ignorance of the Standing Rules and Orders of this Council, though he has been here some time and should know them by now. I think that disposes of the constitutional issue.

The hon. member on my right (Major Cavendish-Bentinck) was nominated by the European Elected Members Organization to speak on behalf of the Organization. He has not put in my protest on the constitutional issue. I candidly admit now that had we a reasonable Government in this Colony and hon. members opposite were given a free vote and could vote against it or otherwise, I would welcome this bill and I endorse everything the hon. member on my right has said regarding the details of it.

There is a constitutional issue I consider also in clause 20 on page 16, where it says: "The excess profits tax collected under the provisions of this ordinance shall be paid into a special fund to be called the 'Excess profits Tax Fund' and any excess profits tax to be repaid under the provisions of this ordinance shall be paid out of that Fund". I should like to ask the hon. Chief Secretary how he proposes to use the money that is collected under this bill for the purpose of financing the items mentioned on a previous occasion this morning. I presume that will require to be altered if the hon. Financial Secretary's intentions are to be carried out, and I thought it was a wise and sane thing when he said how the money could be used in the meantime.

In (2) of clause 20 it says: "The Governor is hereby authorized to lend, free of interest, to His Majesty's Government in the United Kingdom any moneys which may from time to time be standing to the credit of the Excess

Profits Tax Fund, or to apply such moneys to such other purposes as the Legislative Council may by resolution direct". I have no objection to the whole of the money going to the Imperial Government as the war effort of the Colony, but if there is going to be delayed action until the war is over I suggest that no action is taken without the consent of the Council.

In the last sentence it says: "apply such moneys to such other purposes as the Legislative Council may by resolution direct". That is eyewash. Your Excellency and your Executive Council, whatever you decide to do, will move a motion in this Council, and hon. members on the other side of Council will have to vote as they are told, and it is a political farce. For that reason I think that sentence ought to be expunged.

In clause 20 (3) it says: "Upon the expiration of this ordinance and when all excess profits tax due under the provisions of this ordinance to be repaid has been repaid, the moneys thereupon standing to the credit of the Excess Profits Tax Fund shall be given to His Majesty's Government in the United Kingdom as a free gift towards the cost of the present war". Nobody will doubt that I am an Imperialist, and on many occasions I have fought for my country as a volunteer. I have had nine years war service and thirty years as a soldier, and I am only sorry that I am not in this present war, but they did not like the look of my face or something and here I am! I think that before anything is done with this money it would be a good thing, where excess profit has been made, that there should be contributions towards the funds of this Colony. I would suggest that before these funds are distributed it should be by agreement with the officials and unofficials and not by resolution of the Council. I resolution in this Council means nothing to us. It is a foregone conclusion, for the Government members on the other side and the nominated members will have to vote as they are told. If this clause is worded "by agreement" I would agree. I am afraid I am rather hot under the collar on this constitutional issue in connexion with this clause 20.

I should like to pass one or two remarks that may be of some advantage

[Col. Kirkwood] to the members of the select committee when it is appointed and the members are considering this bill. I know a few cases, but I will mention no names. Take the case of a sawmiller who is making £1,000 a year, which is a very low amount for them to make because there has been in timber a slump for a considerable time, and £1,000 does not represent a fair return on the capital invested. Under this bill—there are other reasons which I will not go into—there would take too long, this particular case is an anomaly. I would ask the select committee to remember that this particular sawmiller, and probably many others, have spent unthinkable sums on huge tractors which in ordinary times they could not afford to buy, to help in this war effort and get things along, and they have worked 16 hours a day in two shifts. They have torn the heart out of the forests, and no doubt the war effort has been helped. They had to get the timber to the East by a certain route, and it was delivered. That is a great help, and they deserve a great deal of praise for working those long hours, with the worry and trouble which they have had, and some consideration should be given to them.

I think it is rather hard that having made this special effort, 60 per cent of their money is going to be taken away. In regard to the forests, there has been terrific cutting—I do not want to labour soil erosion and all the rest of it, but I should like to know why a sum of money should not be set aside for re-afforestation, because I am quite certain, notwithstanding anything I may be told by the Conservator of Forests, there has been excessive damage done to the forests and the trees are not likely to be replaced for some years.

HIS EXCELLENCY: I do not want to interrupt the hon. member, but if he has a great deal more to say perhaps, as it is after one o'clock, we could adjourn now, unless he is likely to conclude soon.

COL. KIRKWOOD: I would prefer that an adjournment was made and I will continue to-morrow.

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, 19th June, 1941.

Thursday, 19th June, 1941

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 19th June, 1941, His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The Minutes of the meeting of 18th June, 1941, were confirmed.

RULING

HIS EXCELLENCY: Yesterday the hon. Member for Nairobi North asked for a ruling as to whether Question No. 29 standing in the name of the hon. Member for the Coast conformed with sub-sections (i) and (vii) of Standing Rule and Order No. 22.

I have considered the question, and am of opinion that the question as drafted does not strictly conform with the terms of sub-section (i) of the Standing Order inasmuch as the question would have been equally intelligible without any reference to the Information Officer by name. The hon. Member for the Coast appreciates this and is prepared, I understand, to amend his question by the deletion of the Information Officer's name.

As regards sub-section (vii), the question does not in my opinion make or imply any charge of a personal character against the Information Officer, but raises by implication the propriety of his conduct in his official capacity as Information Officer. Such questions are specifically covered by sub-section (vi) of the same Standing Rule and Order.

Subject to the deletion of the reference to the Information Officer by name the question may therefore now be put.

ORAL ANSWERS TO QUESTIONS No. 29—CONDUCT OF GOVERNMENT OFFICERS

MR. COOKE asked:—

Is Government aware that in a speech made at St. George's Day dinner in Nairobi on 26th April, the Information Officer expressed views on a political issue which is a matter of serious controversy in the Colony at the present moment?

[Mr. Cooke]

Was he expressing the views of Government or merely his own private views?

If the latter, is a paid Government official permitted to express his political views in public?

If not, what disciplinary action has Government taken or does Government propose to take against this officer?

MR. RENNIE: (a) The Government is aware that on the occasion referred to the officer named expressed views on a political issue.

(b) His own private views.

(c) Not normally.

(d) None.

LORD FRANCIS SCOTT: Sir, on a point of order I suggest that the reply is out of order, because it refers to "the officer named". It should be by post.

MR. RENNIE: You can name an officer either by name or by designation.

MR. ISHER DASS: Are Government servants, paid servants of Government, free to take part in any affairs of politics and to express political views?

MR. RENNIE: That particular point has already been answered by "(c) Not normally".

MR. ISHER DASS: In view of the answer given, is some action to be taken since it contravenes Colonial Regulations which prohibit a Government official taking part in politics or expressing his views in public?

MR. RENNIE: Under the Code of Regulations and Colonial Regulations each particular case of a disciplinary nature is considered on its merits.

LORD FRANCIS SCOTT: In view of the point raised by the last hon. member, as it is always the habit of senior Government officials to make political announcements at these public dinners, is it to be the rule in future that they will not be allowed to make such speeches?

A MEMBER: Would the hon. member define a normal occasion?

MR. RENNIE: At the moment I have not the Code of Regulations with me. Perhaps if the hon. member would come to my office I can explain more fully what he wishes to know.

MAJOR CAVENDISH-BENTINCK: Is it not a fact that these accusations are made, the Information Officer can scarcely be regarded as a regular Government employee but as a civilian who has volunteered to help with the war in work for which he has peculiar qualifications, and does not Government think it undesirable that people who help Government in the war should be subjected to these attacks in Council?

MR. COOKE: Is it not a fact that it was aimed also at the hon. member himself?

EXCESS PROFITS TAX BILL

SECOND READING

The debate was resumed

COL. KIRKWOOD: Your Excellency, speaking yesterday at the adjournment, I was speaking with reference to the saw-mills affected by the bill under discussion and I pointed out that they had at the request of headquarters in Nairobi to help the war effort expended a good deal of money in equipment, and also that some of them have been working more than one shift a day. I know one mill which worked sixteen hours to help the war effort. In doing that, I stated yesterday that it had depleted the forests considerably, and I asked for consideration for the forests, who cannot speak for themselves, in that money should be returned in the way of re-afforestation, either from Government funds or from money received by the Forestry Department for timber which has been cut by those mills.

I would further ask that the sawmilling industry be included in clause 6 (B), which states in the margin "Special deduction in case of agriculture and mining"; it should read "and sawmilling". Excess orders have almost disappeared now, and the mills are faced with surplus equipment which is a liability and not an asset. I would ask the select committee to consider that question when the bill is referred to them.

[Col. Kirkwood]

I would like to refer to clause 15 (2), which allows 40 days for payment after assessment. It has been mentioned by other speakers and I agree, that the period is too short and that it should be 90 days; three months is not an excessive period, and I hope that will be agreed to.

I would also on behalf of agriculturists ask that they be excluded totally from this bill. They have had a very thin time since 1930, since the crisis, the world drop in prices which never recovered. Take maize, for instance, the price is lower now than it has been for many years, and is still under the cost of production. If you take from 1930 to include up to 1941, or up to 1940, you would find that the average payout was somewhere in the region of Sh. 6, and that is either on the margin of the cost of production or just under. That is only one. Generally, the agricultural industry has had a thin time. Speakers on the other side of Council have at times compared themselves with agricultural and commercial people in that the latter have in times of prosperity an advantage as with an increase of trade their profits grow as against static salaries, and they have a gambling chance, but I maintain there has been no gambling chance whatever for ten years for the agricultural industry of this Colony. I may be criticized by somebody quoting pyrethrum or flax, but everybody in agriculture does not grow flax or pyrethrum, and generally they have had a very thin time. Under war conditions I think they have had a worse time, for they do not get a fair deal under group farm management, while prices are bad, apart from one or two items. I think they deserve a great deal more consideration, and I hope the select committee will consider seriously recommending that the agricultural industry be excluded entirely from this bill.

I would also ask that the agricultural co-operative societies be included in the remarks which I have made concerning agriculture. After all, they are working to market and dispose of the products of the producers; they do not exist for the purpose of making profit beyond what they can make and save for their

members, who are the producers or to create a stabilization fund to level out payouts. If sums accumulated for that purpose are going to be taxed I think it is most unfair. I think that if Government will not agree to exclude them, they should consider excluding any amounts which these societies have which stand to the credit of the stabilization funds, whether called that or not.

I do not wish to keep Council, but I do hope the points put up by the hon. member on my right (Major Cavendish-Bentnick), with which I agree in entirety—though I do not agree with what he said on the constitutional issue—will be considered.

LADY SIDNEY FARRAR: Your Excellency, I rise to support the bill. In view of the fact that I understand an opportunity will be given for representative bodies such as the Chamber of Mines to give evidence before the select committee I will refrain from making more than very brief remarks on certain points not already dealt with or in which I cannot agree with some of the previous speakers.

Clause 5 (2) lays down that the chargeable accounting period shall date from July, 1940. In other words, as I read it, the levying of this excess profits tax is retrospective to and includes July, 1940. Excess profits earned previous to that date are apparently in no way liable to the tax. The Commissioner of Income Tax will correct me if I am wrong, but to the ordinary man in the street it would appear that the most spectacular war profits made in this country were made previous to that date by certain classes of businesses and contractors. In clause 9 it is laid down that persons carrying on business may elect as one method of computing standard profits to base them on the average profits of the twelve months ending December, 1939, some months after the outbreak of war. It makes it possible to include September to December, during which time, speaking as one of the men in the street, we feel that certain firms such as those engaged in supplying clothing materials, motor vehicles, and so on, and contractors taking on building contracts for the military authorities, made a very large

[Lady Sidney Farrar] and substantial profit entirely due to the circumstances of the war. I would also stress that this was the period before price control had been very effectively brought into force.

I fully appreciate the difficulties involved in the imposition of a long retrospective period in respect of the calculation of any tax, difficulties and expenses which it may be felt more than offset the moneys which would accrue. At the same time I am satisfied that there will be a great deal of dissatisfaction among other payers of the tax who imposed on themselves a voluntary and very carefully calculated price control in the early days of the war, before the official control was introduced, as their contribution to the war effort, believing that the contractors who made large sums by charging higher prices for their goods would eventually have their profits levelled down to their own profits when excess profits tax was introduced into the country. I suggest that in select committee the date in clause 5 should be carefully reconsidered, and if it is found entirely impracticable to alter it to include September to December, 1939, the period in clause 9 for the standard profits computation should be excised and the calculation based on a certain period of time should not include any period after September, 1939.

In clause 6 both the agricultural and mining communities will be very appreciative of the real endeavour made to recognize their need for differential treatment as primary producers. After the exposition the hon. member gave us they will realize that every endeavour has been made to meet the particular point in which they were especially interested, such as the possible restriction of increased development and the difficulty of allowing for the purchase of new and urgently required machinery. On the other hand, I think the inclusion of agriculture under the provisions of an Excess Profits Tax Bill, from a psychological point of view, was a mistake. It appears highly unlikely—and I hope the hon. member in charge will correct me if I am wrong—that there will be any appreciable return from agriculture, with its long history of hand to mouth existence, little if any profit for a number

of years, and the need for ready cash to meet increased development. Even including the tea, sisal, pyrethrum, and sugar industries and others of that type which appear to be making considerable profits recently, I think it will be found that few, if any, will show excess profits, and although the smaller farmer may be quite uninterested in the whole question, never even seeing the £1,000 mark, the larger interests it will only saddle with increased accountancy and increased expenditure in that way without any appreciable return.

As regards the mining community, in no single instance can increased profits be ascribed to the increased price of gold, since the enhanced cost of production has more than offset the premium on gold which was fixed at its present price at the beginning of the war. The gold mining industry is already taxed to the extent of 30 per cent of its profits, and further taxation is bound to affect an extension of its activities. If it is considered desirable to exclude the mining industry from the provisions of the bill, I would suggest the following amendments: First of all, that the statutory percentage of the cost of mining be increased to a minimum of 22½ per cent and 25 per cent as the case may be, for the reasons that mining is considerably more hazardous than the average Kenya business, and this is barely adequate. Secondly, profits from mining ventures vary from year to year. One producer may have earned substantial profits in 1939, and another has a peak year in 1940, and the alternatives in clause 5 will barely prove sufficient to place all mines on an equal footing with one another, and an increase in the statutory percentage would assist in minimizing a comparative inequity. Thirdly, an insufficient profit standard might act as a deterrent in attaining a maximum gold output.

There is also the case of income from investments in the case of a concern dealing mainly in the acquisition of prospects; their development and the sale of mining properties which should be excluded from the charge of excess profits tax. As an example, a certain company may hold shares in one or more mining companies liable to excess

[Lady Sidney Farrar]

profits tax and receive dividends therefrom; at the same time it may be interested in a number of prospects from which it hopes to make certain profits. Under clause 4 (2) such a company would appear to be regarded as one dealing normally in investments. It is contended that the wording of this clause should be designed to confine the meaning of investments to shares in other companies or businesses.

Clause 9 (2) of the bill—here the maximum allowed per partner in calculating standard profits is £1,000, which the board of referees can increase by £500. Under the United Kingdom Act £1,500 is allowed subject to a further increase of £1,000. Allowances in this country generally are higher than at home, and probably the hon. member may tell us why it is thought advisable to differentiate in this matter in this country. The income of an individual can hardly be said to go any further in this country than in Great Britain, and it would be unwise to make the provisions of this bill apply at too low a level which will lead to curtailment of increased production.

Clause 12 has already been referred to by previous speakers but in every case, in supporting the contention that some change should be made in the possibility of persons or businesses having to pay excess profits tax in two places, they have expressed the hope that it may be possible to accept a certificate of payment from the United Kingdom to avoid payment in this country. I should like to go further, and suggest that it should be a certificate that payment is due and has to be made in the United Kingdom rather than that payment has been made. The suggestion that payment should be made does not save these businesses from having to pay out money in two places at the same time.

There is one more point which I should be glad to have cleared up, and that is the question raised by a certain number of people as to whether the pay of members of the forces is to be included in the computation of an individual's total income as regards the provisions of this tax.

I beg to support the bill.

MR. SHAMSUD-DEEN: Your Excellency, I wish to support what was said by my colleague yesterday in speaking on the principle of the bill, with the exception that I personally feel it is rather a modest measure in that people are only called on to give to the revenues of the Colony 60 per cent of their excess profits. If a person has made something in excess of what he normally makes, I think he ought to pay more.

There is one point to clear up. The hon. mover of the bill yesterday said this was not a tax on profits made out of the war, and that it was a tax made in excess of standard profits. If that is the case, I think either the provisions of this bill will have to be augmented, or another bill brought into force by which profits made by individuals and firms out of the war must be taxed. I should suggest up to the extent of 100 per cent. Your Excellency, we have seen from reports in the papers of proceedings taken in the courts that there has been a good deal of corruption. I am not going to criticize the method, but there cannot be any attempt to bribe those responsible for letting out contracts unless there are very good profits to be made. The general impression is that people have made fabulous sums of money out of the war, and there is no reason why they should not pay back something into the revenues of the Colony to be handed over to the war effort.

Again, from reports in the papers one sees, there has not been very full co-operation between authorities giving out contracts and those controlling prices. In one case there was reported in the papers a case in court where the military actually offered a certain firm a contract at a price far in excess of the controlled price. We have a very efficient and enthusiastic officer in charge of the control of prices, but unfortunately there appears to be a lack of co-operation between the military and him. Otherwise this sort of liberally offering to people a price in excess of the controlled price would not occur.

All I am trying to get at is that there seems to be a considerable waste of Government money which, after all, comes

[Mr. Shamsud-Deen] out of the pockets of the taxpayers of England or of the taxpayers in this country, which ought to be properly under control.

I fully support the principle of the bill, and only wish it had been more than 60 per cent.

LORD FRANCIS SCOTT: Sir, I rise to support the bill, but I do not mean to detain the Council at any length. I associate myself with the views put forward by the hon. Member for Nairobi North and certain other points which have been raised and which will, no doubt, be considered by the select committee. There is only one clause which I will particularly deal with.

It is clause 20 (3). I think that is unnecessary, and is an unwise sub-clause to have in this bill, to say that any money standing to the credit of the excess profits tax fund shall be given His Majesty's Government as a free gift towards the cost of the present war. The object of the bill, of course, is to assist the home Government in the prosecution of the war, and (2) does authorize you, Sir, as Governor to lend free of interest any money to the home Government for that purpose. But I do submit that the end of the war is a long way off, that nobody knows what will happen between now and then as to what the financial position will be or anything else, but what we do know is that the cost of the war will be colossal, that the taxes at home will be colossal, and that the war debt at that time will be colossal. The probabilities are, as I see them, that at the expiration of the ordinance when all has been settled up, we shall say to the home Government that we do not want repayment of any money, we may have lent to them.

That is probably what will happen, but there will be a certain amount of money left over to the credit of this fund. I do suggest that that amount of money will be so infinitesimal in comparison to the sums dealt with at home that it will be completely wasted by being sent to the Imperial Government for that purpose, whereas it might be of very considerable use if applied to essential purposes required in this

country. I suggest either that sub-clause be deleted, or if it is wished to keep it in to show the intention that this money is available for the home Government then the word "shall" in the fourth line be altered to "may". I hope this will be considered in select committee.

MR. KASIM: Your Excellency, I rise to support the principle of the bill.

With regard to the collection of excess profits tax, it should be spread over six months, because people are unaware of this tax being imposed and it would be unfair to force them to sell their stock at a loss to obtain the money for the tax. I hope the select committee will consider this question sympathetically.

In regard to the board of referees, I hope Government will appoint at least one Indian member on the board.

MR. RENNIE: Your Excellency, perhaps I might say a few words about the point mentioned by the noble lord, the hon. Member for Rift Valley.

I am a little surprised at his comment, in view of the fact that this particular sub-clause (3) of clause 20 is merely implementing the policy already agreed to by this Council, namely, that at the present time, when we are all out to do our very utmost to help the Imperial Government to pay for the cost of the war, certain additional taxation has been imposed on the peoples of Kenya in order to help to meet that cost. This particular sub-clause is one way of implementing that policy, and if another method had been put into practice, namely, the excess profits going into revenue, as the ordinary proceeds of taxation do, and then being paid out of revenue as would be required to implement a particular clause of this bill, we should merely be carrying out in another way what had already been decided on by this Council.

The suggestion has been made, however, that the word "shall" should be deleted and replaced by the word "may". I have no doubt that the select committee will give consideration to that point and that my hon. friend the Financial Secretary will give it consideration before the meeting of the select committee.

LORD FRANCIS SCOTT: On a point of explanation, I do not suggest that we should not give while the war is on, but this happens to arise after the war is over.

COL. GROGAN: Your Excellency, I regret that I have not prepared an essay on this occasion. In connexion with that, one does notice a growing tendency to ignore Standing Orders in respect of speeches, and it has occurred to me that as we are alleged to be in pursuit of economies we might very well substitute the present method of government by a new system of government by white paper instead of government by debate. All essays could be published in white papers and the expense of this pantomime largely relieved!

The bill, if I may venture to pay a compliment to the hon. mover for his lucid explanation of a difficult document, is quite obviously 100 per cent fair in its intention if one is prepared to accept the arguable proposition that there is any justification for a bill of this sort in the very peculiar circumstances that apply to a relatively young country. I am not going to discuss any of the matters which concern the application of the bill, but I propose to concentrate my remarks on clause 20 (3).

I have had occasion in previous debates in respect of gifts of money, to refer to the current term "gesture". "Gesture", in my humble opinion, is beginning to be in this country "gesticulation", and there is always the danger of that settling down as a permanent form of St. Vitus's dance. (Laughter.) I seriously suggest that this last effort is a strong indication that we are in danger of being afflicted with this incurable disease.

The argument for this conclusion, as I understand what was said by my hon. friend the Chief Secretary, is that the principle is already agreed to. I refute that with all the earnestness I am capable of. It is merely stretching it a bit to argue that because this Council has agreed that a certain sum of money raised as the result of a particular specific act shall be given to some particular cause, therefore any other money subsequently voted should automatically have to be contributed to the same cause. This is an entirely new bill, an

entirely new method of raising money, and highly questionable at that, and I suggest that it is an entirely fallacious argument. It is further shown to be fallacious by sub-clause (1), which differentiates this money from general revenue by allocating it to a specific fund. (2) also makes a complete *reductio ad absurdum* by providing that the Council by special resolution may find special uses for this money. I suggest that (2) and (3) do not fit.

Those are the arguments for, and the only arguments I have heard. But the arguments against are as follows.

One: It is not only the United Kingdom which is fighting the war, it is the Empire as a whole, and if you consider the relative sacrifices of the people in the United Kingdom and the sacrifices of the settlers, the permanent population of this country, you will find that except in the issues of butter and eggs and minor details the sacrifices made by the permanent settlers in this country are at least comparable to those of the people of the United Kingdom. Of course, attention is focused on the happenings there, with sympathies and admiration for the people, but it must not be forgotten that a large number of people have gone through very tragical circumstances and under far more uncomfortable conditions than the people at home. I think it is a pity if we allow sentiment to run away with us.

Two: The provisions of the bill ensure that the money shall not be available for war purposes, a point already made by the hon. Member for Rift Valley, because these so-called moneys will not pass to the possession of the United Kingdom until some considerable time after the war, because they have got to be held in a suspense fund to find out whether there is to be any restitution at the end of the war. A further point raised is that they should be used to assist the United Kingdom in its reconstruction after peace. That, of course, to my mind is entirely ridiculous.

The third argument is that this appears to me to be based on a very generally held monetary fallacy. I believe there are still a large number of innocent people in this country who believe that when you send £250,000 to England we

[Col. Grogan] hire a couple of dhows and load them up to the rims with discs of coarse metal covered with verdigris, which discs quite successfully pass in this country as money. On arrival in England they are reduced to an insignificant mass of metal. The real position is that when we give £250,000 to England, it is merely reducing the credit structure of Kenya to that extent without adding one single farthing to the credit structure of the old country.

It does not matter what we pay in respect of the alleged monetary movements between the two territories, not one single cartridge more is produced for carrying on with the war. That is perfectly well known to anybody who thinks about it. Quite obviously there is no monetary limit to the United Kingdom capacity to carry on the war. That depends entirely on available material and men, and money does not enter into the matter at all. It only enters in so far as they may require credits in some other country, and England does not require credits here because the picture is the other way round.

The next argument is the suggestion which I understood in the very admirable speech of my hon. friend the mover, that the purpose of this Bill, or one of them, was to establish something in the nature of the principle of equality of sacrifice. That is very admirable, but if people by the chances of the war have made money because of the war quite a large number of people have lost money because of the war. What sort of equality of sacrifice is it if we take away from those who have been successful and hand the money to a third party instead of distributing it among the losers? You cannot have a better example of that than the tea and coffee interests. Because by accident the people of England prefer to do something very horrible to the internal lining of their stomachs by drinking strong tea instead of Kenya coffee, the tea industry is extremely prosperous because of the war and the coffee industry is in the doldrums.

If this principle is properly applied, whatever moneys we take away from any industry profiting by the hazards of war should be put into a fund for the benefit of people who have suffered as a result of the war.

The next argument against it is that it is entirely unconstitutional to tie a future government in respect of the disposal of moneys which are not involved in some specific act of Government. No government has the right to say that by taxation they do not know how much they will raise but hope it will be so many millions and that so many years hence they are going to give all that money to a third party. It is entirely unconstitutional.

The sixth argument is that this kind of business leads inevitably to extravagance. It is like passing the loving cup. Everybody is given a sip, and the last man will get a drip or a small part of what was there. More and more extravagance will arise, because you will say: "We have already given millions away to a third party; for God's sake spend them as quickly as we can."

The next and last argument is that a very much better use of these moneys or credits would be to liquify the frozen assets of the country, this large proportion of the produce of the country which, for war reasons, we cannot move into the markets of the world and bring back into monetary circulation. They should be liquefied with these funds and hold our reserves in commodity form which at the end of the war can go to the people at home, when there will be more serious conditions to be attended to.

MR. LOCKHART: On a point of explanation, that is how we intend to use the fund.

COL. GROGAN: That I gather, and I admire very much the skill with which my hon. friend has to a certain extent dodged the real implications of this noble gesture (laughter), and merely suggest that the principle should be extended *ad infinitum*.

I do seriously trust that very careful attention will be given to the elimination of this sub-clause by those gentlemen who have made this noble gesture in the comfortable assurance that not a single one of them is likely to contribute a single penny to the fund! We are the people finding the money and really making an act of self denial without any advantage to the recipient. I trust they will seriously remember that and eliminate this thing, whereupon I shall be

[Col. Grogan]

pleased to vote for the bill. But if the clause is not eliminated I propose to vote against the bill as a whole.

MR. ISHER DASS: Your Excellency, in view of the speeches made during the last 14 months by the members on this side of Council and by people on various platforms, I was of the opinion that, after the Bill had been published in the Official Gazette, it would on its presentation in this Council pass through all its stages (after it had been fully explained as to the technicalities and implications by the hon. mover) without more ado. But, having heard since yesterday arguments asking for exclusions, for concessions, and for all kinds of relief, it makes me feel disgusted, particularly with the suggestion of the hon. Member for Ukamba that the sacrifices on the part of this Colony can be compared to the sacrifices of the people at home. I suggest that they do not compare anywhere favourably at all, but if you compare the sacrifices only for heaven's sake compare the sufferings of those people with the comforts of the settlers. You cannot compare only sacrifices, you have to compare the sufferings of the people and the circumstances of the country they are living in. I think it would be very wrong on the part of anybody to compare the comforts of the settlers in this country with the sufferings of the people at home.

The hon. mover of the Bill was very clear, that whenever and wherever there are hardships experienced by settlers or individual members of the commercial community, he would go to the extent of increasing the standard profit of £1,000. I should have thought his assurance that this would probably give relief would be accepted. The position would have been very simple. If any member of the commercial community or agricultural community or the mining industry or saw-milling has made no excess profit they will not be called on to pay. If you have made nothing you will pay nothing. In view of the fact that every penny should go to the cost of the war and every effort made for the prosecution of victory, it stands to reason that these suggestions will have no meaning at all.

The hon. Member for Mombasa suggested that those who opposed this Bill were nobodies. I have always heard during the eight years I have been a member of this Council that the backbone of the country is the agricultural and mining communities, and I have also heard that those are the two main industries of the country on which the prosperity of the country depends. Naturally, if these people are the backbone on whom the country depends, it is logical that they are somebody, and if these somebodies are called on to prove their somebodiedness and they ask for all sorts of exclusions and remissions, they are behaving in a manner undignified, for they are proving themselves nobody, in the words of the hon. Member for Mombasa. (Laughter.) It is not by speeches that the people of this country will be judged after the war by outsiders or the people at home, but by actions, and if it is sensible to say that actions speak louder than words, actions are not so marvellous on the part of those who suggest exclusions and they cannot keep their class as somebody at all.

Hon. members on this side of Council, when suggesting all these remissions, did they make them seriously or were they amusing themselves? You take out the mining industry, you also exclude the farming industry, you exclude all the leading and learned advocates of the country, take out all doctors as well as other professional men, all the timber merchants and sawmillers, and all the incorporated societies. Who are left? Unemployed on the dole to pay this excess profits tax. (Laughter.) It was very amusing when I heard that everybody wants to be excluded, leaving nobody to pay the tax except probably the hon. mover himself, but as he is a Government official I do not think he will be included.

The suggestion was made by the hon. Member for Kiambu that the expiration of the Ordinance be extended to three years; I have also heard it outside that the provisions of clause 21 be extended to five years for the commercial community. This is amusing. If you extend the operation of that clause to three or five years the hon. Financial Secretary should be prepared with a further fund.

[Mr. Isher Dass]

because any man with a little intelligence and commonsense who had experience of the last war knows that there is sure to be depression, and serious depression, after this war, and if you extend this clause for three or five years we surely are going to make ourselves liable for all losses incurred for that length of time. I do not believe the period should be extended beyond what is now laid down in the clause, and kept to one year only.

To the hon. Member for Trans Nzoia I suggest that constitutional points were raised in a very unconstitutional manner and at a very inopportune time. I do not think this is a proper time to talk of any silly constitutional issues, and as to control over finance I should have thought the hon. member would have been satisfied with reading clause 20(2) on page 16 of the Bill, where it says that whatever is done shall be by resolution of the Legislative Council. Therefore he has control. He can talk as much as he likes about unconstitutional matters, and can still vote for or against it; therefore control is still exercised as far as his point is concerned.

In conclusion, I would say that I sincerely believe the provisions of the Bill—if we mean honestly what we have been saying and if we have sincerely desired this thing for the last 14 months—I definitely maintain that the provisions of the Bill do not go far enough, and in select committee some means should be found so that the tax might be graduated: there should be a graduation scale of 60, 70, 80 and 90 per cent, if necessary it should go to 100 per cent, because when provision is made for dealing leniently with cases of hardship it is logical there should be provision to meet those cases which have made not only a standard profit but more during the last 12 months, and they should be asked to pay. I hope this point will receive as much consideration as other points which have been raised, and I support the Bill.

MR. MUNDY: Your Excellency, there have been a large number of points raised, and I think it will be most convenient if I link them up together, should they have been mentioned by more than one member, in my reply. Most of the

points must be dealt with in select committee, and I propose to take up those on which hon. members wish me to express my view.

As to the select committee hearing evidence, I understand that it is entirely a matter for the committee. I have spoken to the proposed chairman, and he will raise no objection whatever to hearing evidence from outside, although, of course, it must be realized that the matter will be in the hands of the committee to decide what they wish to do.

On the question of the inclusion of professions, several days ago I did look up the definition of a profession because I thought it might be useful. In the dictionary a "profession" is described as "a vocation, occupation or calling as distinct from trade, and implies a measure of learning". If you exclude the words "as distinct from trade", that definition will apply to a number of our merchant princes. That does indicate rather a thin line between professions and trades for the purpose of a tax of this kind. The Bill really excludes all incomes earned by what one might call servants; that is, servants in relation to masters. Where a person is earning his income independently, he comes within the scope of the Bill. I have studied the South African and the Southern Rhodesian laws very carefully, and I have not been able to discover a section which provides any special provisions for dealing with professions, but if I have overlooked it I shall be glad to consider it in select committee.

The hon. Member for Nairobi South asked if I could produce a reason why professions were not charged in the United Kingdom, and if there was one he would be glad to withdraw his opposition. I have turned up the Parliamentary debates in the House of Commons where the question was raised, and I agree that one of the reasons why they were excluded was that the amount of the income of a professional man is rather a question of personal skill and that the capital employed is his brain. At the same time, Lord Simon, then Chancellor of the Exchequer, did say this:—

"There is the further point which is always brought up to me by the authorities whom I have consulted.

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They are practical people who have no prejudices and merely want to collect a tax. They say that as a matter of fact, if we were to include individuals as well as trades and businesses, it would mean an enormous extension of the examination of individual cases and that the amounts which would be got for the revenue would be unimportant in comparison. No one would dream of including in this scheme anyone with a personal income which is less than £1,000 a year. Even so, those who have examined the matter very carefully say that there would not be obtained, for the labour employed, a result commensurate with the very substantial additional work."

I think that does reply to the question very clearly, because in the United Kingdom the excess profits tax brings in millions of pounds, and I suppose there are so many small professions concerned that it really is not worth while collecting the tax from them. In this Colony, and probably in South Africa and Southern Rhodesia, the position is different, and I am quite sure we shall be able to spare time to deal with the few professional people we have. (Laughter.)

As regards agriculture, this is a question to be dealt with fully by the select committee. The question of exemptions I considered very carefully, and I should like to point out that it cuts both ways. That is, if a man is making profits in a trade and he also runs a farm, he can put the two together and any farm losses can go against the trading profits. It will help him with his trade profits, and will be assisting agriculture.

I quite agree that agricultural co-operative societies are a special problem, but I am quite sure that the latitude allowed in the Bill is sufficient to enable them to be dealt with properly.

Another point was whether agriculture should be omitted. One difficulty, is that we do not know what will happen to the prices of agricultural products. I have been told that sisal ran up to £100 a ton in the last war, and coffee was higher, so that we cannot exclude agriculture in a bill of this kind; prices may go up.

A question was raised by the hon. Member for Nairobi North regarding

overdrafts and debts. That was a question which was considered very carefully in connexion with income tax, and I do not think there is any practical way of offering relief in such a case, the reason being that an overdraft does not necessarily imply financial difficulties, and it varies from day to day, and so do debts. Quite frankly, I do not think there is a formula to enable them to be dealt with in a bill of this kind.

A question was raised regarding the working proprietor's allowance, where the owner of the business is serving with His Majesty's Forces, and I shall be very glad to support an amendment in select committee to enable a member of H.M. Forces to be dealt with as a working proprietor, if he is prevented from working in his business owing to service in H.M. Forces.

As regards sawmillers, they are adequately covered by clause 6(10), which was inserted with the intention of dealing with those cases. Where machinery was specially bought for war purposes and becomes valueless, the whole cost will be allowed in the calculation of the excess profits tax.

There was a question that under clause 10(3) no regard is to be had for capital purposes to any consideration given where a business changes hands. That clause was put in intentionally, and it was the result of long experience in the United Kingdom in the last war. What it amounts to is that for the purpose of the tax we are comparing the earning power of a particular business in pre-war days with its earning power during the war, irrespective of ownership, and if on change of ownership an inflated price is paid the earning power of the business has been capitalized at an increased figure. If you imagine a business selling for 10 times its pre-war price, the capital allowance would run up to 150 per cent, which would be absurd. In sub-clauses (10) and (11) the Commissioner can make modifications in exceptional cases, and that is the way it is intended to deal with it.

As regards the date of payment, I do not think it has been fully appreciated that, if this bill is passed, I have to serve return forms for which two months is allowed for each to be completed. An assessment cannot be made until that

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time has expired. Then I have no doubt that it will take a month to work out the figures. Seven days are allowed for serving notices, and on top of that 40 days for payment. It means in effect that there will be not three months but four to five months' grace as from the date of the passing of the Bill. I should like to mention that in the United Kingdom one month only is allowed. I feel that the time is adequate. If the money is lying in the bank it might as well be paid over, and if it is not it will be necessary to allow extra time. Here again this is one of the things that cuts both ways in an excess profits tax, because there will also be repayments to be made, and I do not think hon. members would suggest that they should be held up even for 40 days, whereas the actual practice will be to make repayments with the least possible delay.

I do not anticipate any difficulty in accepting payment in local war bonds but, as regards those of the United Kingdom, I do not know their position and it will be necessary to make inquiries. But I imagine there will be administrative difficulties in accepting them.

Another point was the position of the United Kingdom companies. I shall be glad to accept a computation from England for the purposes of working out the tax here, and since the United Kingdom figures will be made up in accounting periods it will be a simple matter to convert those figures for this tax, which will save trouble to the United Kingdom companies generally.

Clause 12, the relief clause, clearly states that the relief is to be granted from double taxation, if the tax is payable in the United Kingdom or any part of the Empire, and is also payable here. That is, there is no necessity for the tax to be paid before relief is granted. So far as the administration here is concerned, there will be no question of asking for more than one tax before relief is granted.

As regards the treatment of depreciation funds which are accumulating in a business, the question as to whether they are capital employed in a business is one of fact. If the money is used in business,

it will be allowed for capital purposes, but if not it will not be allowed.

There was a question regarding the constitution of the board of referees. That has to be determined by the Governor in Council, and I am afraid that I cannot say what they will do, but no doubt they will take anything said here into consideration.

With regard to an increase or alteration of the tax so as to make some portion of it repayable at the end of the war by holding it in war bonds or free of interest, I have already given that careful consideration before the Bill was drafted, and I think that if 60 per cent is accepted as the right figure at the present moment such a proposal as to make 20 per cent repayable and 40 per cent the tax would mean that our excess profits tax would be less than the highest rate of income tax. I think at the moment that 60 per cent is an adequate figure. If it should happen that in the next year or so moneys begin to accumulate in banks and not used, there might be a case for adding 20 per cent and repaying it at the end of the war. But I think the majority of people realize that money must not be frittered away, and if left in their hands they will take adequate care of it and it will be available to meet trade requirements as they come along.

The hon. Member for Nyanza raised a large number of questions regarding the mining industry, which I am afraid are too lengthy for me to deal with here, but I will mention the standard period having gone into three months of the war period. In framing the Bill, I endeavoured to make the standard period as fair as possible, and in fixing the year 1939 as a standard I agree it takes in three months of the war. But what is overlooked is that the three months before the war were not good ones for trade generally. Everything was very uncertain and buying generally was hampered, so that if we take the last three months with the first nine months it will give a fair standard profit to compare with the war years.

There was also the question of an additional 5 per cent to be allowed to the mining industry. I do not think that should be given, because the mining industry already has a very adequate allowance for capital expenditure, and I

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think a difference of 5 per cent between the ordinary businesses and the mining industry for additional risk is fair.

The hon. member Mr. Shamsud-Deen raised the question that there should be a separate tax on profits made out of the war as distinct from those made during the war. It is a practical impossibility to say whether any particular profit is made out or during a war or whether from a war contract or not. That has been recognized in the United Kingdom.

The only other question related to clause 20, which I am glad to say brightened up the debate very much and, as far as I am concerned, I was able to leave that to the hon. Chief Secretary and the hon. Financial Secretary.

The question was put and carried.

MR. MUNDY moved that the Bill be referred to a select committee comprising: Mr. Lockhart, (Chairman), Mr. Brown, Mr. Blunt, Mr. Mundy, Major Cavendish-Bentlinck, Mr. Nicol, Mr. Wright, Mr. Pandya and Mr. Kasim.

MR. RENNIE seconded.

The question was put and carried.

NATIVE LANDS TRUST ORDINANCE, 1938 LAND EXCHANGES

MR. MORTIMER: Your Excellency, I beg to move: Be it resolved, that this Council approves of the proposals for the exchange in accordance with the provisions of section 7 of the Native Lands Trust Ordinance, 1938, of portions of Native Land Units which are more particularly described in the Schedule hereto and that this Council agrees that the circumstances attending the said exchanges of land are such as to require that such exchanges be permanent.

Schedule

I—MASAI NATIVE LAND UNIT

(A) Proposed Exclusion from the Masai Native Land Unit South-Western Mau Area.

A portion of the Masai Native Land Unit, roughly triangular in shape, in extent 34,700 acres very approximately, and bounded on the north-west by the south-eastern boundary of the south-western Mau Forest Reserve, on the south-east by the Amala River and on

the west by a series of cut and beacons straight lines.

(B) Proposed Additions to the Masai Native Land Unit: Eastern Mau Areas.

(a) Three portions of the Eastern Mau Forest Reserve situated along the southern boundary thereof to the west of L.R. No. 3990 and known respectively as "Ololongwe" of 123 acres approximately, "Chebuin" of 228.5 acres approximately, and "Tepeso" of 45 acres approximately.

(b) Part of the southern portion of L.R. No. 3990 plus a small portion of the Eastern Mau Forest Reserve adjacent in aggregate extent 1779 acres approximately.

II—KIKUYU NATIVE LAND UNIT

(A) Proposed Exclusions from the Kikuyu Native Land Unit.

(a) Tuso.—Three portions of the Kikuyu Native Land Unit in aggregate extent 1,005 acres approximately situated along the eastern boundary of the Aberdare Forest Reserve in the vicinity of the Tuso River.

(b) Gikira.—A portion of the Kikuyu Native Land Unit, in extent 1,023 acres approximately, situated along the eastern boundary of the Aberdare Forest Reserve in the vicinity of the Gikira River.

(c) Murigo's.—A portion of the Kikuyu Native Land Unit, in extent 950 acres approximately, situated along the southern boundary of the Mount Kenya Forest Reserve, near Chief Murigo's village.

(d) Sagana Tongue.—A portion of the Kikuyu Native Land Unit, in extent 430 acres very approximately, situated along the southern boundary of the Mount Kenya Forest Reserve, in the vicinity of the Sagana River and east of L.R. No. 2266.

(B) Proposed Additions to the Kikuyu Native Land Unit.

(a) Kerita.—A portion of the Kikuyu Escarpment Forest Reserve, in extent 2,850 acres approximately, situated immediately to the east of the road known as the "Bamboo Forest Road" and some three miles to the north of Uplands Railway Station.

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(b) Lari.—Three portions of the Kikuyu Escarpment Forest Reserve, in aggregate extent 1,710 acres approximately situated generally to the north-west of Limuru Railway Station and to the south of Uplands Railway Station.

Section 7 of the Native Lands Trust Ordinance empowers Your Excellency to grant leases of land in the native lands for the purpose of carrying out exchanges, but if for adequate reasons it is considered those exchanges should be permanent then the consent of this Council is required.

There are two quite separate transactions involved in the motion now before Council, one affecting the Masai native land unit and the other affecting the Kikuyu. Dealing first with the Masai exchange, I will explain the objects and reasons of the transaction.

In the correspondence on the Resident Labourers Ordinance, 1937, the Secretary of State, discussing the problems that might arise if any large number of resident labourers were removed from farms, laid down the condition that the bill should not operate unless the Governor was assured that alternative land was available in any case that might arise, other than where a resident labourer merely returned to his own home. There is no clear evidence as to the extent of the problem, as no one can say what will be the effect of the application of the Resident Labourers Ordinance. In order to provide for all possibilities; however, it became necessary to have available sufficient land of a suitable type to accommodate any number of resident labourers who might on any reasonable estimate be expected to require it. The problem chiefly concerned the Kikuyu tribe, as it was not considered that the land units of other tribes would prove to be inadequate.

The Kenya Land Commission referred to this problem in its report—paragraphs 1867 and 1868 and 1976—and expressed the hope that the extensive additions that were being made to the Kikuyu reserves, the establishment of a large C area on the Yatta, and the introduction of greater elasticity in the Kikuyu system of land tenure, together with the greater

possibility of interpenetration between tribes would go far to solve the problem of finding accommodation for time expired squatters and would be adequate to meet any contingency that might arise for many years to come. Close investigation, however, showed that in the Kikuyu native land unit there was insufficient land available to accommodate returning resident labourers. The addition of 385 square miles of the northern Yatta as Kikuyu native reserve did not solve the problem, as it did not provide nearly enough land of the right quality. Much of that land, as hon. members are well aware, is low lying, waterless, and entirely unsuitable for cultivation. In addition to the needs of the resident labourers, it became apparent in course of time that additional land might be required for the settlement of claimants of right from the Limuru and Klambu farms, to whom I shall refer at a later stage. There were also certain Dorobo at Tinet for whom it was thought provision might be required.

It became necessary, therefore, to make a thorough search to find land available and suitable for all those people. I will not weary hon. members by taking them over the ground covered in that investigation. During the course of several months the investigation covered all likely and many unlikely areas. Suffice it to say that the choice finally fell on land at the western end of the Masai native land unit on the northerly side of the Amala River. Protracted discussions took place with the Masai, who were not unwilling to release the land provided a suitable bargain could be made. The piece of land on which negotiations centred was a triangle known as Olegu-more, believed to contain about 33,500 acres and actually used by the Masai to a small extent only. Some of this land is under uneconomic forest, almost entirely bamboo, and some consists of open glades.

Under the Native Lands Trust Ordinance, the only way in which this land could be acquired from the Masai native land unit was by means of exchange. It became necessary, therefore, to find some land to put on the other side of the scales. The Masai have for long coveted a piece of land, L.R. No. 3990, of

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3,340 acres, held by the Delamere Estates. When the negotiations were proceeding, this farm was acquired by Government at a cost of £3,975. The transaction was carried out by the cancellation of a debt owed by the Delamere Estates to Government. The southern portion of that farm forms a salient in the Masai native land unit, but the northern portion runs right up into the heart of the forest reserve. It was not considered desirable, as hon. members will agree, that the whole farm should be handed over to the Masai. It was therefore decided that only the southern portion should be included in the exchange and that the northern portion should be handed over to the Forest Department as part of the forest reserve. Certain portions of forest reserve land, not required for afforestation purposes, were brought into the negotiations, and a bargain was ultimately struck with the Masai for the exchange of land, plus a sum of money in addition as a make-weight.

The bargain is that in exchange for the permanent surrender of the portion of land demarcated on the ground and agreed to by the Masai, there should be paid to the Masai local native council £6,000, and land to the total extent of 3,340 acres, comprising the southern portion of L.R. 3990, together with some small pieces of forest reserve, should be added to the Masai native land unit. From that £6,000 the local native council have to compensate some 21 manyattas to be found in the area concerned. The forest reserve is being compensated by the inclusion of the northern portion of the Delamere Farm, and the Highlands, which will have lost 3,340 acres of land available for white settlement, will have its share in the bargain by having some small scattered areas of forest reserve of no use for forest purposes, and consisting of open glades set at liberty for agricultural settlement. Thus everybody will be happy. (Laughter, and "Question.") In view of the "Question" from the other side of Council, perhaps I had better say that nearly everybody will be happy! A map illustrating this complicated transaction has been placed on the table, and if any hon. member finds difficulty in following the proposal I shall be happy to explain in fuller detail.

One further point before leaving the Masai, and that is that the land agreed upon proved on survey to be about 34,700 acres instead of 33,500 acres as at first thought. The Masai administration has a problem of its own and that is the existence within the Masai native land unit of a considerable number of Kikuyu squatters who have wandered there with or without consent over the course of years. The Masai resent their presence and desire to have them removed. It is proposed, therefore, with the consent of the Masai to utilize these 1,200 acres excess as a settlement for these unwanted Kikuyu.

All the procedure required by the Native Lands Trust Ordinance has been carried out; the purpose for which the land is required has been declared by Your Excellency to be a public purpose within the meaning of the Ordinance, the land has been formally set apart, the local native council, the local land board, the Native Lands Trust Board, and the Highlands Board have all expressed approval of the transaction, and all have agreed that the exchange should be a permanent one. As to the need for permanency, I do not think I need bring forward any arguments. It is quite obvious that as the use of the land is to satisfy permanent requirements the exchange should be on a permanent basis. When this Council has expressed its agreement by the adoption of this motion, the next step will be to ask Your Excellency to publish a notice declaring the exchange operative. This will have the effect of making this area Crown land, and the intention is then to put forward a motion in this Council of which notice has already been given that this area be declared a native reserve for the purpose of meeting the needs which I have just described. When that motion is debated, it will be a more appropriate time than the present to refer to the measures that are being and will be taken to administer the land and to preserve it from deterioration.

I pass on to the second part of the schedule, which deals with the Kikuyu native land unit.

Hon. members will need no reminding that one of the most difficult and important matters with which the Land Commission had to deal was the existence on

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the Limoru and Kiambu farms of a considerable number of natives who were there before Europeans came into the country and who remained there during the time the Europeans owned the farms. The Land Commission held the view that these claims of individual right were incontestable and must be met.

It is unnecessary to go into much detail now, as this subject was fully discussed during the long debates on the native land question in April and December, 1938. I will add this one thing, however, that the numbers of natives concerned proved on investigation to be very much in excess of the numbers that were in the minds of the Land Commissioners. The Commissioners' solution was that the Kikuyu tribe should be treated as one unit, that additional land should be made available to the tribe as a whole, and that when this land had been made available the rights of these particular natives should be extinguished. The Commission expected that it would prove possible to find accommodation for these claimants of right in the native land unit either in the added blocks or elsewhere. The Native Lands Trust Ordinance, 1938, altered the situation very considerably by providing that despite the extinguishment of native rights, no native could be compelled to remove himself from the European farms unless the Governor was satisfied that sufficient suitable land was available for his accommodation, thus making the settlement an individual, and not a tribal, one.

The land in the native land unit originally set apart for the satisfaction of these claims of right was for the most part in the Fort Hall and Nyeri districts, land which proved entirely unattractive to the Africans concerned. Their main objections were, first of all, that the areas were far from their homes and their families, who lived in the Kiambu Reserve; secondly, that they were in the Fort Hall and Nyeri districts and that, whatever security of tenure the right holders might have been given, the local natives would regard them as interlopers and strangers and make life impossible for them if they attempted to settle in the areas; thirdly, that the climatic conditions of those lands were entirely differ-

ent from Limoru and would necessitate entirely different methods of farming.

The Native Lands Trust Board, in reviewing individual cases of these claims of right, recognized the cogency of the objections, and the then Governor, Sir Robert Brooke-Popham, instructed that more acceptable land must be found. Great efforts were made to find suitable land. I have no doubt that hon. members deplore, as I do myself, that forest reserve had once again to be brought into the scheme of things for the purpose of finding this additional land, but I can assure hon. members that this method was adopted only as a last resort when all other fields had been examined in vain. The additional land was, therefore, found with the somewhat reluctant assistance of the Conservator of Forests, and certain portions of forest reserve at Kerita and Lari were set at liberty in exchange for the return to forest reserve of portions of forest land in the Fort Hall and Nyeri districts that had been added on the recommendation of the Commission to the native land unit.

The various items that are included in the exchange are detailed in the second part of the schedule to the motion and can be seen on the maps which have been laid on the table. The area to be added to the native land units is approximately 4,560 acres, and this includes the provision of about 500 acres for the settlement of certain Dorobo now scattered in forest reserves. The area to be excluded from the native land units is 3,410 acres approximately.

As the land to be added to the native land unit is in the Highlands, the Highlands Board had by law to be consulted. The Board with some reluctance agreed, but subject to certain conditions which have been and will be carried out. To save the time of Council, I do not propose to read the conditions, unless hon. members wish that they be read. As it was of great importance that the work of the settlement of these claims of right be carried out at the earliest possible moment, occupation of these lands by claimants of right has already been commenced and the settlements are now firmly established. It is very gratifying to the credit of the officer seconded for the purpose, Mr. Wyn Harris, that the

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removal was carried out with remarkable smoothness, and almost entirely without unfortunate incidents. His sense of justice, his firmness, and his tact impressed the natives and Europeans alike. Apart from a few special cases now being dealt with, the transfer of the natives from the farms to the new settlement areas has been completed.

So closes a chapter of Kenya's land history that might, in other circumstances, have had a very unhappy ending.

Here again, the need for the permanence of the exchange is obvious. The land is required to satisfy a permanent need; clearly therefore the exchange must be on a permanent basis. In this instance there is no local native council and no local land board concerned, but the Native Lands Trust Board and the Highlands Board are agreed that the exchange should be permanent. The concurrence of this Council is all that is now required to enable Your Excellency to make the permanent exchange effective.

MR. BROWN seconded.

MR. COOKE: Your Excellency, I am afraid that I must oppose this motion, because I regard it as merely another example of this competition between Europeans and Africans to destroy as much forest as possible in a short time, and I am sorry to say that my hon. friends the Director of Agriculture and Conservator of Forests seemed to be little exercised both before and after this atrocious scheme had been committed.

The hon. mover said that every avenue has been explored, but I should like a categorical assurance from him, which so far I have been unable to obtain, that they did explore the avenue of acquiring one or two farms contiguous with the native reserve in Kiambu area. That would have saved this crime of cutting down about 4,000 acres of land which the Conservator of Forests has himself said has a capital value of about £30,000. For that £30,000, I have no hesitation in saying, one or two farmers would have been only too glad to have sold their farms. I should like a categorical assurance on that subject.

The hon. member has talked about the exchange of forest land in the Tusso area, but I did not know that that land is forest land. It is probably potential forest land, but there are few trees there, and I submit that it is not a very fair exchange to give away £30,000 worth of valuable forest timber for this potential forest land. I should like an assurance that that land will be planted out.

The hon. member referred to the closing of a chapter, and nobody will be more glad than I am that that chapter is closed, because I always thought the right holders had a claim, but it does rather remind me of the repeated assurances of that bad man Hitler when he says that he has no further territorial claims in Europe, and probably in a few months or a year's time the hon. member will come round with more claims. I do not know why the Conservator of Forests does not dig his toes in; I do not know how long he is going on surrendering forests, but if he does it much longer there will not be any forests to surrender and he will lose his job, so I suggest that he might the next time strongly oppose any suggested excision and go down fighting!

MAJOR CAVENDISH-BENTINCK: Your Excellency, having had a good deal to do with these exchanges I am, of course, in favour of the motion. There is, however, a statement (or at any rate an expression) used by the hon. member in moving this motion which I cannot allow to pass entirely unchallenged, for the simple reason that it might be held up against us as a precedent in years to come. That is, that the Kikuyu native land unit had insufficient land, and further, that in dealing with the right holders he stated that the land which was available proved entirely unattractive to the natives concerned owing to the distance from where they were then residing, and owing to the fact that the local natives in the districts to which it was suggested they might be sent would regard them as interlopers, and owing to the fact that the climatic conditions—I think the land in question was not very far from Meru and Nyeri—in that part of the world were so vastly different from those at Limuru.

[Major Cavendish-Bentinck]

I know the difficulty Government has had in finding land for these particular natives, and I admit that these particular natives have a special case, and for that reason I am supporting the motion. But what I will not admit is that there is not enough land in the Kikuyu land unit to house vastly more natives than are there to-day, and I will not admit, when for some adequate reason natives have to be moved, that because a native does not want to go a few miles away we should give in every time and invariably at the expense of the European Highlands. That very nearly happened again only the other day in the case of a railway realignment.

That is why I maintain that we on this side of Council have got to be very firm and very explicit in clearly expressing our point of view on this important question for the benefit of posterity.

LORD FRANCIS SCOTT: Sir, as I have had a good deal to do with these exchanges of land, both as a member of the Highlands Board and the Native Lands Trust Board, I should like to say—with regard anyhow to the second part of the schedule—that it was with very great reluctance that I agreed to this excision from the forest area. The position, as explained by the hon. mover, was that in accordance with the Land Commission report and the subsequent legislation, these right holders could only be moved if the Governor of the Colony was satisfied that there was adequate land and suitable land to which they could be moved. The original land was this land now being excised from the Kikuyu native land unit and which had been recommended by the Land Commission for this purpose. Whether it was a suitable and adequate area I am not prepared to say; personally I thought it was, but the majority of the Native Lands Trust Board were definitely of the opinion it was not, and as we could not recommend to the Governor that that was adequate and suitable land other adequate and suitable land had to be found.

The hon. Member for the Coast asked whether there was any farm land which would suit. That was explored,

and there was no land to be found which was suitable or adequate. Actually, one European farm has since been purchased by Government and put back into the forest reserve to help out to a certain extent. I think everybody must deplore every time when valuable forest land is destroyed for other purposes. We must all agree, too, in this particular case that this question of the right holders had been a gnawing sore for many years. Every year that went by the question became more difficult, and it was essential that it should be solved, and as there seemed no alternative, except in the form of the excision of land in Kerita and Lari forests, most reluctantly I agreed on the Native Lands Trust Board, and the Highlands Board, subsequently agreed. None of us liked it, and preferred to find another solution, but as there seemed none we had to agree to this.

The hon. Member for the Coast also asked about other land included in the forest reserve, whether it was forest or potential forest. I think the answer is "mostly potential". In effect, it was this best we could do to dry and compensate the forest reserve, but we agree with the principles which he stated.

We come to his further question about fresh claims, and I am afraid that I have to agree with him. It is rather like Hitler, and we on the Highlands Board keep on getting fresh claims. As the hon. Member for Nairobi North said, really the time has come when a stop has got to be made to this.

That brings me to the other question raised by the hon. Member for Nairobi North about the land unit. The Kikuyu land unit comprises the whole of the land occupied not only by the Kikuyu tribe but by the Embu and Meru tribes as well. It is a very large unit, and there is room enough in it for further needs and further natives. I think the hon. Member for the Coast is a little unfair on the Conservator of Forests, because he has done everything he can to prevent forests being taken away, and it was only because he was ordered by a higher authority to do it that he has had to give way. I do not think it fair that he should be attacked in this respect.

There are only two things further which I should like to say on this matter.

[Lord Francis Scott]

The first is that I should very much like to associate myself with the remarks of the hon. mover as to the extraordinarily able way in which Mr. Wyn Harris handled a very difficult and unpleasant duty (hear, hear), and I was very glad to see that he was honoured in the recent Honours List with the M.B.E.

The other thing is that we were told that strict conditions were laid down about the conservation of this land which had been taken out of the forest, and the hon. mover said those conditions were being complied with. But a short while ago I heard most disquieting stories to the effect that they were not being complied with and that the land was rapidly going to be ruined unless strong measures were taken at once, and that the Administration was not prepared to take those strong measures. I should like an assurance from the hon. Director of Agriculture that he is satisfied that the land is being looked after properly and that these conditions are being complied with, whether there is any opposition to them from the natives or not.

I support the motion before Council, and would once more like to say that this is a matter which had to be agreed to most reluctantly because there was no alternative.

MR. HOSKING: Your Excellency, I should just like to speak with reference to the remarks of the hon. Member for the Coast.

First he complained that he had been given no assurance that alternative land was looked for. I would refer him to column 217, Volume XI, Hansard—

MR. COOKE: I said a categorical assurance.

MR. HOSKING: My assurance was:—

"The hon. Member for the Coast then asked why the settlement of Kikuyu right holders had been made in the forest and why farm areas had not been taken over for the purpose. I can assure him that we had explored every avenue there was and that we had discussed the possibility, remote though it might be in practice,

of acquiring farms for the settlement of these natives, but we found with regret that the only practical area was in this forest."

The noble, lord the hon. Member for Rift Valley has borne me out that this possibility was fully explored before we regrettably decided on a forest area—

MR. COOKE: On a point of explanation, I should like to see my hon. friend on that point later, because that is not my information.

MR. HOSKING: I am not a member of the Highlands Board, but I attended a meeting of the Board, and I repeat my assurance that that possibility was duly explored.

Secondly, the hon. member said there was competition between natives and Europeans to destroy as much forest as possible. I should like to point out that in the last five years agreement has been reached between the natives concerned and the Forest Department as to dedicating as forest areas over 300,000 acres of forest in the native land units and much of this has already been so declared. That, I think, is a complete answer to his accusation that we are only concerned in the destruction of forests and not the preservation thereof. There is a programme before us of acquiring more and yet more forest for preservation as forest reserve in the native lands units.

As to the allegation that there is ample land in the Kikuyu native land unit, we must, of course, provide for the normal expansion of tribes at present resident there. Unfortunately, statistics as to the population are inadequate, but there is no doubt that the Kikuyu in particular are increasing at a very considerable rate, and we must leave room for people normally resident there.

MR. MONTGOMERY: Your Excellency, I was rather surprised to hear the hon. Member for the Coast say that he was going to vote against the motion and a minute or two later say that he was glad this chapter of land history was being closed. Surely if he opposes the motion the chapter will not be closed.

MR. COOKE: On a point of explanation, I am glad it has been closed, but it could have been closed in another way.

MR. MONTGOMERY: One point has not been made in this debate which I should like to make. That is, during these protracted negotiations, in which I have been concerned the whole time, the greatest assistance was given by the members of the Highlands Board, and I think it should be noted that without their co-operation these negotiations, which have been very difficult and are now closed, would never have been closed.

DR. WILSON: Your Excellency, I only rise to say I hope that, in spite of the effort of the hon. Member for the Coast to re-open the chapter, it can now be considered as definitely closed, and closed in a most satisfactory manner, and I should like to congratulate the hon. mover for the clear way in which he put the whole position and reviewed the history of a long chapter. I hope that as a result of this debate, to use his own words, nearly everybody is pleased.

MR. SHAMSUD-DEEN: Your Excellency, my only objection is that this has been repeated so many times and we have been told that the chapter is closed so often. There is no doubt in my mind that what is before Council this morning is probably for the good of the natives. But what I am rather puzzled about is that we definitely state in this Council that, as far as the native reserves are concerned, the whole question is finally closed and settled, but if we keep changing and chopping, no matter what good reasons there may be, I am afraid we will be opening the door to an interminable alteration of these reserves. As I said, there must be good reasons, and the hon. Chief Native Commissioner has given us very good grounds for alteration. The only thing in such matters is if we wish to inspire confidence in the minds of natives that the matter should be brought to finality at some date, and no matter what the reason may be it should not be re-opened.

That is my feeling. I do not know whether I shall vote against the motion,

but I do feel that Government is going on what has been definitely stated before on many occasions, that as far as the native reserves and the land units are concerned the whole matter is finally closed for all time. Now we are beginning to re-open it, and to-morrow there may be good reasons for further alterations: I think the principle is wrong, that is all.

MR. ISHER DASS: Your Excellency, I rise to oppose the motion, and I take the opportunity of lodging my strongest protest at taking away any inch of the native lands and adding it to the Highlands. I have maintained for many years that, owing to the increase in the native population, it is absolutely essential that whatever land is available for them none should be taken from them but that, if possible, we should buy more land or secure it from other sources and add such land to the native reserves.

The only principle I agreed to in the first stages years ago, is that if land was actually required for building educational institutions or post and telegraph offices or for electricity, water works or irrigation purposes, then as those measures would be in the interests of the development of the country any excision of land for those purposes would be welcomed. For any other reason, that of just adding land to the Highlands, I maintain that it is another form of peaceful penetration, and part of the policy of industrialization of natives and depriving them of their land to bring them to the towns to serve as domestic servants and labourers.

I should not take up much time, and would simply say that some hon. members have expressed surprise at the words "closing of the chapter" used by the hon. mover. For the information of those hon. members who have expressed surprise, I may inform them that there are many chapters in this book on native land. It may be 50, 80 or 90 chapters, so this may be only closing the fifth or sixth chapter and there are many yet to be dealt with. I shall open the balance of chapters left in the book during my next visit to England, as I have done before, and tell the people all about this peaceful penetration of native land for the European Highlands.

MR. BLUNT: Your Excellency, the Member for the Coast suggested that I had been an accessory after the fact, and I admit that soft impeachment, and in explanation of the question asked by the noble lord, the hon. Member for Rift Valley, I will state what has happened recently with regard to the preservation of those areas.

It so happened that when these areas were being given out the settlement officer, Mr. Wyn Harris, was there and an agricultural officer was provided to assist him, and that officer was, unfortunately, very shortly afterwards taken into the army. There remained a period when no agriculturist was there to see that the necessary measures were taken, but when opportunity offered another officer was employed, and for about six weeks, in April, 1940, he was on this work. He again was taken into the army, and once more matters were left in these areas under, I may say, inadequate control. The matter was, however, taken up again, and early this year it was realized that, in spite of the shortage of staff and in spite of the fact that the Kiambu Reserve had only one agricultural officer, his time should be devoted specifically to the Kerita area. In April of this year he went to the area and has worked on little else since, until within the last three weeks we have been fortunate in getting one of the officers originally there back from the army. He is there now at work, and I am assured that the work is going on satisfactorily.

The whole area is being surveyed, the individual holdings are being considered. Those areas too steep for cultivation are being closed, and less steep areas pegged out for proper conservation measures to be taken. There have been one or two cases where a native has not readily undertaken the work suggested to him, but I am glad to say there are no more cases of that kind now, and the work is going forward satisfactorily. I believe that in a period of a few weeks we shall be able to regard Kerita as having been satisfactorily protected against any deterioration.

MR. MORTIMER: Your Excellency, there is very little for me to add to what

the hon. Chief Native Commissioner and the hon. Director of Agriculture have already said.

The hon. Member for the Coast accuses me of having said that every avenue had been explored in the search for alternative land on which to settle claimants of rights. I trust that Hansard will bear me out when I say that I did not say this. I can, however, definitely inform the hon. member that in the search for alternative land no stone was left unturned! (Laughter.)

The hon. Member for Nairobi North referred to the general question of accommodation in the Kikuyu native land unit. That question is not before Council now, but we are dealing with "these particular natives", to use his own phrase, and he recognizes the necessity for providing for these particular natives in the way we have done. Therefore, we are in entire agreement on that point.

The hon. member Mr. Shamsud-Deen said that this Council had been asked on several previous occasions that this chapter in land history had been closed. I do not recollect any such assurance. In the debates in 1938 on the Land Commission Report and on the Native Lands Trust Bill and the Crown Lands (Amendment) Bill it was recognized that very much remained to be done to carry out the recommendations of the Commission, and the motion that has come before Council this morning is merely an aftermath of the Land Commission Report. The hon. member asked that an assurance be given that this will not happen again. Well, the law provides that additions may be made from time to time to native reserves. It also provides that exchanges may from time to time take place, and no one can say that this section of the law will not in time be utilized as necessity arises, but I do assure the hon. member that there are in the law very adequate safeguards to protect the native lands and any other lands against hasty or ill-conceived measures.

I really completely failed to understand the point which the hon. member Mr. Isber Dass was endeavouring to make. (Hear, hear.) He seemed, to be

(Mr. Mortimer) under the impression that the proposal now before Council was take away native land and add to the European Highlands. Well, I greatly regret if my explanation of the proposal was so incomplete and inadequate that he failed to understand what the motion really meant. For his information, I would mention that the 34,700 acres taken from the Massi native land unit will be used for occupation by natives. As far as the Kikuyu exchange is concerned, the natives get the better of the bargain both in quantity and quality.

I have been asked for an assurance that no further territorial demands will be made on the forest reserves of the Colony for matters of this kind. Neither I nor anyone else can give an assurance that never will the forest reserves be encroached upon for purposes of this kind, for that would cover too long a period of time, but in all sincerity I can assure hon. members that, so far as can be foreseen at present, when this motion has been passed and the further motion that will come before Council next week has been passed, no further proposals are in view for excisions from forest reserves for this or any other purpose.

MR. COOKE: Before the hon. member sits down—

HIS EXCELLENCY: On what point does the hon. member rise?

MR. COOKE: The point I raise is one of explanation. I ask that an assurance be given that land excluded from the Kikuyu reserve will be reafforested.

LORD FRANCIS SCOTT: That is not a matter of explanation at all.

MR. MORTIMER: I can give that assurance. I have been assured by the Conservator of Forests that such portions of this land as are not at present under forest will be planted up. I have disposed of that question, and have nothing more to add.

The question was put and carried.

ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, 24th June, 1941.

Tuesday, 24th June, 1941

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 24th June, 1941, His Excellency the Governor (Sir Henry Moore, K.C.M.G.), presiding.

His Excellency opened the Council with prayer.

MINUTES

The Minutes of the meeting of 19th June, 1941, were confirmed.

NOTICE OF MOTION

POINT OF EXPLANATION

MR. LOCKHART: Your Excellency, on a point of explanation, notice has been given in the Orders for to-day by the hon. member Mr. Mundy to move the adoption of the select committee report on the Excess Profits Tax Bill. Unfortunately, the select committee was unable to complete its report yesterday and will not be able to do so until to-day, so that a new notice of motion will have to be given.

PAPER LAID

MR. LACBY laid on the table the report of the Committee on the Arab and African Terms of Service.

ORAL ANSWERS TO QUESTIONS

No. 35—ESTIMATES, 1942

MR. COOKE asked:—

Will Government give an assurance that every effort will be made to present the 1942 Estimates as early as possible so as to avoid the frequent suspensions of Standing Orders and other expedients necessitated during the past few years owing to the delays in presentation of the Estimates?

MR. LOCKHART: The 1942 Estimates will be presented to Legislative Council as early as possible.

No. 38—ITALIAN PRISONERS OF WAR.
MAJOR CAVENDISH-BENTINCK asked:—

Is Government yet in a position to give Council any information regarding the employment of Italian prisoners of war?

[Major Cavendish-Bentinck.]

In this connexion perhaps Government could state whether employment on the following lines has been considered:

- (i) Road work.
- (ii) Land and water conservation work (dams and water boring).
- (iii) Fly encroachment?

MR. RENNIE: Prisoners of war are still employed on the construction of their own camps and on other military work and large numbers are not available for employment by the civil authorities. In the meantime Government has been examining the question of their employment in consultation with the military authorities with a view to overcoming the difficulties connected with accommodation, security, and finance. In order to obtain information about the best method of employment and relative working value of Italian and African prisoners of war the military authorities have established two experimental camps for work on the Kenya section of the Great North Road. It is hoped also that prisoners will shortly begin work on the Gilgil township roads and that thereafter it will be possible to use them on improving the Naivasha-Gilgil-Nakuru Road.

The answer to the second part of the question is in the affirmative, except in regard to water boring which does not lend itself to operation by prisoners of war. Other forms of employment, such as stone quarrying are also being investigated.

MAJOR CAVENDISH-BENTINCK: Arising out of the answer, may I ask whether any computation of costs of employment of prisoners of war has been made. We have got to keep them anyhow and the cost of employing them on useful work is not the full cost.

MR. RENNIE: The question of costs is one that has received a good deal of consideration by the civil and military authorities. The matter has not yet been finally decided, but Government has had the point mentioned by the hon. member in mind when it has been considering the matter.

MR. COOKE: Will the hon. member bear in mind that difficulties were made to be overcome, when studying this question of the employment of prisoners?

COL. KIRKWOOD: May I ask if Government will state what will be the pay of prisoners of war? I presume it is laid down by the home Government.

MR. RENNIE: I should require notice of that question, I do not carry the figures in my head.

COL. KIRKWOOD: It should be known what we have got to pay, I suggest Sh. 1 or Sh. 2 a day?

MR. LOCKHART: They are not all of the same rank.

SCHEDULES OF ADDITIONAL PROVISION

No. 4 of 1940.

MR. RENNIE: Your Excellency, I beg to move that the Standing Finance Committee Report on Schedule of Additional Provision No. 4 of 1940 be adopted.

The report referred to is in the hands of hon. members, and in anticipation of the motion to refer this schedule to the committee the committee examined it on the 20th March and recommended approval of the expenditure contained in it. As hon. members will see from the outside page, the schedule deals with the last quarter of the year 1940, 1st October to 31st December. The expenditure amounts to £197,590, and there are certain items which are specifically offset by savings totalling £17,570; approximately £62,400 will it is hoped be recovered by consequential increases of revenue, which means that the net additional expenditure will be in the region of £117,000.

MR. BROWN seconded.
The question was put and carried.

No. 1 of 1941

MR. LOCKHART: Your Excellency, I beg to move that Schedule of Additional Provision No. 1 of 1941 be referred to the Standing Finance Committee. The schedule is in hon. members' hands.

MR. BROWN seconded.
The question was put and carried.

AGRICULTURAL ADVANCES ORDINANCE, 1930

RECOVERY WAIVED

MR. LOCKHART: Your Excellency, I beg to move:

"That this Council approves of recovery being waived of a sum of £4,666-0-38 advanced under the provisions of the Agricultural Advances Ordinance, 1930."

Hon. members are familiar with the necessity for these motions, which arise at times when the Land Bank Board, which is acting for Government in the matter, has reached the conclusion that certain advances have become irrecoverable and require to be written off. That conclusion has been reached in regard to four advances which are now plainly irrecoverable, and it is necessary to receive the approval of Council to write off these amounts which are included in the assets of the Colony.

MR. BROWN seconded.
The question was put and carried.

WAR LOAN

AUTHORITY TO ISSUE FURTHER BONDS

MR. LOCKHART: Your Excellency, I beg to move:

"Be it resolved that, under section 2 of the War Loan Ordinance, 1940, this Council authorizes the raising of further loans not exceeding £250,000 by the issue, and sale whether within or without the Colony, of registered bonds."

The position is that we extended the limit of the East African war loan to one million pounds at the last session of Council. The result of the subscriptions has been far more favourable than we anticipated them, and the latest figure of collections amounts to £914,000 which I think hon. members will agree is very creditable indeed to East Africa. I should like once more to pay tribute to the War Savings Committee for the work they have done. (Hear, hear.) We may not have another session of Council for some time, and it was therefore thought that this opportunity should be taken to extend the limit of the loan by a further £250,000, although at the present rate of progress that is not going to cover the subscriptions for very long.

MR. BROWN seconded.

The question was put and carried.

MR. NICOL: Your Excellency, I am in full support of the principle contained in this motion, but I want to move an amendment. My amendment is that the figures £500,000 be substituted for the figures £250,000. The resolution would then read as follows:—

"Be it resolved that under section 2 of the War Loan Ordinance, 1940, this Council authorizes the raising of further loans not exceeding £500,000 by the issue, and sale whether within or without the Colony, of registered bonds."

As the hon. mover said, the collections to date are £914,000, and I have reason to believe that the sum of one million pounds should be reached in a very short time, and I also would like to pay tribute to the subscribers in East Africa who have raised this sum in less than a year. In this regard, the committee which Your Excellency appointed to encourage war savings have given very careful consideration to future prospects of raising money for the war fund, and they are very satisfied that there are good grounds to believe that within the next twelve months we ought to be able to raise one way and another another million pounds. So far as this resolution is concerned, we only want to set our cap at another £500,000 in the meantime.

Subscriptions to the £5 bonds are coming in at the rate of approximately £10,000 a week, and that average has been well maintained up to the present date. I have reason to think that, whether people like it or not, the time is fast approaching when they will be forced to spend their money on unnecessary articles. We have seen what has happened at home. Restrictions have been put on the public to prevent them from purchasing unnecessary goods, and they have even been rationed as far as clothing is concerned. Again, the factories which make a lot of luxury goods have either lost their employees to munition works or else the factories have actually been taken over for the manufacture of war material. I think the same sort of situation is going to arise out here, and I

[Mr. Nicol]

observed the other day in the appropriate notices of Tanganyika Government—and I gathered from it that other East African Governments contemplate similar restrictions—that they seem to have taken drastic measures to control personal expenditure. I think we all agree that that is quite right. Again, imported goods are not coming forward in the same quantity as in peace time due to the difficulty of shipping and also a certain amount of loss by enemy action. As a matter of fact, it has appeared to me to be remarkable that so many luxury goods are still able to come into the country, as one would imagine that with the development of the war in the Middle East all necessary available shipping space would be required to ship war materials to that centre, and only goods of the most vital importance should receive consideration for transport.

So I think the people of this country have got to realize that they have got to take in their belts and go without a lot of those little luxuries they have enjoyed in the past. By going without them they will be able to save, and the best thing they can do with their savings is to turn them over to Government for the prosecution of the war. What the future has in store it is very difficult to say, but with the rate of expenditure per day on the war it is quite obvious that conditions of living for many years to come are going to be more than Spartan and improvident people will become a charge on the community. It is therefore essential that everybody should make provision for the future by endeavouring to build up personal capital to act as a cushion on which to fall back after the war is over and the cost is assessed on the community.

The War Savings Committee feel, therefore, that if £10,000 a week is coming in now by small savings, by present facilities, with the probable scarcity of goods in the future, and a saving facility for the small saver, the figure of £10,000 a week ought to rise considerably, and that is one of the reasons why right now we are going out for £500,000. We want to make it clear that we do not think this is the

limit of the saving capacity of the community. By the £5 bonds, the series B, we have only touched a certain type of saver, and we are satisfied that the potential saving power of other sections of the community has not yet been touched. I refer to the poorer European, Asian, and native. These poorer people are unable to put down £5 at a time, and we have now found by experience that it is essential that smaller units should be devised. As you know, Sir, shortly it will be possible for an individual to get a card to which he will affix stamps, and when the card is filled turn that over to the post office savings bank for the credit of his account in the post office.

I think, perhaps, that it would interest the Council, while on the subject of post office savings, to know that there has been a total increase from the 1st January, 1941, to the 31st May in deposits amounting to 1,770 accounts and a total gross increase for all accounts of £90,690. That is Kenya alone. I have no figures for Tanganyika. The Uganda total increase in accounts was 288 and an all-over increase of £9,761, but I believe a material improvement will be shown in the Uganda figures shortly.

I think that indicates that people are saving-conscious, but the stamp scheme is only a substitute for something better, and at the best it only means accumulating a post office denominational amount. What we want is a unit which will be easy to acquire and the records of which it will not be difficult to keep. I therefore make strong representations that Government will take whatever steps are necessary to make available East African savings certificates corresponding to the national war savings certificates, and I ask Government not to magnify the difficulties of issue but to endeavour to overcome them. It may be necessary in the first place to confine the sale of such certificates to literates, as the identification of signatures will not then present a difficulty. These certificates, the committee suggest, might be known as "Thrift Certificates", and it is also suggested that they could be made attractive pictorially. The War Savings Committee are satisfied that the native, who has given magnificently to war

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[Mr. Nicol]

funds, can be relied on to make a substantial effort to contribute his savings too, and I hope the hon. Chief Native Commissioner will be in agreement with what I have said.

It is therefore necessary that no time should be lost in providing the small denomination for the small saver and, in passing, I would mention that it would be very much easier as far as the war saving advertising is concerned if we could get direct access to the masses rather than have to confine ourselves to the man who can put down £5 at a time. Advertising, as far as the native is concerned, ought to be easy, and Mr. Champion and his cinema van would be of inestimable value. I am quite certain we can rely on the Information Officer and his efficient organization to give us his full support.

In conclusion, I hope my amendment will be accepted, that Government will do its utmost to remove such difficulties as have been expressed from time to time against the provision of saving certificates, and that we can proceed with the slogan "On to the next half-million".

MAJOR CAVENDISH-BENTINCK seconded.

COL. GROGAN: Your Excellency, my hon. friend the Mombasa essayist created a considerable amount of alarm in my mind by his suggestion. I have always questioned the wisdom of a loan policy in a small country like this, especially when it is dependent on crops which are very difficult to sell to turn into money, and I see the serious possibility of the credit machinery of the country seizing in view of the fact that Government is busy disposing of all our surpluses while they are trying to freeze up what loose moneys are available. When the hon. Financial Secretary replies I hope he will be able to give us an assurance that he has satisfied himself in advance that this freezing of free moneys will not be liable to cause a serious deflationary effect upon the credit structure of the Colony.

MR. LOCKHART: Your Excellency, as far as the amendment of the hon. Member for Mombasa is concerned, the

committee of which he is a member is in a far better position to judge their requirements than I am, and I have no hesitation in advising Your Excellency to accept the amendment.

The proposals I assume we shall be getting formally from the committee regarding savings certificates, and we have discussed this on a good many occasions. The hon. Member for the Coast has just told us difficulties are only made to be overcome, but it does not alter their magnitude or complexity. I can only say the scheme the committee put up will be examined again very sympathetically.

I do not propose on this motion to be drawn into any disquisition on the subject of the credit structure of the Colony or the effect on it of an extension of loans, but I would point out that while the hon. Member for Ukamba said we are busily engaged in the disposal of our surplus we have not disposed of any yet, and so far as the freezing of assets to be invested in this loan is concerned, the proceeds of the loan have been paid over to the Chief Paymaster and put into circulation again very rapidly, together with a great deal more local moneys provided from the credit structure of the United Kingdom.

The question of the amendment was put and carried.
The question of the motion as amended was put and carried.

EDUCATIONAL FACILITIES
MAJOR CAVENDISH-BENTINCK: Your Excellency, I beg to move:

"Whilst realizing the necessity of maintaining our war effort unabated, Council considers that in view of the improved military situation on our frontiers every effort should be made to restore the educational facilities which were impaired during the recent emergency. If it is necessary to maintain certain military hospitals and hostels, an attempt should be made to find other suitable accommodation for those now housed in schools, failing which more adequate alternative accommodation and facilities must be provided forthwith for educational purposes, and the services of sufficient

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properly qualified male teachers should be secured either by release from the army or by engagement overseas."

The wording of this motion is by no means concise, because it covers a very wide field, but we have endeavoured to express in the wording of the motion the feelings which I believe are shared by all members on this side of Council. We have also so worded and framed the motion that I trust it will draw from our hon. friend opposite, the Director of Education, a full statement as to what the education position is in the Colony to-day. It will be within the knowledge of most members of the Council that there is a certain amount of disquietude, a certain amount of anxiety, about education. Everybody knows that certain buildings have been taken over, a certain amount of staff is away on military service, and, as a result, there have been a good many statements made, some of which possibly have been based on misapprehension. There is no doubt that education has suffered, is bound to suffer from war conditions but, at the same time I think possibly some shortcomings have been exaggerated. So it is with the object of trying to ascertain what is exaggerated and what in fact needs doing and can be done to remedy the position, that we are debating this motion this morning.

I am quite sure that we can embark on this discussion with the conviction that every single member of Council completely agrees that it is our duty, the duty of each one of us, to do our very best to see that the coming generation suffers as little as possible owing to war conditions and is given the best possible start in life both as regards education, health, and so on. Therefore I am going very shortly—because I think we may have to speak at greater length after we have heard Government's statement—to review one or two shortcomings that are alleged to exist in our educational system under war conditions.

The first criticism that has been raised is that there are in fact a number of children for whom parents are unable to find room in school. It is said that applications have been made to get both boys and girls into boarding schools and

they have had to be refused. I would like to know whether that is the case and, if so, what sort of numbers are involved and what provision is going to be made to remedy the situation. Incidentally, I should also like to know whether there are in fact any European children whose parents are making no effort to send them to school and whether, owing to war conditions, these children are being overlooked by the authorities and whether, perhaps, we ought not again to consider the question of compulsory education, a system which on more than one occasion I personally have advocated in this Council.

The next criticism is concerned with school buildings. We know that quite a number have been taken over by the military either as hospitals or hostels or for some other purpose. The chief building in connexion with which there has been considerable criticism is the Prince of Wales School, and that at the moment is a hospital. In equity, however, I would draw attention to two considerations. The first is that the school, or, rather, the boys in that school were not thrown out by the military in order that the building should be taken over as a hospital, but in the early days they were evacuated on the advice of the military, because at that time there was very good reason to pre-suppose that this part of the world was going to be heavily bombed, and it was only after such evacuation that the military took over the school as a hospital. The other consideration I would have hon. members bear in mind is that as a hospital the building is now full. I went over it myself a few days ago and saw the list of beds occupied and of applications, and I must say I do not see how we could possibly, without making really adequate alternative provision, put those people out of this building at the present time. At the same time the pupils who were accommodated in that school are now in temporary buildings in Naivasha, and they are suffering in certain respects, chiefly from lack of scientific equipment and laboratories, etc., necessary for the advanced part of their education. That, I think, is a serious drawback, and I should like to know in the course of the debate what provision is going to be

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made, either to find alternative accommodation, suitable accommodation of course, for the patients in the Prince of Wales School or alternatively, to provide proper facilities for carrying on the education of the young people now at Naivasha.

There are other buildings, too, that have been taken over. There are some on the Hill, and also the secondary girls school which has been moved to Eldoret, and we would like to have some sort of account, if possible, of what the building position is. To show the sort of rumours or statements, or whatever you may like to call them, that are passing from person to person at the present time, it is suggested that while we have provided very inadequate accommodation for our children, while our best school buildings are being used as hospitals, there are very large hospitals at Nyeri and Nanyuki which could be made available for hospital cases but which are now going to be handed over to Italian refugees or Italian prisoners. I am not criticizing whatever may have been done, but it is only right that we should be given some sort of authoritative statement.

It is also said that there should be additions built to the school at Nakuru, and possibly at Eldoret, and possibly Kitale, so perhaps we might be given some information as to whether Government has in fact any such plans in view.

The next line of criticism concerns staff. We do know that a number of the younger men on the staff of our hon. friend the Director of Education did go, and were naturally very anxious to go, and join the military forces, and it is alleged that as a result there is a very great shortage of male teachers at the present time. It is more than alleged, because we know it is a fact that, in certain schools at any rate, such a desperate shortage does exist. Perhaps we could be given some information not only as regards the schools run by Government but possibly as regards schools which also play an important part in the education of the young people of the country, the schools which are in private hands.

It is also said that when certain people are got back from the army, men who have hitherto been employed in European schools, they have been sent, although they are very highly paid people, to native schools in the reserves. I do not pretend for a moment that we have to stop all native education because there is a war, nor do I say that it must of necessity have been wrong to have done so, but I certainly think we are entitled to some explanation as to the facts.

As regards the whole question of staff, if one does not have an adequate number of male masters in the schools discipline is likely to slacken and, indeed, it has been said by parents, I believe, that discipline in one or two schools has become very bad indeed.

I should also like if possible in the course of the debate to hear whether any provision is made for pupils who have taken their school certificate to proceed with their education so as to take the higher certificate. If facilities are lacking, I do hope something can be done to remedy this state of affairs, because I think it is quite wrong to allow these facilities to lapse entirely for the duration of what may be a very long war.

There are other aspects of education which are very much in the minds I think of most hon. members of the Council. One is the fitting of young people who have gone straight from school into the army to take some useful job when they come back from the army. I am not referring to the re-absorption of men when they are demobilized back into jobs so much as to the very young men when they come back from the army being fitted for jobs. If we can hear anything about that we shall be very grateful, but it is a little beyond the scope of the debate to-day, and I realize that a committee has been appointed to go into that subject.

Since there was a debate about education in this Council, a new school has been created and established at Njoro, an agricultural farm school. I would like here, in conclusion of my opening remarks, to pay tribute to those who have been engaged in the establishment of that institution, in regard to which I hear nothing but good reports. I think

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it is a tremendous step forward in the educational facilities of this country.

With those remarks and questions, I beg leave to move the motion standing in my name.

MR. NICOL: Your Excellency, in rising to second the motion, I would say that I entirely agree with what my hon. friend has said. Certain of my constituents have expressed alarm to me at the apparent shortage of both male and female teachers in the schools, that is not only in regard to Government schools but private schools. I know that recently under the Defence of the Realm Regulations teachers were declared to be in a reserved occupation. On the outbreak of war Government would not allow female teachers to join the W.T.S. but did allow them to become V.A.D.s. It is suggested that they might be released for service for teaching. But the most vital necessity, I think, is to adequately staff the boys schools with male teachers, and I would urge that, despite the fact that there is a war on, it is very necessary that the rising generation should not have their education impaired.

MR. WRIGHT: Your Excellency, I want to add a few words in support of the motion. As I am an almost inarticulate member on this side of Council my constituents require me to do so, particularly in respect of that part of the motion asking for the provision of more male teachers, qualified male teachers. Contrast has been made between conditions prevailing now in Kenya and those prevailing at that very expensive institution called Makerere, where, I am given to understand, the war has not in any way affected the teaching staff. The contrast may be made in this sense: all these youngsters of ours at school in Kenya are, in fact, the future rulers of Kenya, because enlightenment must come to Kenya some time, whereas the objective at Makerere would seem to be a determined effort to make Oxford Blues out of African blacks.

MR. PATEL: Your Excellency, I beg to support the motion before Council.

Admittedly there is a necessity for a war effort in the Colony, but at the same time it must be recognized that, as far as Indian education is concerned, the Education Department has done its best to provide alternative accommodation and facilities as were available in the Colony. Education in the beginning suffered for two reasons. Firstly, because most of the educational buildings were requisitioned for military requirements, and as danger was then anticipated schools were closed for a number of months. Indian education did not suffer too seriously because, owing to the advice then received from Government quarters, a large number of children had left the Colony but, as circumstances have now altered and those children are coming back, unless a serious effort is made by the Education Department I suggest that the deficiency in facilities and accommodation will be greatly felt. In view of the altered circumstances as indicated in the motion, I believe the Education Department will make a very serious effort to revert to the accommodation and facilities which existed before the war. In particular, I should like to mention one school at Mombasa, the Government Indian Girls' School, one of the most important of the Indian institutions. That building has been acquired for a hospital since the beginning of the war and the alternative accommodation provided is not adequate. I shall be glad if the hon. Director of Education will be able to indicate that it will be possible to give that building back to the girls' school.

MR. SHAMSUD-DEEN: Your Excellency, I think it should be realized by the hon. mover and all those in favour of the motion that the Education Department and Government itself have left no stone unturned in getting the restoration of the buildings requisitioned by the military. We all know how little influence Government and the civil administration can possibly have on the military authorities, whose requirements should be given preference over everything else. We had some trouble and difficulty in Nairobi when the Indian Boys Secondary School was requisitioned and we were put to very great inconvenience, and I know of my personal

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knowledge that the hon. Director of Education and Government tried their level best to get the school restored to the Indian boys, who were something like 1,000 in number, and who had to go to the other side of the town and be educated in tin shanties. But up to a certain extent things could not possibly be helped, and if any hon. member is under the misapprehension that there was any lack of representation on the part of the Education Department or Government he is misinformed. What the hon. mover and his supporters have said is that it is an absolute necessity that the schools should be restored at the earliest opportunity. The question is, in view of the circumstances of the military authorities can it be done. I, of course, associate myself with the desire that these institutions should be restored for the purpose for which they were built at the earliest possible opportunity.

LADY SIDNEY FARRAR: Your Excellency, I rise to support the motion before Council, and to express appreciation of the able manner in which the hon. mover has undoubtedly voiced the anxiety of people throughout the Colony at the present time on the subject we are discussing. It is a very real necessity, it is not for once a matter entirely of letters in the Press, it is a fear voiced in homes throughout all the up-country districts as well as Nairobi, and I sincerely hope the Director of Education will take the opportunity of making a very full statement and that this statement may do much to allay the anxiety which is growing.

In view of the hon. mover's very careful covering of the particular points at issue, I will not refer to any of those again, but I should like to emphasize that the question we have to meet particularly is that of the older boys at the present time. As far as Naivasha is concerned, with the exception of additional science laboratories, the position is not crucial, but there is no doubt that day scholars at Nairobi are suffering from lack of male teachers. We have to bear in mind that in this country girls' education is reasonably well catered for by private as well as Government

schools. It is not the case where boys are concerned. Parents of older boys have no alternative but to send their boys to the Prince of Wales School, and in view of that we must ensure that no stone is left unturned so that the education and facilities given at the Prince of Wales School are the best that can possibly be obtained and that the teachers are the very best who can possibly be wished for. I would urge that steps should be taken to have this school in Nairobi again in the near future, that additional male staff should be found for the day scholars of the higher standards in Nairobi. That is one point I particularly wish to make, but I should like to associate myself with all the remarks of the hon. mover.

MR. COOKE: Your Excellency, in supporting the motion I feel gratified and indeed proud that the hon. mover and the hon. Member for Aberdare—with whose views I do not always agree—are saying to-day what I said six months ago. I live in the hope that in other ways, especially the Settlement and Production Board, they will learn the wisdom of substituting actions for words.

To turn to my hon. friend the Director of Education, I must confess that I am a little bit disappointed with him. I had always regarded him as a fighting man, but last year, immediately the "red tabs" appeared on the horizon, he threw up his hands and surrendered, and, indeed, it was one of the greatest defeats pedagogism has ever received in this country. The pen for once proved less mighty than the sword. I know what his defence will be, because I have discussed it so many times with him. He will first say there was the danger of the fire bomb. Of course, it did exist, but I do submit that the danger from illiteracy and lack of discipline was a much greater fear. We had both alternatives in front of us, and have chosen the other one. He may say, too, that parents would have taken their children from school. Well, I think that is rather a reflection on the parents of Kenya. A certain number would have done so, but I know many who would not; and, in any case, if the English schools could run the risk and parents were content with that risk being run, surely in this little country of ours we could have done the same.

[Mr. Cooke]

Now it seems to me always that when people are dressed in a "little brief authority", as some of the military people are, they always want the best houses and offices that can be provided. I never had very much to say in favour of the Secretariat of this country, but if they were able for years to govern the country in a ramshackle building on the Hill, I do not see why the military authorities should not themselves have been content with less pretentious buildings.

I am rather sick of all this talk in this country about the White Highlands. Nobody more than I believes in the future of British civilization in this country, but there are a lot of people who get very hot under the collar and go into paroxysms of excitement if we talk about taking away any of the White Highlands, but view with equanimity the taking away of these schools. One thing is absolutely certain, and that is all those legal documents by which the White Highlands are supposed to be guaranteed will be of no importance whatever if we neglect the character of the next generation to come. And it is for that reason that the schools are so very important.

I have also thought that the Man Power Committee must be criticized for freeing so many men. I know that even from the private schools of the country male teachers have been taken away, and I think that is a very shortsighted policy. People may say that it is no use indulging in recriminations now, but the value of recriminations is that it ensures effective action in the future. And we are not out of the wood yet, and if perhaps the war comes nearer again I hope Government will show more vision and keep our schools open and allow the children to run the risk run by the children at home.

I beg to support the motion.

MR. ISHER DASS: Your Excellency, in connexion with this motion I have to make one or two observations.

I am not very much impressed by the arguments advanced by the hon. mover or his supporters; in fact, I could not believe that they are justified in thinking that neither Government nor the hon. Director of Education has shown any anxiety in regard to the education of the

future generation. I am not prepared to accept that statement from the unofficial side, because they are aware of the fact that Government, and particularly the hon. Director of Education, are more anxious about the education of the younger generation than some of the hon. members themselves. This motion, moved 18 months after the 3rd September, 1939, is too late in the day, in view of the changed circumstances—that the major operations in this part of the world are likely to be finished in a week or fortnight—which have entirely altered, so that educational facilities are sure to be restored by the Education Department. Another thing is that I sincerely believe that if hon. members on this side of Council think that some stones are left unturned somewhere, all his motion does is to ask the hon. Director of Education to turn them over for their satisfaction in view of the next general election in 1942.

MR. LACEY: Your Excellency, I welcome the opportunity afforded me by the motion of the hon. Member for Nairobi North and by this debate to make a plain statement of facts about education in Kenya in war time, and I can say that Government's policy in this matter is almost identical with the motion before Council. There have appeared recently in the correspondence columns of the local Press some letters which were both ill-informed and misleading, and I take the opportunity, as suggested by the hon. mover, to make a full statement and not only to deal with the specific points raised by hon. members.

It was stated shortly after the outbreak of war that it was the policy of Government, as far as humanly possible, to ensure that the education of children of all races should continue consistent with the necessary war effort of the Colony, and that policy has been carried out. Those are not idle words spoken in a spirit of self-complacency. Not only due to the action of Government and my department, but also largely to the valuable assistance and active help from individual members of the public, committees, and other bodies every effort has been made not only to maintain but to improve the educational services

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because there is a small but growing proportion of the people of all races in this country who realize that education is not a static cast-iron thing but that it is a living and changing process in which they must help as well as the schools.

I will deal first of all with education in Kenya in war time under three headings: one staff, second buildings, and third, a matter of great importance in my opinion and one hardly raised at all this morning, which for lack of a better word I will call "content".

Dealing with European education first. I must say that some of the letters in the Press might give an outsider the impression that Government's European education service was a remarkable sort of concentrated ruins in which a few heroic but not capable women were dealing with young hooligans. I do not mind aspersions cast on me or Government, but I do object strongly to aspersions cast on the youth of Kenya and on women doing a very gallant war job; and I am glad to say that even if some anxious mothers have not appreciated the work of these women the senior boys of the schools have.

Take the specific case of the number of male teachers in Government European schools first. In May, 1939, there were 26 male teachers and instructors in Government European schools. When Italy entered the war there were 20. There are 20 now, with a new recruit on the way from overseas; three recruits have arrived in the last nine months and we expect two more before the end of the year. In actual fact, from schools for Europeans 11 men have been allowed to join up—actually all wanted to, but a very careful selection was made of the men who should go and of the schools from which they went. Of these 11, four have been returned, and with the new recruits the number has been made up to 20 instead of 26 before the war. Dealing with the staff of the Prince of Wales School in particular, the staff at Naivasha is six men and two women, including the principal, Mr. Astley. Turning to Njoro Agricultural School, the only other secondary school for boys, there was a staff particularly recruited for it: a teaching staff of which all three

are men; there is no woman except the matron on the staff. Where the drop in the six men comes in is in the primary schools, none of which admits boys over the age of 15, and from the mixed school in Nairobi. I agree that at the moment the staff of the Nairobi school wants strengthening, but there is a man on the seas and another man who will be posted to that school.

But hon. members should realize two things: first, recruitment is not particularly easy; second, men already trained in the war are infinitely more valuable to the military than new recruits, but I have every confidence that by the end of the year the staff situation regarding male teachers will be satisfactory. I am a little worried that some teachers may be invalidated out or sent on short leave in South Africa for health reasons. For that reason, when necessary representations will be made either to obtain the release of one or more men from the army or to get additional recruits.

Apart from this fact, I can state most categorically that at the present time the staff in the Government European schools is better qualified and bigger numerically in proportion to the pupils than ever before, and I acknowledge the debt of gratitude I owe to the women, many of whom had experiences of teaching boys of secondary schools, for the way they have carried on teaching as war work. In this connexion, it is not quite true to say the Education Department or Government would not allow women teachers to join the W.T.S.; I have at the moment three or four still in the W.T.S. Over the question of man power, I am afraid that I still realize very vividly that there is a war on, and only the other day I read in the educational supplement to *The Times*, dated 19th April, 1941, that the Imperial Government has decided that the age for teachers to be exempt from the army is now 35, and that teachers under 35, with the exception of about 10 per cent who are specialists, have been called up to join the army. I will just read this extract:

"The Government are fully aware of the effects on the educational services of the withdrawal of men teachers, and they recognize that the withdrawal of

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men to the further extent now decided upon will inevitably aggravate the difficulties under which many schools and other educational institutions are labouring. The needs of the armed forces for more men, however, are in present circumstances the over-riding consideration."

In view of the need of the armed forces for men in June, and even now, I maintain that Government has kept a very fair proportion between the number which could be allowed to join and the number kept to carry on the essential work of education.

Incidentally, I rather despair at getting information across to the public in Kenya, but some hon. members may have been listening to the wireless last night and heard the results of the Cambridge School Certificate examinations. In spite of the fact that last year was a very disturbed year, in spite of the fact that schools had to be moved up-country, and in spite of the fact that there were considerable changes in staff, those results I think show at least on the academic side that Government schools have been well maintained. The Prince of Wales School, which one would have imagined would suffer most, entered the record number of 31, and 27 passed; the Kenya High School maintained its high record of 100 per cent. I realize that just passing the examination is not necessarily the test of a school, but it does show that the academic side is maintained.

I pass now to the question of buildings. I am very glad that the hon. mover mentioned what I wanted to stress very strongly, particularly in view of the letters in the Press, that the Prince of Wales School, the Kenya High School, and Loreto Convent were not requisitioned by the military but vacated to ensure the safety of the children, and only after that were they occupied by the military. Only two schools were occupied by the military practically in September, 1939, Kenton College and Jeanes School at Kabete. When Germany declared war—or went to war—all schools in Mombasa and Nairobi were closed temporarily in accordance with defence plans and on the advice of the then

Governor, Sir Robert Brooke-Popham, but they were soon reopened and continued in the normal way until the outbreak of war with Italy. Then the boarding schools in Nairobi were sent up-country.

I was rather tickled by the remarks of the hon. member who suggested that I had lost my good reputation of being a fighter and was afraid of the "red tabs". I can assure him that I am not. During the last war I had the honour of being a staff man, so that I am probably one of the last men to be impressed by any displays of colours. But I am, I hope, a reasonable person who tries to make a reasonable valuation of the situation as it is, and over the question of the evacuation of the schools I feel considerably more happy than the education authorities at home, because the Government at home took up a lot of time thinking whether they should evacuate the children or not, whether evacuation should be voluntary or compulsory and so on. Our plans were already made here and were put into effect immediately.

To carry on with the buildings. There was one specific question raised by the hon. mover, the question of accommodation. Since last June this Government has spent £15,000 on permanent extensions to schools up-country. At the beginning of the year there was no waiting list for boarding accommodation in any school, there is no waiting list now at the Prince of Wales School; here are three or four at Nakuru and, I believe, but am not certain, one at Eldoret. At Kitale we have put up new extensions costing over £3,500; by instituting the agricultural school we have made more accommodation for senior boys and, subject to the Secretary of State, the intention is that a second boarding block should be built at the school. At Eldoret we have bought a house and erected temporary accommodation to last for 10 years, and definite plans are before Government, though I am not sure whether they are subject to the Secretary of State, for an extension costing £7,500 to be made at Nakuru. Incidentally, we have taken advantage wherever possible to make all extensions permanent. For example, the Kenya High School: while it was not

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requisitioned by the military, the boarding block was used by the Education Department after the boarders had been evacuated as class rooms. When it was considered necessary to hand it over to the South African W.T.S., permanent classroom accommodation was erected, and also a brand new and well equipped domestic science room.

Over the question of the return of buildings, I appreciated the attitude taken by the hon. mover. Actually, Government has been discussing this matter with the military authorities ever since the middle of March. There has been no delay but, as the hon. member said, the Prince of Wales School at the moment is choc-a-block as a hospital, but I have been given a guarantee that in the event of it being decided that the building at Kabete shall not be handed back to the Education Department, necessary additions will be made to the school at Naivasha in the way of laboratories and a gymnasium and other small improvements. Regarding the boarding block at Nairobi Primary School, I fully hope that that will be returned to me by September. It is not occupied by the military, but is a civil emergency hospital. The position regarding the Kenya High School is a bit obscure, but it may interest hon. members to know that during a recent tour of the Rift Valley Province I went to the hotel in which the school is housed and at the invitation of the headmistress lunched with the prefects and had a staff meeting, where I learnt a great deal. I found the pupils preferred being there to being in the rather more palatial building in Nairobi.

Turning to what I call matters of content, still dealing with European education, it still worries me that very seldom in this Council or elsewhere are questions raised about the content of European education. It seems that parents, so long as they believe a child is properly housed and there is a qualified staff, are not interested in what the child is being taught. I must admit that I am, and I would point out that during the last year we have made very definite progress. The hon. mover referred to the agricultural school at Njoro. I think that was a very

great advance, but I would also point out a fact to which I have already alluded briefly, that in Nairobi we have now facilities for the proper teaching of domestic science. We have also been able to recruit two more trained teachers of physical training, which is most important in this country; it was through a lucky chance that I was able to get these two teachers. I am not satisfied that the basis of European education is broad enough yet, but it is broadening, and I would again ask hon. members and the public of Kenya that if they have any suggestions and practical ideas to offer to put them forward.

Turning now to Indian education. In one letter to the Press the statement was made that not a single Indian or African school had been sacrificed on the altar of co-operation, for which co-operation he imagined I should be given the O.B.E. That is a complete mis-statement. The first school to be requisitioned was an African school, but a large number of Indian schools have from time to time been occupied for military and other emergency purposes. I do not want to refer in detail to individual schools, but I was impressed when going through my files the other day to come across a minute by your predecessor, sir. He said: "Although I am in principle opposed to taking up schools, we have got to win the war, and therefore, unless anyone can find other suitable accommodation, the school will be taken over for the military."

The situation now as regards Indian buildings, is that the Girls School, Mombasa, is occupied as a civil emergency hospital; incidentally, it has military patients too. I hope that by September or the end of the year it will be possible for the school to be moved back to its original building. Meanwhile, during the war, Government has finished the £30,000 primary block in Nairobi, it has taken over the Kitale school, and at a recent meeting of this Council £4,000 were voted to start the new school at Kisumu.

Turning to the European staff in Indian schools. This has not been affected, and we have been able to post a man to the school in Nairobi to carry out one of the recommendations of the Advisory Council on Indian Education,

[Mr. Lacey] to organize the teaching of handicrafts. While the European staff in the Indian schools has not been affected, the Indian staff has, and here we are faced with grave difficulties. It is never a satisfactory way of filling the places of men and women who go on leave by trying to recruit locally, though we have done it, but in some cases men, qualified teachers, have joined the forces and there has been extreme difficulty not only in finding staff for Government but also for aided schools. To get over it Your Excellency has approved the suggestion that later in the year I shall send one of my Inspectors to India to get in touch with individuals as well as institutions and to recruit men and women not only for the Government schools but also for aided schools. Not only have we attempted to keep existing facilities going, but within the last 18 months distinct progress has been made in the education. First of all, we have instituted for the first time as a regular business the holding of a refresher course for teachers in Mombasa, Nairobi, and Kisumu. The question of making the curriculum more suitable to the boy or girl as they will live in Kenya, instead of hanging on to a curriculum which might have been suitable to India, although I doubt it, has been carefully gone into. I have already mentioned the question of teaching handicrafts, and that is not the end of it. The whole curriculum is being studied again, and although I have not been able to recruit men for physical training in Indian schools some of our officers engaged in other branches of education have given special courses during the refresher course, and I hope before long to post at least one European qualified to teach physical training to Indian education.

Turning now to Arab and African education, it has been necessary to sacrifice a number of schools. The first school given up was the Jeanes training centre for teachers, and this has been a serious loss. We are attempting to remedy it by slightly increased grants and the loan of one of our teachers to mission institutes to fill the gap, but this is not felt to be satisfactory and it may be necessary to put forward representa-

tions to you, sir, in the very near future. Still dealing with African schools, quite a number have been used by the military from time to time. Arab schools have suffered more, and at the present time the Coast secondary school at Shimoni-Tewa is still in the possession of the military, and only in December, 1940, was the school at Malindi given up by them.

But I am more concerned with the content rather than with the buildings. I am trying to get a teacher who can speak and teach Arabic. I thought I had found one the other day, but he is not under my control and has decided to go into the army. Recently, the Director of Education, Khartoum, has been visiting Kenya, and he has told me that if he can spare one he will send me an educated Arab to assist in the education at the coast.

Of course it is not true that large numbers of men have been released from the army for African education or that men who were in European education before have been released to go into African education. Before the war, there were 37 European men employed in Arab and African education. In May it was decided as part of Kenya's war effort to hand over to the military the Native Industrial Training Depot. Since the outbreak of the war the apprentices there have been largely employed in turning out everything from car bodies to stretchers and other war work. They have received the warmest thanks from the military authorities and from the Director of Medical Services. When the growing need for African artisans became very urgent, 99 per cent of the African apprentices in the Depot volunteered to join the army. So seven Europeans have gone from the staff there into the army, and in addition four or five others from schools were allowed to join up. One has just come back. In two cases officers were lent to other departments in order that younger men might be seconded to the army. Thus, instead of men being released from the army for African education, the N.I.T.D. has been officially handed over to the military and I have lost 11 Europeans.

There are, of course, changes from one side to the other. One man who was

[Mr. Lacey] in European education before the war is now in Arab education, and three who were in African education are now in European education. In African education we have been faced by difficulty, largely owing to shortage of man power, in trying to find out exactly what is needed. It is my own belief that at the moment in African education we want to broaden the basis, and some surveys have been made in some districts. Lack of man power has hindered these surveys, and I am afraid the difficulty is not likely to be overcome until the war is over.

I would, before I go into detailed questions, acknowledge with gratitude the great help which the country has received from the Union of South Africa. We have Kenya boys and girls in universities in the Union as well as in schools, these including many who were evacuated from Great Britain. I have received very valuable help and advice from the Commissioner of the Union and various education authorities and the pleasing gesture—though I am shy of that word—which placed at my disposal all their experience in educational broadcasting since 1935, has been followed by another, as the authorities of Witwatersrand University have agreed to admit, if we want to send them, up to a maximum of six Asian students to their medical schools.

I should like to tuck up one or two of the threads still hanging out. I have dealt with most of the points raised by the hon. member.

As to the question of accommodation in the schools, as far as I know at the moment the waiting list in the European schools is very small. I must admit that I am troubled by problems of individual families in out of the way places. It is a difficult thing to get to know about them. I am very grateful to the E.A.W.L. and other societies which tell me when children are not being educated. It is extremely difficult, and I see no other way of meeting it except by compulsory education, and I may say that in view of the fact that this matter was discussed recently by the advisory councils on education, all four of them, it is receiving very close attention by Government at

the moment. I shall always welcome information concerning isolated families or groups of children who are not going to school. With reference to the query about the military hospital at Nyeri, my latest information is that it is not being handed over for the use of Internees. Whether that information is correct I am afraid I do not know.

Turning to the question of shortage of staff in private schools, it is true that one or two specific cases of difficulty have been experienced. I realize the important part which private schools play in the educational system of the country, and in one specific case to which reference was made Government have taken steps, and I think there may be an additional master at the school in a very short time. The supply of women teachers was very good until comparatively recently. I am glad to say that a number of army officers had the good sense to marry women who were qualified teachers, and the latter have been giving us help. It is only in the last three months that the supply has become exhausted, and immediate action was taken when I was satisfied about the situation, and of course now teaching is a reserved occupation.

Incidentally, I should like to say that it is not true that Makerere is going on undisturbed. Three tutors were allowed to join the army.

I was surprised to the reference by an hon. member to the Man Power Committee. I do not know what grounds there are for that sort of remark; for as far as I am concerned the Man Power Committee has been extremely reasonable. It is difficult. We are tied up in the war, a war which is by no means won yet, and though different individuals have different opinions as to the number of men who can be spared to join the armed forces, the committee have given very serious consideration to each particular instance.

I think that is all I have to say. I hope that what I have said will clear up the troubles and worries in the minds of a good many parents and show it is the definite policy of Government even in war time to make certain that the educational facilities are not only maintained but extended.

COL. KIRKWOOD: Your Excellency, I am rising to support the motion before Council, and anything I say I hope will not be interpreted as criticism of the Education Department or the hon. Director of Education in particular. I do admit that shortly after his arrival in the Colony we got into a dogfight, but we have been very good friends ever since, and he certainly has my admiration of the way he has conducted his department. If criticism is seable, it must be taken as against Government.

In the first case, we were told when the Prince of Wales School was evacuated that it was because of the possibility of bombing. Well, bombing has never occurred, and in my mind it is not likely to occur in Kenya, so that there is no justification for not reopening the school. On the other side, of course, there were the military requirements, and I admit their wants must be met as they have been by Kenya even at the expense of the whole of the schools. But I doubt if the military or Government are justified under present conditions in retaining the schools occupied by the military, more especially Kabete. We have been asked by the hon. Director, and advisedly, that if we have any practical suggestions to make to put them forward. I say the most practical suggestion anybody could give Government is to ascertain the military requirements, especially regarding Kabete school.

If they cannot foresee the time when they can hand that school over, Government or the military, or the two jointly, should then get busy and find hospital accommodation for the unfortunate people, who have every right to all our sympathy, elsewhere, but it must be adequate. I see no reason why Kabete should not be restored to its original purpose inside of six months. We keep on being reminded that these places will be occupied either for the duration of the war or for 12 months afterwards. Well, the war is practically over, so that there will be no difficulty. I predicted many months ago the end of the year would see the end of the war, and I again risk my reputation that it will be nearing its close by Christmas Day. That will mean another 12 months after

the war before we shall be able to get the school, and I think it deplorable if the Government or the military cannot find other accommodation so that Kabete college can be vacated. It is a school absolutely essential for the welfare of the children of the Colony, and that is why it was built, and I do not believe the education the boys are receiving at the moment is as effective as it would be at Kabete. The surroundings and conveniences are different, the accommodation is different, and the temporary buildings taken over were never built for a school and are not suitable for a school.

As regards the teachers, I think something should be done to release male teachers. Teaching has been declared a reserved occupation, but I think the Information Office might use some propaganda to the effect, and in the schools too, that not only are these men and women in a reserved occupation but that it is in very many cases against their wishes. They would prefer to be in khaki and to fight for their country, and it is deplorable that any boy or girl should say to a teacher: "My father is fighting, why are not you?" I think they should be given a badge, one easily distinguished, to let children know that these people are carrying on in the interests of education and that it is in every way a war effort on their part. I think they should be given every consideration from that point of view.

I do hope Government will state, apart from the definite information given by the hon. Director of Education on the part of his department, what is their policy. We are in a peculiar position. We are now living under war conditions and have been for some time. We are going to live under worse conditions after the war is over. Money will be very dear, sterling will be very low on the exchange market, and local conditions will be worse than during the last war, and God knows that is saying something, and Government should make up their minds now and not wait until the economic disaster occurs after this war to justify their educational policy by getting on not only with the present schools but finding further accommodation that we have to-day for the rising generation.

MR. RENNIE: Your Excellency, perhaps I might just say a word or two to deal with one or two points made by the hon. member for Trans Nzoia.

One would imagine, after hearing him speak, that he had not listened to my hon. friend the Director of Education, and one would also think that Government had taken no steps whatsoever in this matter of asking the military authorities to return schools. I myself am well aware that considerable pressure has been put on the military authorities for several months now in this matter, and that as far back as March of this year we asked them when they would be able to hand over this particular school to which the hon. member referred, the Prince of Wales School. The reply we got at that time was that it was not possible at the present juncture to forecast a date on which these properties would cease to be required for military hospital purposes, but the promise was made that the military authorities would communicate with us further as soon as it was possible to give more definite information.

We have taken up the point again with them. I myself have discussed it more than once not only with Brigadier Orenstein but with Col. Barnsley. The position at the present time is this, and I think this relates fairly closely to what the hon. member suggested. I have asked Col. Barnsley if he will go into the question of the cost of finding alternative accommodation to the Prince of Wales School, I have asked the hon. Director of Public Works if he will go into the cost of finding alternative accommodation for the science and other facilities that are at present lacking at Naivasha. I propose, as soon as this meeting of the Legislative Council finishes, to discuss the matter with Col. Barnsley and with my hon. friend the Director of Education, in order that we may arrive at some agreed plan and put that plan up for consideration to you, sir, and the General Officer Commanding.

It seems, therefore, that Government has been taking some steps in the matter and that it is not quite so supine as the hon. Member for Trans Nzoia seems to imagine.

There is some confusion of thought on his part regarding the question of reserved occupation. As far as male teachers are concerned, there is no question of reserved occupation there, but steps have been taken recently to ensure that women teachers are declared to be in a reserved occupation. Most of the men teachers are members of the Kenya Defence Force and have been exempted by that tribunal, and I think the hon. member is not paying much of a compliment to the intelligence of the boys at some of our schools if he thinks they are not aware of the fact that their masters are kept there of necessity and because it is their job and not of their own free will.

There is just one point I may be able to throw some light on with regard to the hon. mover's remarks about the hospital at Nyeri. The military authorities have handed over to this Government No. 5 General Hospital there, that is one of the blocks, for the particular purpose to which he referred. But if I am correct—I have not seen the building—I think that that hospital could hardly be regarded as an adequate alternative to the Prince of Wales School.

The hon. member referred to the question of private schools. In that connection you are aware, sir, of representations made to you on this matter and the steps that have been taken to see that, in the case of a private school in respect of which particular representations were made, one additional male master will return for a limited period, so that the situation at that particular school should be improved to that extent.

There is only one point on which I might elaborate the hon. Director's remarks, and that is about the Indian Girls' School at Mombasa, which was raised by the hon. member Mr. Patel. Steps are being taken to provide alternative accommodation in respect of the use to which that school is put at present. It is being used not by the military but the civil authorities as a civil emergency hospital, and steps are being taken to extend the civil hospital at Mombasa with a view to giving up the school and allowing it to revert to its former purpose.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I conclude from the contributions made to the debate by the hon. Director of Education and the hon. Chief Secretary, that this motion is going to be accepted by Government, and thereby Government has implied its intention of doing all they can to improve the educational facilities as far as it is humanly possible to do so under existing circumstances. I would like to pay tribute to the speech of the hon. Director of Education, because I do think it has removed a great many misunderstandings and misconceptions which may have been held by various people. He dealt with the subject under four heads: staff, buildings, what he called "content", and general, and I will very shortly reply under the same headings.

As regards staff, I am sure we are all relieved to hear what the position is. I trust that everything possible will be done to expedite the arrival of those who are expected from overseas. The only point on which I am not quite satisfied is whether Government is really making enough effort to help the private schools to secure adequate staff, because if we did not have the contributory assistance of the private schools towards educating the children in this country we shall fall considerably short as regards accommodation. They form part of the whole, and I therefore hope that everything possible will be done to help them.

As regards buildings, I think we have had a very good explanation of what the situation is and also of the expenditure incurred on buildings since the war, and this has certainly been illuminating to me and to most of us on this side of Council. At the same time, it does appear that although there is no waiting list for the Prince of Wales School, for the Kenya High School, or for most of the schools, and although there was none I understand at the beginning of the year, there is now a small waiting list at Nakuru of three or four, and one at Eldoret. Surely we can somehow or other find room for four extra in the two schools. I hope Government will try as far as possible to prevent these waiting lists because they, quite rightly, do provoke dissatisfaction.

As regards the "content" of education, the hon. Director of Education suggested that we did not seem to pay much attention to that and rather regretted the fact. I must take him to task, because I did mention facilities for the higher certificate and did mention also special training, vocational training, required for young people when they come back from the army. I think we really do pay quite a lot of attention to the content of education.

Lastly, under general, the hon. Director admitted that he was not entirely satisfied as to the position of children of certain families living in out of the way places. That has been a problem in this country for many years, and under war conditions that problem might tend to increase and become more difficult. We may find quite a few children growing up entirely without education. I do hope that every possible endeavour will be made to avoid that, and repeat the hope that in spite of the war inquiries will be made as to the possibility of the introduction of compulsory education in this country being proceeded with.

Finally, I would say that the hon. Director of Education hoped that his remarks would assist in eliminating misapprehensions and clearing up the position. I hope so very much too, but unfortunately the destruction of one individual seems to be considered more important by the Press than the future of a great number, and we are not honoured with the presence of a reporter at these meetings. I therefore trust that in the interests of everybody concerned and in view of the misunderstandings that do exist in the country, some means will be found of reporting the hon. member's speech in full in the Press.

The question was put and carried.

COFFEE INDUSTRY ORDINANCE, 1934

Select Committee to Consider Amendments

MRS. WATKINS: Your Excellency, I beg to move:

"Be it resolved, that a select committee be appointed to consider the desirability of amending the Coffee

(Mrs. Watkins)
Industry Ordinance, 1934. (a) to take away the power which is given to the Board under section 3 (13) to make by-laws governing the election of delegates to the Conference; (b) to empower the Governor in Council to make rules under section 18 governing the election of delegates to the Conference; (c) to provide that such rules shall not entitle any owner of a coffee estate to more than one vote.

This is a matter of very considerable importance to the coffee farmers of Kenya. Some hon. members here will be wondering why on earth we cannot settle these things at another time and in another place, the Coffee Conference. My explanation to this Council is that we cannot do it because we have not got equal representation. At the risk of boring this Council and Your Excellency, I must refer quite briefly to some of the recent history of the coffee world.

Ten years ago we had the Coffee Union, the only corporate body on which we could discuss the common interests and through which at times we could approach Government. When Government increased enormously the specialist services for coffee which, after all, was the main export of the country, we had to have something more definite and less unwieldy than a whole union of farmers with which Government could deal, and so our union became a Conference, and from the members of that Conference a board was elected. In the first instance the delegates were sent up to the Conference from the different districts, usually through the district associations. On these associations each farmer could vote once, and no one voted more than once. But when the Coffee Board was firmly established, its members suddenly began to think that it was rather unfair that the small man should have the same say as the large man in these interests. They thought it would be better to have the acreage vote, and so they tried it. Fifty acres carried one vote, 2,500 acres carried a delegate, and these delegates voted for the board. Ultimately the country was divided into two areas, east and west, and there were three delegates for the eastern area and three for the western area.

Hon. members must disabuse their minds from the hallucination that I am a rather large woman, and must recognize the fact that in farmers' parlance I am a small man, putting the case of the small man before you to-day, and also the case of some of the larger farmers.

What happened then was the acreage vote was supplemented by a show of hands occasionally. If people preferred it they could have a show of hands, a *per capita* vote. Over the course of many centuries at home it has been decided that for a ballot to be just it must be secret. If that is so at home, in large towns and in large communities, it is doubly so here because, after all, in farming communities, the large farmers and the agents for the syndicates are primarily the job givers and advisers to the Land Bank, and it does happen that the smaller man has felt very strongly that he was not in a position to oppose these men. I will not press that point any further, except to say that I think a secret ballot for these matters is axiomatic.

Another thing which to me is axiomatic also is a voters roll. If you claim an acreage vote, the acreage should be against each planter's name on the roll, and if agents or farmers generally are representing owners there should be a written statement that they have the power of voting by proxy. If I were to ask for a voters roll I should be given a list of all coffee planters in the country, but it is rather out of date. I took that list, which was published in 1937, to the relevant department in this country and to some district commissioners in coffee districts to get it brought up to date, and we found an original entry of 878 coffee planters. We then found that 374 had gone out of production or come into production, and numbers of farms had changed hands, so that there were about 500 corrections in a list of 878. I submit that that is not a voters roll at all, and I think we ought to have it. The list is here and the corrections are on it.

What has the result of all this muddle been? There has been an annual conference, and from that annual conference the board is annually elected, whose members retire in rotation. That is the surface effect, but in practice the same

[Mrs. Watkins] names, may I say the same clique, remain in power throughout the years. At the meetings where we elect our delegates, as soon as one goes into the room it is apparent to anybody whether a show of hands or the acreage vote is going to be most beneficial to the particular delegate wanted by the big companies. Even if the acreage vote is not brought in it hangs like the sword of Damocles over our heads. As a result, people say that it is a pure waste of time to go to these meetings, and why go there if the large men get their own way. Once or twice is quite enough to show that the syndicates can use it if they wish, and that it is hopeless to get anything changed. The majority therefore sit back and the big syndicates have it mostly their own way.

This uneven representation did not matter very much in the years past, because the board was advisory, and whether big farmers or little farmers represented us did not matter so much. But now the board is the only advisory body which Your Excellency can recognize, and it is entirely linked with control, and no one else can be consulted on what the coffee planters want except that board, then we say it is urgent that that board should represent us and not our acreages. Hon. members will say, I am sure, let the board alter it. I wish we could—we may be able to after this has been aired in this Council. But the idea of coming here is because we are unable to do it. We have tried our utmost again and again to get things altered.

May I read extracts showing we have attempted it and have been not defeated so much as side-stepped, and it is the side-stepping we resent more than being defeated. In the conference proceedings of 1934, pages 89-90, there was a motion to the effect that "Conference favours election of candidates by means of a postal ballot". An amendment to this was proposed and lost by 26 votes to 14 that "the present system was unsatisfactory" and some alternative system should be explored. The chairman did not put the original motion on the plea of lack of time and said the board would make investigations and issue a report. This was side-step No. 1.

Again in 1934/5, pages 44-6 of the annual report, it says "The question of election of the board by postal ballot has been left over to obtain the opinion of the industry on acreage representation. Nevertheless in the 1935 conference, the board itself proposed a resolution that the procedure of Appendix F be approved and it was carried by 39 votes to 1". The report, however, was published bound together with the conference proceedings, so that the industry generally had no time to consider the matter until it was an *au fait accompli*. Side-step No. 2.

In the monthly bulletin for May, 1938, page 80, under the heading "District Representation" occurs the following: "If the industry desires the existing arrangements changed in any important principle, the matter may properly be brought before the 1938 conference. Subsequent action will be in accordance with the instructions of the conference." Accordingly, at the 1938 conference, a resolution was adopted that the conference "considers that the present method of election of Eastern Area board members is unsatisfactory, and that a system be substituted in the Eastern Area whereby every coffee planter entitled to do so shall be able to record his votes direct for any particular candidate". If the board members were elected by postal ballot, it would not much matter how the delegates to the conference were elected, but what we resent is that the members for the board have to be elected from the conference who are dependent on acreage vote.

At the 1939 conference the following motion was on the Agenda: "That this conference is of the opinion that the present method of election of the members of the Coffee Board is inequitable and considers that the existing system should be abolished. Conference therefore requires that board members be elected by means of a ballot at which all those coffee planters who satisfy the geographical requirements of section 3 (1) (d) (e) of the Coffee Industry Ordinance and are there defined as voters shall have the power of voting and that each such coffee planter be allowed to cast a single and individual vote by means of a postal ballot or at the poll in person". Unfor-

[Mrs. Watkins] nately the war intervened, and Side-step No. 4 occurred.

Well, the feeling has grown stronger naturally after all that, and it seemed to me essential to bring the light of cold hard facts to bear on this. As I said before, the first thing I did was to get the list brought up to date as far as I could. I went to the people who collect licences who ought to know approximately how many coffee farmers there are, and to district commissioners, and I was helped enormously by leading men in the various districts, Ruiru, Thika, Sotik, and so forth. They have given me long lists of people who do not favour the acreage vote. In my own corner of the world I asked people, and those at a distance I could not see I wrote to and said "Please let me know what you think about this as soon as you can". Some of the postcards were very amusing, and typical of Kenya, and witty, and some relate how in the past they had tried to fight acreage voting and had failed.

The results of all this I would like to give hon. members. We have 736 coffee farmers still on the active list. We have 343 people who want acreage voting abolished. We have 42 people who do not want acreage voting abolished, and automatically those who are members of the coffee board are included in that 42; we thought they must be against us in this matter. Süll, Ruiru, Kiambu, Ngong, Kabete, Limuru are in the constituency I serve, and I got a majority from each separate ward in favour of single voting, not a general one over all the wards; and when I saw the majority of yeses over the noes for all the absentees, together with all those whom I had not been able to ask or who were away, I knew I should go ahead.

What do we want? One single clear-cut attitude. We want single voting, just that, nothing else, just single voting. We are not against coffee control, we welcome it. We are not against the coffee board, we know it is an essential link between us and Government. We are not against control, as so many people consider we are. We welcome control, it is a help to us, and we are grateful for it, but we do say that when our board is completely

linked up with control it must be representative of us. Your Excellency may have noticed in this country that each farmer has his own opinion, and although it may not be possible for Government to recognize these separate opinions I will say that a farmer does want his opinion taken into account in the election of delegates for his own interests, and the small man goes so far as to say that his opinion is worth more than the delegated vote of a large syndicate and that he, in his opinion, is worth more, because his 150 or 100 acres with a house and family and cows, pigs and whatnot are more valuable than similar acreage held by a syndicate whose interests lie elsewhere. I was told by a hard-headed financier recently that was sheer soft sentiment. I maintain that it is sheer hard cash because, after all, the man is paying his taxes, his children are being educated here, and every penny of income and overdraft is going back into the country, while the profits from syndicates go often to other countries and sometimes to foreign countries. I think that we must remember Cecil Rhodes' slogan: "More and more homes for Britishers, more and more ledgers for managing directors".

The acreage voters are making considerable capital out of the fact that it is quite unfair for a man with half an acre to have the same say in choosing a delegate as the man with 1,000 acres. That would be true if it was not a hypothetical case, but no man with half an acre is interested in voting, few farmers with small acreage are, and it will be noticed that I have left it for Government to decide, or the committee, how small is to be the minimum below which no coffee planter can be interested enough in voting or if he is to have a vote at all. I think that is a matter for discussion and arrangement, but we do say the man who is vitally interested in his representation is not the large syndicate man but the small farmer living on his farm. It matters to him tremendously whether the cess is large or small, what power is used by the syndicates, it matters more to the little man, much more than it does to the big syndicates.

We are also met at times with the argument of the hard-headed financier, with

[Mrs. Watkins]

whom I have a friendly acquaintance, that it is a purely industrial matter, and that the man with fifty shares should have less control than the man with 1,000 shares. If that was so, and it was an industrial company, then the coffee board could never alter its own electorate. No company's board can take it upon itself to alter the powers that gave it birth. Yet that is what the coffee board has been competent to do. We are most emphatically not an industrial company. I was told that it was industrial or political, and we have to be one or the other. We are not political, nor are we industrial; it is more of an administrative body. A municipality, I think, somewhat resembles our coffee board, because a municipality covers many industries and the whole livelihood of the people living in the town, and a municipality is also ruled by one vote per head. I maintain that a municipality has a close resemblance among public bodies, for the coffee board covers the whole livelihood of the coffee farmers, the whole future of these men. If you wanted to force that industrial argument further and have differentiated voting power, I maintain that the acreage vote is not the yard stick at all. The acreage which you have does not represent the capital you invest by a very long way. I know that from experience. At one time I invested £1,500 in 100 acres. More recently I invested £6,000 and have 98 acres. Neither does it represent quality or even proportionately quantity. It is not the yard stick of our interests at all. It is quality. Quality is the only thing that matters, for it keeps Kenya coffee in the forefront of the world's markets in slumps and depressions, and yet at present the small man with a quality coffee grown under his personal supervision has a board elected by quantity producers.

Yet it is quality that matters these days, and Kenya will find in a very few years how much quality matters.

Nor is this present dictatorship of the coffee board a temporary matter. If it were a temporary war measure we would be much more philosophic, but there are seven years in which they might have taken a referendum, and four times in

which they have side-stepped the issue, as I have tried to show. I am not criticizing the board. I have not one word of criticism except that it has side-stepped any alternative to the present arrangement. At present certain matters are *sub judice*, although uppermost in our minds, and I am not worrying about them. But I do say this, however good the board's intentions we do not want to be ruled by any clique, and as far as we know the only way to get out of a clique's hands is one man one vote. I presume to suggest that that is why the one man one vote principle has survived the centuries at home is because it is the only known way to get out of cliques who get themselves into power and take measures to keep there. However well-meaning a clique is we would rather have one man one vote.

If you say "What does it all matter?" I would say, look at the results. You have two alternative systems of voting, both under the control of syndicate farmers very largely, but you have no voters roll; what does it all matter? I want to give one instance of many—blind liquoring. Most of you are not very interested in blind liquoring, but I should like to say just this. The liquoring of coffee is grading it for sale by putting it into different classes, and if you have blind liquoring it means a man tests the coffee without knowing from whom that coffee comes. Though all maintain on the board that no one can possibly be prejudiced by a pre-knowledge of where this coffee comes from we say it probably is prejudiced. The taster knows perfectly well the farm and may have a knowledge of what is happening on that farm, its condition and so forth, and he also knows the men who control the industry, and also his job. If by so knowing he is entirely unprejudiced by all these associations, why not reassure the public and have blind liquoring. It would show then that he was unprejudiced altogether. They say he is unprejudiced, but how are we to know? Yet we cannot get it through.

Another point is that we think it rather anomalous for a paid servant to be permanent chairman of the conference and of the board that has of necessity *carte*

[Mr. Watkins]

blanche to decide how much a paid servant should be paid. It sounds rather like Peter Piper, but it is one of the things we want to alter.

I was going to ask for a free vote on this motion because, after I have spoken and raised the inevitable barrage from one or two members on this side of Council, it places those men who sit opposite in a frightening array as in a jury box, but I do not think they are so frightening taken one by one as in the cohesive mass of the steam roller. I should also like to say that the steam roller disintegrated into its component parts can do a lot of thinking. But I shall be quite glad to leave it to the Council as really a petition for the restitution to us of an age-old British right which, for a short period in one of our corporate interests here, has temporarily slipped of the straight and narrow way of single voting. I have, however, been advised that a fairer and better way is to ask for a select committee to go into our affairs.

Before I sit down, I should like to ask one thing: was there ever a rich man or a man of many possessions, who did not feel right inside himself certain that he had more at stake than had his poorer neighbour, and yet when our personalities fade out of the picture, when we ourselves stand back from the scene, there is not a man jack in this Empire who does not know that it is the man who should be represented and not his possessions. I am glad, and very grateful, to be allowed to leave this matter in the hands of such select committees which Your Excellency may appoint, because I have faith in their judgment, and also complete faith in the justice of my cause. And now the small man can sit down.

MR. WRIGHT: Your Excellency, I beg to second, and claim the right to participate later in the debate if necessary.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 25th June, 1941.

Wednesday, 25th June, 1941

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 25th June, 1941. His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The Minutes of the meeting of Tuesday, 24th June, 1941, were confirmed.

PAPERS LAID

The following papers were laid on the Table:—

By MR. RENNIE:
Standing Finance Committee Report on Schedule of Additional Provision No. 1 of 1941.

By MR. LOCKHART:
Select Committee Report on the Excess Profits Tax Bill.

ORAL ANSWERS TO QUESTIONS

No. 39—SETTLEMENT COMMITTEE'S RECOMMENDATIONS

MAJOR—CAVENDISH-BENTINCK asked:—

In view of the obvious importance of having plans made well in advance for post-war closer settlement, will Government give an assurance that the Settlement Committee's recommendations which received the approval of this Government and of the Secretary of State before the outbreak of war, can be considered as still having Government approval and backing, in which connexion I would especially refer to section 8, paragraphs 170 to 175 of the Settlement Committee's Report?

MR. RENNIE: Yes. It will, of course, be realized that in so far as the finance of the scheme is dependent on the provision of loan funds it is not possible to forecast how soon after the war the present embargo on loan issues will be raised.

No. 40—LAND AND WATER CONSERVATION COMMITTEE

MAJOR—CAVENDISH-BENTINCK asked:—

Following on the gazetting of the personnel of the Land and Water Conservation Committee and its ambiguous

[Major Cavendish-Bentinck] terms of reference, will Government give an assurance that within reason adequate funds will be provided to meet essential expenditure on any scheme or long-range plan which may after investigation receive the approval of this Committee?

MR. RENNIE: Any funds required in order to carry out any recommendations made by the Land and Water Conservation Committee will require to be voted in accordance with the usual procedure and I am, therefore, unable to give an assurance that any expenditure proposed by this Committee would necessarily be approved. I would add, however, that any recommendations made by the Committee will receive the urgent attention of the Government.

Government sees nothing ambiguous in the terms of reference of this Committee which closely follow the wording of a Motion which was passed by this Council on the subject of the appointment and objects of this Committee.

MR. COOKE: Arising out of that answer, is not the hon. member himself as a member of Executive Council responsible for part of this ambiguity?

No. 41—GREAT NORTH ROAD
MAJOR CAVENDISH-BENTINCK
asked:—

Is Government yet in a position to give any information in regard to the projected improvement of the Great North Road?

MR. STRONACH: So far as the sections of the Great North Road that lie outside Kenya are concerned, this Government is not in a position to make any statement at present, but it is understood from the Chief Secretary to the Governors' Conference that the matter is under telegraphic correspondence between the Secretary of State and the territories concerned. As regards the Kenya section, work on a portion of that section is expected to begin this week, and in this connection I would refer the hon. member to the reply which has been given to Question No. 38.

COFFEE INDUSTRY ORDINANCE, 1934

SELECT COMMITTEE TO CONSIDER AMENDMENTS

The debate was resumed.

LORD FRANCIS SCOTT: Sir, I rise to oppose this motion on broad grounds, that this is not the right place or the right time to discuss this particular question.

I should like to say first of all that I regret very much that, as I had to return to my office yesterday morning before 1 o'clock on account of urgent business, I was unable to hear the speech of the hon. mover. Of course, our position here is made extra difficult from the fact that the Press have declined to take any part in reporting our deliberations so that one does not get the additional chance of reading speeches in the Press next morning.

With regard to this, I should like to remind the hon. Chief Secretary that he took particular trouble to have a certain member of the *East African Standard* staff given indefinite leave from the Police Force so that he should be in a position to report the proceedings of this Council, and as that person has not been used for that purpose I would suggest that the leave be cancelled and that he be returned to duty.

MR. RENNIE: On a point of explanation, I have no recollection of any such undertaking on my part.

LORD FRANCIS SCOTT: I happened to be Deputy Director of Mar Power and was intimately connected with the case, and I think my hon. friend Mr. Montgomery will bear me out in that respect.

MR. RENNIE: On a further point of explanation, the undertaking may have been given by the editor of the *East African Standard*. Of that I have no recollection. It was not given by me.

LORD FRANCIS SCOTT: I do not say that any undertaking was given by the hon. Chief Secretary. I only say they tried to get us to grant the exemption, which we declined, and he was given indefinite leave from the police so that the newspaper would be in a position to report the proceedings of this Council.

[Lord Francis Scott] which they had said they were unable to do on the previous occasion through lack of staff.

To come to the motion. The reason I oppose this is that it has always been the custom for industries to settle their own internal affairs as an industry as a whole, and then to ask for legislative sanction to those proposals put up to this Council. One has to go back some years for the history of the coffee industry of this country. I personally have been interested in coffee for 21 years, though certainly not to a major extent, and for for many years the difficulty in the coffee industry was that it was impossible to get any co-operation between coffee planters, or a proper organization. I remember the late Lord-Delamere used to say that coffee planters were most excellent people in every sort of way until they got on the subject of coffee, when they became quite unreasonable and impossible. Whether that is a fair statement or not I am not prepared to say, but he said that.

After many years the coffee industry did get together, it did have this Coffee Board and the meetings of the Conference every year, which gave opportunity for the industry to discuss its affairs and really to speak more with one voice. Unfortunately, as I am afraid too often happens in Kenya, certain elements started an agitation against the board which had been elected to represent the interests of the industry as a whole. That agitation went on for some time, and of recent years it has come to a much bigger pitch and has been brought to a head because of the difficulties which have been caused to the industry by the war and the restriction on shipping. The result has been very unfair. In my opinion, attacks on those gentlemen who have been helping in the control of the industry, gentlemen who were selected by the other planters and who, in my opinion, have performed most admirable service, and I am rather surprised that the Government should have accepted a motion which in effect is more or less an attack on that board. I consider that this matter should be threshed out by the industry as a whole, and not dealt with in this Council by

a representative of a section of that industry, and I further say that this is the wrong time to do it. Half of the coffee planters of the country and all the younger men are away on active service, and are not able to express their views or take any part in the deliberations, and I do further say that it is an unjustifiable waste of time and energies of the hard-working members of this Council to spend a lot of time investigating the causes and complaints in an industry which are purely of a parochial character and can have no effective bearing on the prosecution of the war.

I suggest that for these reasons Government are wrong, if I am informed correctly, in saying that they will accept the motion. However, if they are going to accept it, as I am given to understand, I do trust that the select committee to consider the matter will be composed of people who are completely impartial in the matter and have no interest in the industry itself, and that there will be a strong chairman who will be able to keep the inquiry on the proper lines. For all that, I regret very much that valuable time should be wasted by members of the Council on a matter which, in my opinion, should not be dealt with at the present time at all.

COL. KIRKWOOD: Your Excellency, I rise to support the motion on the ground that I do not agree with the voting on acreage and I do not agree that when delegates are appointed to the board the board should then by adopting a procedure on acreage get into the saddle and make it impossible to get them out. There is an old truth instituted by Henry George of one man one vote, one wife one husband, etc., and if Government could possibly accept the principle of votes on acreage we should have it in this Council, when we could dispose of my hon. friends opposite, because they would be outvoted on every occasion and we should have a chance.

In 1934 Mr. Reynolds was elected by the Trans Nzoia to the Coffee Conference. He moved a resolution proposing that the vote should be a postal ballot. It would mean nothing but one ballot one vote. But that was turned down in 1935. It is reported on page 89 of the

(Col. Kirkwood)

Conference Proceedings. A recent vote taken in my district for a postal ballot was 54 yes and two no. I am quite sure that the hon. mover could give the details if she thinks advisable, and we can find a majority in every district for a postal ballot. I am surprised at the opposition put up by the noble lord the hon. Member for Rift Valley, especially when he says it is a waste of time and not the right place in this Council to alter the Ordinance.

LORD FRANCIS SCOTT: On a point of explanation, I did not say that.

COL. KIRKWOOD: Or suggest that this is not the right place to suggest altering the Ordinance. What has been asked for is very reasonable indeed, to appoint a committee to investigate, and leave it to the coffee industry, but the hon. member objects to that. He admits there was no co-operation in the coffee industry when it comes down to their own interests. I agree with him, but if it is maize there will be. I do not want to digress, but I am wholeheartedly in support of the motion and do hope that Government will accept it. It is a most reasonable request, and it is leaving the decision to the industry itself, but I do not agree that a free vote should be given. I see no reason why a free vote should be given on this subject. If a free vote was universal and constitutional I would welcome it but it is an awkward position to put senior officers in the Council and tell them to vote as they are told, so that I do not think a free vote advisable. It is a rotten constitution, and should be done away with at the earliest possible moment.

There are many other points that could be touched on, but I do not propose to do so. I have touched on the main points, and hope Government will appoint the committee and that the committee, after taking evidence from the industry, will seriously decide to leave it to one man vote regarding the Coffee Board.

MR. COOKE: Your Excellency, in support of the motion so eloquently moved I should like briefly to make one point. That is, to support the principle

of a return to the democratic idea of one man one vote. My hon. friend the Financial Secretary told us a few weeks ago in supporting the present system that it was merely a question of arithmetic. Thank goodness we are not governed by mathematicians! But, apart from that, I would remind my hon. friend of the constitution of the United States of America, where the Federal Senate, composed of States varying in population and wealth, has the principle of one state one vote. South Dakota has the same power as Pennsylvania. I think it only right to assume that the gentlemen who framed the constitution were at least as intelligent as my hon. friend, reluctant though he may be to acknowledge the fact.

I was rather surprised to hear the noble lord indulge in what I thought the rather dangerous principles he enunciated, and I must say that I think it is a pity we are not united on this particular point of view since the coffee industry is going through such a bad time at the present moment.

I beg to support the motion.

MR. RENNIE: Your Excellency, Government's attitude in this matter is perfectly simple. It assumes in the first place, and I think that assumption has been supported by the statistics which the hon. Member for Kiambu gave us yesterday, it assumes that it is the desire of a majority of the coffee industry to have this particular matter inquired into. Government proposes to accept this motion, and its acceptance is not as the noble lord the hon. Member for Rift Valley suggested, an implied criticism of the Coffee Board. It merely evinces the desire of Government to give an opportunity for an impartial inquiry into complaints that are alleged to have been widely made by members of the coffee industry.

I wish to make it clear that the acceptance of the motion does not necessarily mean that Government agrees with the proposed amendments outlined in the motion. It merely means that it sees no objection to the proposed inquiry which will enable the matter to be fully investigated, Government hopes, and enable members of the coffee

(Mr. Rennie)

industry to express their views in the fullest possible fashion.

MR. SHAMSUD-DEEN: Your Excellency, my personal view has always been that in this Colony there is too much control of practically every industry that exists, and that these controls cannot but interfere with the freedom of trade. But there will be an opportunity for me to express my views on that subject at a more proper time. In this case I think the hon. Member for Kiambu has made out a very good case for an inquiry, and I congratulate Government on the graceful manner in which it has accepted the motion; which I beg to support.

MRS. WATKINS: Your Excellency, there are very few questions which I have to reply to.

The hon. Member for Trans Nzoia wanted a few more figures, I think, which I shall be glad to give him. There are nineteen coffee districts, I will not read the names, and we have a majority of twelve districts. We have now just on 350 yeses and we have 46 noes, including those automatically given to members of the Coffee Board and other opponents. I think the noble lord the hon. Member for Rift Valley will say he has not been asked, but we gave him a double no, because he has been so emphatic about it, and including that there are 46 noes and 350 yeses at the present moment. (Lord Francis Scott: I have had no notice about it, and I suppose many other farmers did not.)

I find it rather difficult to answer the objections of the noble lord, and only regret that pressure of his many duties prevented him from hearing my arguments put forward yesterday. I do not think it is incumbent upon me to reiterate those arguments to-day, but I should like to reply briefly and assure him that I tried to get answers from the Coffee Board on various questions. Here is one example. There was a meeting at Ruiru to clear up different points that were puzzling us. We asked the representative of the Coffee Board to give us an answer to the rather innocuous question as to whether the board had any intention of abolishing control at the end of

the war. I counted the number of times: 36 times did the representative of the Coffee Board unbutton his coat, and 37 times did he button it up, and he went away with the answer still buttoned up inside and we never got it. I have never seen before such a perfect picture of dictatorship vested in democracy and thought it rare, but since I have come forward into public affairs I have found it not as rare as I thought it was. The steam roller is after all an open affair; but it is frightening to people to find pocket dictatorships wrapped up in the folds of public work.

We find that co-operation means keeping quiet and following the leader, and we are not very happy about it in the coffee world or anywhere else, because we feel that translation of the leader into a chairman of a board is rather unpopular, and we do not like it, and are rather frightened, especially we coffee planters, that there is a dictatorship hidden in the centre and we cannot get it out. That is the point I wanted to make.

I understand the noble lord's objections fall into two parts. One is the place and time of bringing this motion. I tried to show yesterday why I had to bring it up here and now; and I think he is unaware of the large majority we have. I heard a rumour in town that quite a lot of members are out of touch with their constituencies, and it was told as a lesson to me, but I am surprised to find that in the Rift Valley itself I had a very large majority. I would not have believed that that was possible without any support from the noble lord in this motion.

I should like to say here and now that I am very sorry the noble lord is against me over this. When he is in disagreement it is my loss, but I feel that I am here to represent the views of the constituency which I serve more than the views of the hon. Member for Rift Valley. As long as I am in this Council and until they throw me out, I am going to serve that constituency and its views as well as I can, and if behind those constituents there is a majority of other constituents I shall go forward and do what I can for the farmers whom I serve.

The question was put and carried.

MR. RENNIE moved that the select committee consist of: Mr. Harragin, Chairman; Mr. Blunt, Mr. Tomkinson, Major Cavendish-Bentinck, Col. Modera, Mr. Nicol, Mr. Bouwer.

MR. BROWN seconded.

MR. PANDYA: Your Excellency, the Indian members are entitled to one member on the committee. We have supported the motion, and are rather in agreement with the views of Government. I suggest the hon. member Mr. Isher Dass.

MR. RENNIE: Perhaps the hon. member would give me a name of a representative?

MR. PANDYA: The hon. member Mr. Isher Dass.

LORD FRANCIS SCOTT: As no Indian has any interest in coffee at all I think it is quite improper.

MR. COOKE: Is it any more reason why an Indian should not be on the committee?

HIS EXCELLENCY: In order to put the hon. member Mr. Pandya in order, is he making a formal amendment?

MR. PANDYA: I beg to move that the name of the hon. member Mr. Isher Dass be added.

MR. SHAMSUD-DEEN: I understood the hon. Chief Secretary had accepted the suggestion and had added the name to his original motion.

HIS EXCELLENCY: The position is that the hon. Chief Secretary has moved that the Council appoint a select committee consisting of certain names. I understand that the hon. member Mr. Pandya has moved an amendment that there be the addition of a name. Will somebody second it?

MRS. WATKINS: I beg to second.

MR. MONTGOMERY: If we follow this to its logical conclusion natives ought to be represented. I move that the name of the hon. Member Representing Native Reserves, Dr. Wilson, be added.

COL. GROGAN: I support that as they get all the money from the coffee industry, sir. (Laughter.)

COL. KIRKWOOD: The mixed farmers should also be represented on this committee.

MR. COOKE: May I suggest an Arab, sir?

HIS EXCELLENCY: The amendment proposed by the hon. member Mr. Pandya is now before Council. Does any hon. member wish to speak?

LORD FRANCIS SCOTT: Another name has been moved by the hon. member Mr. Montgomery and that amendment has to be taken first.

MR. MONTGOMERY: The hon. Member for Ukamba seconded it.

MR. PANDYA: I am prepared to accept it because I think it fair.

COL. GROGAN: Should there not be an Arab, because Arabs invented the use of coffee? (Laughter.)

HIS EXCELLENCY: In view of the amendments, which were quite unexpected as far as Government is concerned, I think it would make for the convenience and conduct of business if we allow this to stand over until after the usual interval and consider the matter further. We will now proceed with the next motion on the Order paper.

CROWN LANDS ORDINANCE SETTING ASIDE OF AREAS AS NATIVE RESERVES

MR. MORTIMER: Your Excellency, I beg to move: Be it resolved that this Council approves of the proposal to set aside in accordance with the provisions of section 57 (1) of the Crown Lands Ordinance the following areas of Crown land as Native Reserves for the purpose of satisfying the economic needs of the natives for whom they are required:—

(i) *Olungurone*.—A portion of land which is being excluded by exchange from the Masai Native Land Unit, comprising approximately 34,700 acres, triangular in shape and bounded on the north-west by the south-western boundary of the South-Western Mau Forest Reserve, on the south-west by the Amala River and on the west by a series of cut and becooned straight-lines.

(ii) *Gedi*.—An area of Crown land approximately 12,250 acres lying about 10 miles south of Malindi Township, bounded on the north

[Mr. Mortimer]

and east by Mazrui Reserve No. 5, on the south by Mazrui Reserve No. 4 and a line approximately 600 yards from and running parallel to the Coast, and on the west by the Mida Creek and the Arabuko Sokoke Forest Reserve, but excluding the area comprising the Gedi Ruins declared under Ordinance No. 53 of 1934 to be an Ancient Monument.

(iii) *Digo*.—Four portions of land adjoining the Coast Native Land Unit in the Digo Administrative District of the Coast Province and known as L.R. Nos. 5004/34, 5004/35, 3855/37 and 4660, comprising in all approximately 10,350 acres.

(iv) *Gichuiru*.—The Gichuiru Forest Reserve, comprising approximately 745 acres.

The Land Commission's detailed recommendations have been put into effect by the addition of lands to the native land units and the establishment of native reserves. It was inevitable, however, that there should be a certain amount of clearing up to be done after the Commission's recommendations were carried out, particularly on those points where the Commission's recommendations had proved to be inadequate. I refer especially to the problems of the return of squatters and the Kiambu and Limuru claimants of right. The present resolution is submitted with the object of clearing up these few outstanding matters left over from the Land Commission Report and placing native occupation of the lands concerned upon a legal basis.

The Native Lands Trust Ordinance, following the recommendations of the Commission, declared that the lands which had been occupied by natives by reason of historic right should become native lands, as distinct from Crown lands, and should be known as native land units. The lands which were handed over by the Commission for native use to satisfy specific permanent or temporary economic needs were governed by the Crown Lands (Amendment) Ordinance and were declared respectively native reserves and temporary

native reserves. Provision was made in section 57(1) of the Crown Lands (Amendment) Ordinance for the Governor, with the approval of this Council, to set aside additional Crown lands to be native reserves for the purpose of satisfying the economic needs of any of the native tribes of the Colony, and it is under the provisions of that Ordinance that the approval of Council is now sought of the present resolution. There are four separate items embodied in the resolution, and approval is sought for the setting aside of these lands as native reserves for satisfying native economic needs in the circumstances which I shall now describe.

I have here maps illustrating the four items included in the resolution which any hon. member may see if he so desires.

The first is the area of 4,700 acres known as Olungurone, and this part of the resolution is the sequel to the motion which was accepted by the Council last week for the exchange of this land and its excision from the Masai native land unit. The land has now been declared Crown land, and the way is open for the next step to which I referred during the course of the debate. The reasons for which this land is required were fully explained during the debate, and there is no need for me to say anything further on that point, except to remind hon. members that the main objectives are to have land available for the accommodation of returned squatters and to find immediate accommodation for Kikuyu squatters in Masai country. Some 2,000 acres are at present being demarcated into plots, and that will suffice for the immediate future.

The settlement will be under the charge of an administrative officer who will be armed with a comprehensive set of rules designed to preserve the fertility of the land, to conserve the water supplies, and generally to protect it from misuse. No native will be allowed to occupy land except under an individual permit.

The second piece of land is at Gedi, on the coast near Malindi. In paragraph 1351 of their report, the Kenya Land Commission mentioned the great mass

[Mr. Mortimer] of natives on the coast not living on their own land or land specially reserved for them, but simply occupying on sufferance any land where they could find a place and where nobody objected. Some of the land was Crown land, some private land, and some land awaiting adjudication under the Land Titles Ordinance. A considerable part of the coastal strip in the Kilifi district is covered with thick bush. For many years natives of the hinterland have cultivated sporadically on it without let or hindrance from the owners save that they were not allowed to plant trees or cultivate any permanent crops, because such action is considered to establish some kind of claim to ownership in the land. The resulting soil deterioration and disappearance of timber has been viewed with very great concern.

Large numbers of these people were born in the coastal strip. That portion of the Nyika native reserve west of Gedi area, the Ganza and Vitangeni locations from which these people originated is subject to chronic failure of crops. The crops failed in 1928, 1930, 1932, 1934, 1936, and 1938. As recently as 1934 Government had to supply food for the inhabitants, and hut tax was reduced to Sh. 8 in those areas. The natives living in Ganza and Vitangeni suffer from chronic under nourishment and have an extremely low standard of health and energy. It must be recognized that it is not practicable to remove back to those locations any natives living outside them in the coast strip.

In an effort to clear up the problem some three years ago it was proposed to set apart an area of Crown land north of Mida Creek for the settlement of all the Nyika families, about 850, centred between Malindi township and Tezo. The scheme was to divide the land into 10 to 12 acre plots, giving permits to occupy, including special conditions of development, conservation, and use, and also a special clause governing the succession of the land in the event of the death of the original owner to avoid undue fragmentation. The scheme was actually put into operation with the approval of Executive Council, and the agricultural officer in charge has de-

marked plots as they were required and has generally supervised development. After the enactment in 1938 of the Crown Lands (Amendment) Ordinance, it became desirable to give a legal foundation to that occupation in order that authority might be given to had conservation conditions, and that is the reason why approval is now sought to declare this area of 12,500 acres a native reserve.

The latest report which I have shows that the Crown land in the neighbourhood is entirely cleared of these unauthorized squatters and that 270 holdings in the reserve are already taken up. This settlement is one of the most interesting of recent years, and it should be viewed not so much from the standpoint of clearing Crown land of unauthorized squatters but as a valuable social and agricultural object lesson. The purpose is to make the coast African realize that he can reach a condition of prosperity on a small piece of land on which he can with security carry out permanent improvements under proper conditions of husbandry. Tillat is quite impossible for him with his customary sporadic methods of cultivation, and his shifting about from year to year, exhausting one piece of land and then passing on to another. The social and communal side of the settlement is also being developed side by side with agriculture. This includes traders' plots, dispensary, school, playing ground, market, and a cotton buying centre. The agricultural officer has further projects in mind in the development of village industries and a co-operative market. I submit that the settlement deserves the greatest possible encouragement of this Council.

Hon. members will have noticed that under the heading "Gedi" in the description of the area, the Gedi ruins are excluded. These are preserved as ancient monuments under the Ancient Monuments Ordinance, and every step is being taken by the agricultural officer in charge to ensure that these ruins, a very valuable asset to the Colony and Protectorate, shall not be disturbed in any way.

The next item is Digo. The four portions of land mentioned under this heading were until recently the property of the East African Estates, Ltd., as part

[Mr. Mortimer] of their coast block of 100,000 acres. I need not go into the lengthy and complicated story of this particular grant of land. Suffice it to say that before it was made the native locations in the area were carefully surveyed and were not included in the grant. It was soon found, however, that the survey of those native occupation areas had been very much too rigorous. No room had been left for normal expansion and no allowance made for grazing areas. It was inevitable, therefore, that very speedily a good portion of the East African Estates' land was overrun by natives.

In order to put an end to this situation, which was embarrassing to all parties concerned, it was agreed some three years ago by the company that they would surrender four areas comprising 10,350 acres of land in the southern portion of their block to accommodate these illicitly occupying natives. In return for this surrender of land the company got a proportionate reduction of rent and were released from certain conditions in their title which they considered to be onerous. By proclaiming the land native reserve it will be possible to apply definite conditions controlling the use of the land and the preservation of the soil.

The last item is under the heading "Gichuiru". This land is an island portion of forest reserve of 745 acres in the Dagoretii area. As I have explained, not only in the debates in 1938 on the native land question but also during the debate last week, the problem of finding land for native claimants of right in the Kiambu and Limuru areas proved to be very much greater than the Land Commission had imagined. As part of the final settlement, in order to meet the claims of individuals and to redress any wrong done in the course of the history of European settlement, it is proposed with the consent of the Highlands Board to declare this land native reserve for the occupation of certain claimants of right. The land is in fact completely surrounded by the Kikuyu native land unit, and although it is under forest I think I am right in saying that the Kikuyu have now become forest-minded, and perhaps the harm that might otherwise be done will be somewhat modified. I

deplore as much as any hon. member that it was necessary, in order to settle this very important political and social problem, to include in the settlement this portion of forest land. That had to be done, however, and I submit that hon. members should acquiesce in this settlement as a final solution of one of the most difficult problems this country has had to face in its land policy.

Hon. members may possibly be tempted to ask how many more times they will be called on to vote on the provision of further native areas. I can well understand some impatience on this subject. These items are the aftermath of the Commission's recommendations, and are as far as can be at present seen, with one small exception which I want to mention, final and comprehensive. The exception to which I have referred is a portion of some 2,000 acres of land at Voi which is at present owned by Messrs. Teita Concessions, Ltd., and is being voluntarily surrendered by them for native occupation in order to regularize the native occupation which has taken place there for a generation. As the surrender of the land by the company is not yet completed, it was impracticable to include it in this resolution, and I give hon. members warning that it will come up at some later date so that I shall not be charged with having assured them that this was my last territorial claim.

MR. BROWN seconded.

MR. COOKE: Your Excellency, in congratulating Government on the constructive work at Gedi I would pay tribute to the local agricultural officer whose work has made this possible. As the hon. mover has said, this is a social scheme of the first importance.

I am afraid that I must oppose the fourth item of the motion. The hon. Commissioner for Lands and Settlement told us the other day that he was closing a chapter, but no sooner has he closed it than he turns over some new leaves. I am afraid this will go on, and I must make a protest against it. I am afraid that I did a slight injustice to the Conservator of Forests when I said that soon he would have no more forests to protect, for the same evening I found him wandering in the Arboretum, no doubt hoping that that bit of forest would be

(Mr. Cooke) left for him to look after. Seriously, I think it is time we protested in the strongest manner against these excisions. Perhaps the Provincial Commissioner, who takes an interest in forests, can tell us why it was necessary to excise this forest. It seems to me the fact that it is an island in the Kikuyu Reserve is the strongest argument in protecting it against further erosion.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I am afraid that as the motion is worded I shall have to oppose it. As far as the details of what the motion is supposed to accomplish are concerned, we did hope, that even if we could not use the word "Final", we could at least look on this as one of the penultimate adjustments to be made. As the hon. mover knows, I have been personally connected with a number of these adjustments, and know a good deal about them, and consider they were inevitable and that we had better accept them. Therefore I am in support there. But I wish to propose an amendment to the motion, and explain why when I have read it. I move that the motion be amended by deleting the first paragraph and substituting therefor: "Be it resolved that this Council, being of the opinion that the circumstances attending the proposal to set aside certain areas of Crown land as native reserves are such as to justify such setting aside, accords its approval of the setting aside under section 57(1) of the Crown Lands Ordinance of the following areas of Crown land as native reserves."

I would point out that some few years ago it happened when I was chairman of the European Elected Members' Organization for the time being in the absence of the hon. Member for Rift Valley, we had a debate on the Carter Commission Report, and every single member on this side of Council accepted the recommendations of the report on the condition that these provisions were regarded as final. Those recommendations had been gone into over a period almost of years in this country, they had gone to the House of Commons and to the Secretary of State at home, and even to the Cabinet, and received approval. It is all very well saying that

there has got to be an aftermath, and after a report and inquiry of that kind, a certain amount of clearing up has obviously to be done, but the fact remains that if after a commission of that kind we never try and make their findings final and every time a little trouble comes up we get a motion of this kind, then obviously we never shall get finality.

I will give you an example, which I quoted the last time a motion of this kind came up, the motion already passed during this session, because it really referred to one and the same transaction. I did mention then the following incident, and it is a very important incident. They wanted to realign a portion of the Kenya and Uganda Railway. For that purpose they had to acquire a small strip of land running through a native reserve. I will not admit to such loose terminology as "native reserve" but prefer the legal term and that used by the Carter Commission, and say the railway was to run through a "native land unit"; nor can I admit the argument put forward by the hon. mover this morning that these native land units were only given to natives by reason of historic right. Historic right is nonsense. A large part of the native land units were historic battlefields with no natives on them, and I believe that what we did a few years ago was a commonsense thing. We tried by means of a commission to allocate certain areas of land to certain natives of kindred descent and type, and called them "native land units" in which provision was made for the settlement of those natives for many years to come. What happened to the small strip which was needed for the railway to run through was that the natives had to be dispossessed of a few small portions of land. The natives declared that they were unwilling to go to a distant part of that native land unit to be given land and must have part of a neighbouring farm because they could not be sent any distance from where they lived before. The usual arguments were put up; they might get influenza if they went from Limuru to Nyeri or it was a long way from their friends—the usual arguments. Had we not made a great fuss about it it was going to be accepted that these natives, although there was lots of room in the native land unit, if dispossessed

[Major Cavendish-Bentinck] would be given land in the shape of European White Highlands farm land in the immediate neighbourhood of where they lived before.

It is for the reason that we do not accept this precedent that I think we have to be very careful of the wording of this type of motion. The wording proposed is: "That this Council approves of the proposal to set aside in accordance with the provisions of section 57 (1) of the Crown Lands Ordinance the following areas of Crown land as native reserves for the purpose of satisfying the economic needs of the natives for whom they are required". I looked up section 57 (1)—it never was drawn for this kind of purpose at all. I admit that we have to use it, but if you read section 56 it says: "The Governor may vary the boundaries of the native reserves or of the temporary native reserves". That is, if the population of one native land unit happened to decrease and the population of a neighbouring unit or reserve increased the Governor may make suitable adjustments. In section 57 (1), the one we are dealing with, "Where the Governor considers it desirable, he may, from time to time, with the approval of the Legislative Council and subject generally to the provisions of this Ordinance, by proclamation set aside other areas of Crown land as native reserves or temporary native reserves for the purpose of satisfying the economic needs (whether temporary or permanent) of any of the native tribes", not for individual land owners and right holders, which is what this is being done for.

If we give way on this and substitute an individual alleged grievance to make room for tribes from over-crowded land units if and when they are full, if we give way and allow a precedent that every time a native squeals and asks us to find more land for him we allow this section to be utilized, I think hon. members on this side of Council are all agreed that it is too terribly dangerous a precedent. (Hear, hear.)

A good deal has been said about the Carter Commission and the fact that it did not go into certain things as thoroughly as it should have done. Well, there are three volumes of evidence, and each is pretty thick, and any amount of

maps. Personally, at one time—I do not remember it now—I knew them pretty well, and I submit the Commission went into everything with extraordinary meticulousness. It was a very fine job of work. One thing they did not do: they did not visualize, to my mind (I am speaking personally), the incredible folly of straightaway embarking on individual native land tenure before we even thought of what that entailed, to what extent it could break up or fragment land, to what extent it would go or the ancient tribal rights which would be infringed. That folly they did not visualize, and owing to that folly we are getting into all these difficulties.

I admit, and know, there are certain natives in Limuru and Kiambu who could establish some vague sort of right, chiefly because although they or their forefathers were paid for the land there were no receipts available dating back 25 or 40 years. I admit that we have got to be just to them and find them land. I admit we have got to make provision for the return of the squatter, who may be of any tribe and not necessarily a Kikuyu. And therefore I agree that after all these years we have got to carry out these adjustments explained by the hon. Commissioner for Lands and Settlement. But what I will not agree to is that we on this side of Council can agree to utilize that section which is designed for dealing with tribes, nor can we talk about satisfying economic needs, because these can be satisfied in other ways. This motion is to satisfy the peculiar circumstances of a peculiar specific case, and it is for that reason I move the amendment.

LORD FRANCIS SCOTT seconded.

COL. KIRKWOOD: Your Excellency, I support the amendment which has been moved by the hon. Member for Nairobi North, for the following reasons. I am not satisfied with the wording "for the purpose of satisfying the economic needs of the natives for whom they are required", in the last two lines of the original motion. I am not satisfied with that wording. It presupposes that any demands for the economic needs of the natives will be satisfied, and I think that is very vague and dangerous wording, and it would

[Col. Kirkwood]

be a very dangerous procedure to accept the principle embodied in those two lines.

As a member of the Highlands Board I feel great apprehension of this wording. It will be quoted later on as a precedent and we will be told that we have committed ourselves in adopting this to future known commitments that may be made and which may have the sympathy of Government. On the Highlands Board I confess that I agreed to the previous inclusions in native land units and reserves with very great difficulty. I consider that we went the whole hog to get the difficulties of the native lands settled for all time and made great sacrifices. We gave away valuable land to natives to satisfy their demands, and I do not think for a moment that the land we have given away will ever be beneficially occupied. For that reason I feel strongly that every European elected member should vote for the amendment, otherwise they will put members of the Highlands Board especially in very great difficulty.

The Carter Commission report states categorically that they have dealt with all claims on behalf of natives and that they had satisfied those claims. I have not brought my papers with me, but from memory it will be found, and it will certainly be endorsed by the hon. Commissioner for Lands and Settlement, that when we agreed to excise the land I have referred to we made it clear that we did so as a final settlement. It appears that there is going to be no end to these demands in the interests of natives for land not already included in the land units or reserves. For that reason I support the amendment. I have already been told that the wording in the amendment is indefinite and, in fact, it means the same as the resolution now before Council. That being so, I can see no argument why the hon. Commissioner for Land and Settlement cannot accept the amendment. But the resolution is most dangerous, and I hope that all hon. members on this side will vote for the amendment and that if it is not accepted that they will vote against the motion to secure our position in future, and not allow our

acquiescence to be established in this half united manner.

MR. PANDYA: Your Excellency, I am opposed to the amendment. I had no intention of taking part in this debate, and when the motion was moved I was under the impression that it was going to be accepted by the Council unanimously. The amendment is based on fears for which I see no justification. The words to which objection has been taken are "economic needs of native tribes". In any motion coming before this Council for adding to the native reserves, the primary purpose of that motion must be the economic needs. For what other purpose are we setting aside or increasing the land of the natives? If that is the primary purpose of any motion which may come before us at any time, I cannot see that any principle or precedent is being established by keeping the words "economic needs" in the motion or taking them out. The question may be asked, if that is so why not take them out? The reason is this. We must explain in the motion the necessity for that motion, and if we do not put in "economic needs", for what purpose are we going to set aside the land?

It is also said that the final settlement has been arrived at as far as native areas are concerned, and there must be finality to these kind of concessions. In my view, in life there is no finality; even after death there is no finality. In politics there is no finality, in social questions there is no finality. Does any hon. member of Council suggest that in politics or in life or anything else the word finality is binding on posterity or anybody else? Hon. members may think that in the question of the Highlands there is finality as far as the claims of the Indians are concerned. It is not so. We have never accepted that decision in this country, and nobody will.

Native needs in this country may require in future certain concessions of land from the Highlands or Crown lands, and wherever it is necessary to satisfy the economic needs of natives the Indians would never object. The point that arises about the special circumstances which may require adjustments and the point made by the hon. Member for Nairobi North was that, as far as

[Mr. Pandya] inter-tribal areas were concerned, they had no objection to adjustments within the boundaries of the native areas, but the point arises that there may be instances when such adjacent areas are not available. It stands to reason that Government in that case must acquire land for the economic needs of natives of particular native areas, and if that land happens to be Crown land it is only fair that such land should be acquired.

In my view the amendment is based on a misconception, that as far as the words are concerned there is the same effect, and if section 57(1) is permissible I do not see why reference cannot be made to it. I am opposed to the amendment.

MR. BROWN: Your Excellency, the amendment moved by the hon. Member for Nairobi North must have exactly the same effect as the resolution before Council, because it accepts the machinery which is provided by section 57(1) of the Ordinance. By that section, the only purpose for which the Governor can set aside these areas is for the purpose of satisfying the economic needs of any of the native tribes of the Colony. Therefore, if this statement is accepted, it must have exactly the same effect, because it is only if the Governor is satisfied that it is for the purpose of satisfying the economic needs that this section 57(1) can be invoked. The only difference between the resolution and the amendment is that the former makes it clear what the purpose is—that is to say, the only purpose the law allows—and the amendment leaves it in vague terms.

MAJOR CAVENDISH-BENTINCK: Your Excellency, under Standing Rule and Order No. 43(vi), I wish to explain something in view of the remarks of the hon. member. I do not think he has made my meaning clear.

HIS EXCELLENCY: On a point of explanation.

MAJOR CAVENDISH-BENTINCK: The whole object of the motion is that you are now declaring land as native reserve, and it is going to be used for the purpose of individual tenure in some cases and for mixed tribes. The object, as has been said, is that it shall be communal, held for tribal occupation, and

although I daresay it is the only way it can be done we want to be quite clear in the motion that the circumstances are exceptional and we do not admit that you can set aside land for individual tenure.

MR. BROWN: Surely there are two parts to the hon. member's remarks. One was that he is fighting shy of this expression "for the purpose of satisfying the economic needs", and the second was that this was not for the benefit of native tribes. But it is for the benefit of individual members of those tribes, and therefore it must be for the benefit of the native tribes. This section does not contemplate moving native tribes *en bloc*. If you move certain members of the Kikuyu tribe from the Kikuyu reserve, you are moving them to satisfy the economic needs of the Kikuyu tribe.

MR. SHAMSUD-DEEN: Your Excellency, on a point of order, are we in Council or in committee, because hon. members are delivering speeches more than once.

HIS EXCELLENCY: The hon. Member for Nairobi North got up on a point of explanation and the hon. member Mr. Brown is continuing his speech.

MR. COOKE: Your Excellency, I take it it is in order to speak on the amendment although a member has already spoken on the substantive motion? I have spoken on that, and I shall be in order to speak again on the amendment?

HIS EXCELLENCY: Yes.

MR. COOKE: I join in the protest made by the hon. Member for Nairobi North, though the proposal does not seem to be *ultra vires*. The section seems to convey that the only land that can legally be set aside is land required for a tribe and not for individuals. But I think that individual needs, too, are catered for by the section, though it might be straining it a bit to include them. It was undoubtedly intended to cater for tribes as a whole; for instance, if the Kikuyu tribe had not enough land for its economic needs land from the Ukamba or some other reserve might be set aside for the purpose. That is the reason I am supporting the amendment, although I agree with Nos. 1, 2 and 3 of the motion.

MR. FAZAN (Provincial Commissioner, Nyanza): Your Excellency, the hon. member who moved the amendment wished to be assured that, the circumstances are exceptional. I think I can convince him that they are exceptional.

The point which he took was that while admitting that a tribe as a whole might grow and need more land, if it was merely a case of some small section of a tribe growing and needing more land, the Land Commission recommended that that could be satisfied by internal adjustment within the external boundaries of the tribe. That is correct, that is what the Land Commission recommended. They went around the Kikuyu reserve, traced a profit and loss account, and came to the conclusion that the natives living on the Limuru farms and other areas had been in occupation of certain lands in exchange for which certain other lands must be added. Chapter 6, speaking from memory; of the first part of the report was devoted to assessing the number of acres which should be added to the native reserve in order to compensate the Kikuyu tribe. They then took the question whether the tribe as a whole having been compensated by these additional acres, we could rely on it to find room by internal adjustment for any natives who happened to be living outside the adjusted boundaries. The answer was yes. Therefore, the hon. member is perfectly right if he said that, as far as the Commission envisaged the matter, they envisaged that these natives could be accommodated in that area and that, by a process of internal adjustment there, all the family needs could be satisfied.

What he wanted to be assured of is that it is an exceptional case that we are now asking for additions to satisfy natives who, as far as the report went, should have been satisfied already. It is exceptional inasmuch as in this instance the Commission made a mistake. The Commission sometimes made mistakes though we worked hard and endeavoured to avoid them. In this particular case I think we must accept the fact that the officer appointed to go into it and make a far more full inquiry as to the number of right holders had much more time to give to the work than we

had, and he reached the conclusion, which we cannot deny, that actually we had made an under estimate of the amount of land and the amount of people affected by the new boundaries, and it is really these people we are now talking about. It is not a question of natives and their families living inside the reserve who find themselves in an awkward situation and wish for more land, but natives left outside that we thought could be brought in and accommodated in the reserve but who proved to be more in numbers than we thought.

That is the exceptional nature of this particular case. That is why I got on to my feet, because probably I know this subject as well as most people, and I would like to make that clear, that whatever demands at any other time may come this case is exceptional.

COL. MODERA: Your Excellency, I must agree with what the hon. and learned member Mr. Brown said in regard to the legal aspect of this matter. The hon. Member for Nairobi North has moved an amendment which, if it includes as it does section 57(1), is really more or less the same as Government's motion. I would like to suggest to my hon. friends on this side of Council that Government is endeavouring or is by their resolution straining to the utmost section 57(1) of the Ordinance, inasmuch as they are seeking to make it apply to individual tenure. Therefore, I suggest that the proper procedure on this side of Council is not to press the amendment but to vote against the motion proposed by Government.

MR. SHAMSUD-DEEN: Your Excellency, I am afraid I have troubled this Council too often in rising on points of order, but there is a point of order which I should like made clear. In your predecessor's time the point was raised as to whether a member speaking on an amendment could speak again on the original proposition or not, and to the best of my recollection it was decided that when there is an original proposition and an amendment moved the member who spoke on the amendment had not the right to speak again on the same subject. Before I speak I want that point cleared up. If my recollection is correct,

[Mr. Shamsud-Deen]

it means to say that all members who have spoken on the amendment cannot speak on the main proposition.

HIS EXCELLENCY: In this case, as I was not in the chair then, I should very much like to know what has been the practice.

LORD FRANCIS SCOTT: Sir, I think the correct thing is that if somebody speaks to a motion and moves an amendment in the course of his speech, he cannot speak again, but if somebody has not spoken on the original motion and speaks on the amendment he should be able to speak on the original motion.

HIS EXCELLENCY: In a matter of this sort I will give a definite ruling-but, as you appeal to the practice of the Council and I am not in a position to know what the practice has been, I have been wondering if I could ask the noble lord to give that as his opinion and, if the Council endorses it as the practice of the past, I will endorse it.

MR. SHAMSUD-DEEN: There was a legal ruling given after consultation with the hon. and learned Attorney General, but I am not quite clear on that.

HIS EXCELLENCY: I will have it looked up. The amendment is still before Council—does any other hon. member wish to speak?

DR. WILSON: Your Excellency, I did not expect to be dragged into a full-dress debate on the Crown Lands Ordinance or the Land Commission, and this motion has rather taken me by surprise, but it might save trouble if I speak to the amendment and include what I wish to say about the motion in my remarks opposing the amendment.

It seems to me that the hon. Member for Nairobi North, in moving the amendment, took the view that an individual was not necessarily part of a tribe. I may be distorting what he said, but the Ordinance provides for the economic needs of a tribe, and the tribe obviously includes the individual member, as the greater includes the less. If I may say so, I think he rather confuses the argument by talking about individual land tenure which, to my mind, scarcely

comes into the argument at all. The point is that there are members of a tribe whose economic needs require further land, and whether we give them that land in terms of individual tenure or it is to be considered part of the native land unit I do not think affects the question. What we are considering now is the economic needs of certain individuals of certain tribes.

That is as far as the amendment is concerned, and if I may go on I would say that this question, which seems to be cropping up once a day at the moment, centres largely around the question of forest reserves. The Crown Lands Ordinance and the Native Lands Trust Ordinance may or may not be perfect examples of legislation. They may, at the same time, require amendment. It may be rather late in the day for me to suggest it now or I may be anticipating a possible amendment, or I may be out of order in mentioning it at all, but I think it a great pity that the forest reserves were put under the authority of the Highlands Board. In my view, forest reserves, whether in the highlands or native land units or reserves, should be considered Crown land. We are in the unfortunate position that whenever we want to take a piece of land described as forest reserve, it is called a territorial demand by natives on part of the Highlands area, whereas the forest reserves of this country are as much the property of the Africans as of the Europeans. In my opinion, the situation would be vastly eased if the forest reserves were removed from the authority of the Highlands Board or the Native Lands Trust Board and called Crown lands, which they are.

It is unfortunate in this connexion that it happens that on the Native Lands Trust Board there is a member of the Highlands Board as a liaison officer, but on the Highlands Board there is not a direct representative of the Native Lands Trust Board.

A good deal of capital is made out of these bits of forest land which are taken for the economic needs of the native. To take one case, the 745 acres at Gichuru. I have no doubt that possibly some hon. members think it is

[Dr. Wilson]

a wonderful bit of virgin forest with trees hundreds of years old which are going to be cut down for the benefit of unprincipled native cultivators. Actually, if hon. members have seen this land, they will know that it is not too much to call it a miserable bit of land. What little forest there is is disreputable, and for the rest when I last saw it it was carrying a certain number of unhealthy-looking gum trees. In other words, this bit of virgin forest was exploited by the Forest Department by cutting out what forest there was and planting a few miserable gum trees to dry up whatever water there might be in the soil. That is this island forest in the middle of the Kikuyu Reserve, and to protect these few miserable gum trees we should have to fence it and place forest guards there to make sure that no native crept over the imaginary boundary and stole a small bit of firewood, or to prevent his goats grazing among the trees.

We should not get confused into thinking that these so-called demands mean cutting down virgin forest and the destruction of the natural assets of the country. There is no reason why that land should not be better under new conditions than it was under the old, with all due respect to the Conservator of Forests.

We have been talking about finality. As the hon. member Mr. Pandya said, of course there can be no finality. What is static is dead and Kenya, I believe, is not dead. It is not only alive but very progressive, and as long as there is life there has got to be change. It is wrong to talk about territorial demands—which they are not—by one section from another. It is a question of adjustment by mutual consent.

LADY SIDNEY FARRAR: Your Excellency, I rise to support the amendment put forward by the hon. Member for Nairobi North.

I would first of all take exception to one or two of the remarks made by the last speaker. The first one which struck me as an entirely incorrect point of view was the question of European and African rights to forest land. That is in no way whatsoever my point of view. I have heard them call it Crown land,

but I regard forest land as land belonging to the state and not to any particular section of the community, for the good of the state as a whole and not for the good of an individual, tribe, or section of the community.

As regards the question of this particular bit of forest and handing it over rather than face the impossibility of having its integrity as a bit of forest land respected by the tribe surrounding it, I think it is a lamentable point of view that apparently we have to accept the fact that we cannot impose the laws of the state on any community in the state. That point of view also I think has cropped up. We recently suffered from it in regard to a stock route through the Chepalungu Forest, when the same point of view was taken by Government; rather than endeavour to maintain discipline they were prepared to give in to certain demands by a certain section of the community. It is an entirely false and dangerous point of view.

I am strongly in favour of the amendment, because I think the hon. Member for Nairobi North is endeavouring to rectify an attitude of mind which has shown itself in regard to these excisions of land, not to increase the land held by the tribe to take in additional members of the tribe but to meet the demands of individuals who may happen to be members of that tribe. I may not put this clearly, but that is a point of view which has crept in at the present time, and it is an entirely false one. We as supporting the Highlands Board realize that certain exceptional circumstances may arise which find an individual of a tribe lacking in land who should be absorbed into that tribe. Take the case of Meru, where there is a large number of squatters residing on farms outside their own native land unit. They would say it is very necessary to re-absorb those individuals into their tribe and their native land unit. When that is necessary, if there is no land available, it might under exceptional circumstances be necessary for the Highlands Board to agree to widening the boundaries to include those outside members of the tribe, and the way we are having these present excisions put to us is that those individuals require land, not that the tribe

[Lady Sidney Farrar]

does, in exactly the same way as though we say that a certain family of Smiths in the White Highlands feel that they personally require additional land from the Forest Department and that this must be considered individually not as the need for enlarging the boundaries of the White Highlands, which would be the wrong way of looking at it.

I would like to suggest that we take into consideration the correct way of thinking of the need of increased areas for natives; that is, under exceptional circumstances it may be necessary for a tribe to have additional land added to the borders of the native land unit to enable it to absorb its own tribal personnel.

I support the amendment.

LORD FRANCIS SCOTT: Sir, I think there has been a certain amount of confusion of thought in this debate, and if I can take the first section of the motion, the Olengurone area, it cannot possibly be said that there is an addition to a tribal reserve. This land has been taken by an agreement with the Masai tribe for the settlement of any resident native labourers who may be turned off European farms as a result of the latest amendment to the Resident Labourers Ordinance. It was taken because the Secretary of State refused to agree to that Ordinance until some land was set aside to which they could go, but it is not to be set aside for any particular tribe, but for farm squatters, most of them probably Kikuyu. It is also set aside for a good many Wanderobo to go there, and it is definitely for individual holdings.

That is the scheme of Government for the settlement for this area, and it is no good trying to pretend it is for an addition to a tribal area. I think, as the hon. and learned member Mr. Brown has said, there is no difference between the amendment and the original motion, and I do not know why Government is not prepared to accept the amendment. I have not heard definitely that it is not going to, nobody has stated on behalf of Government what Government's attitude is, but I trust they will accept.

If not, we shall have to divide and take a vote on it.

MR. ISHER DASS: Your Excellency, I rise to oppose the amendment, and the reasons for opposing it have already been stated by the hon. member Mr. Pandya, so that I will not take up the time of Council by repeating them. There is only one point which needs any answer, the attitude taken up by the hon. Member for Rift Valley and the hon. Member for Trans Nzola; that is, after hearing the hon. and learned member Mr. Brown to the effect that the amendment is exactly the same as the original motion, why should Government not accept the amendment. This is an absolutely ridiculous argument. If the effect of the amendment is exactly the same as the original motion, why do not the hon. members on this side of Council accept the original motion? Why should they insist on moving the amendment and ask for its acceptance if the meaning and the effect are exactly the same? I should say it is nothing but obstinacy and a waste of time. I therefore strongly oppose the amendment.

Another reason is that, after all, if for argument's sake the amendment was accepted, it would be a sort of act of decency on the part of the hon. mover of the original motion. We are told in a straightforward manner that this piece of land is required for the economic needs of the sons of the soil. It is a simple fact, instead of saying that the land is required for peculiar circumstances, and hon. members on this side have asked for an explanation of the peculiar circumstances instead of saying "We are grateful to Government for bringing forward this motion". If and when the land is required for the economic needs of the sons of the soil, I can quite see the anxiety expressed by some members on this side of Council, that when there is a question of the needs of the sons of the soil or betterment of the Africans there are always some fears or misconceptions on the part of the European members.

Here again I may take the opportunity also of adding another warning, that in view of the statements made recently by Imperial statesmen at home the European

[Mr. Isher Dass] members of this Council should adapt themselves to the circumstances of the future changed social order in order to meet the needs of the sons of the soil in this part of the world, as much as the people at home are preparing for a changed social order for the labour classes.

MR. RENNIE: Your Excellency, this amendment has taken Government somewhat by surprise, and it seems to me a little unfortunate, in view of the fact that all hon. members are agreed, so far as I can see, on the object behind this particular motion, that some attempt could not have been made to get agreement as regards the actual wording of the motion. Fears have been expressed by more than one hon. member that this is merely one of many future demands to be made. We have heard a great deal this morning about territorial demands, and we have heard more than once of the question of the railway realignment. May I remind the hon. members who bring up this question of the railway realignment that I, as chairman of the Highlands Board, was the first to take exception to the particular proposal, and to suggest that it be referred back to the Native Lands Trust Board who had put it forward to the Highlands Board?

I think each of these particular cases must be decided on its merits, and it is not proper, I think, for hon. members to argue from the particular to the general as they have been trying to do this morning. Because one particular case comes forward that, I think, cannot be held to be an argument that further demands of the same type or of a different type will come forward. I think hon. members must be aware in view of the careful explanation given by the hon. Commissioner for Lands and Settlement, that any particular case of this nature receives the utmost and most careful consideration before it is submitted to Council. So far as further demands are concerned, I think hon. members might assume that each particular case will be dealt with on its merits.

The point which the hon. member raised this morning, as you are aware, sir, has not escaped the notice of Government. This particular point was

raised several months ago, and endeavours were made within the existing legislation to find a better section or a better ordinance than the one used this morning, but we went right round the circle and came back to the same point, and the hon. and learned Attorney General and the hon. Commissioner for Lands and Settlement, after the fullest consideration, advised Your Excellency that this section might properly be used.

As stated by the hon. and learned member Mr. Brown, and also by the hon. Member for Nairobi South, the amendment differs in no real way, apart from the omission of the words "economic needs of the natives", from the original motion, and I must admit that, in the circumstances, I am a little surprised that it has been put forward in the way it has been. It seems to me to be camouflage of the real object of the motion before Council, but since we are all agreed, so far as I am aware, on the object behind this motion, and since the amendment is designed apparently to carry out the same object, I would suggest that an endeavour be made to get agreement on the exact terms of the motion. If you would agree, sir, I suggest that the debate be adjourned at this stage to enable the hon. mover and myself to go into the matter to see if we can find some solution to the problem.

The hon. and learned Member for Nairobi South, logically if I may say so, has said that the amendment is no improvement on the motion, and that the only logical course if the motion is not approved by hon. members is to suggest that it be thrown out. That, I think, would be the logical course, but since it is a matter of wording and not of object and principle I suggest that we go into the wording and try to reach agreement on that.

HIS EXCELLENCY: I take it that Council agrees to that proposal. I feel myself very keenly that, in the light of this debate, there is no real division of opinion as to the desirability of what we are going to do, and I believe it would be most unhappy if in the circumstances Council had to divide on the subject.

COL. GROGAN: Your Excellency, may I say that the course of the debate

[Col. Grogan]. . . has gone a long way beyond the specific proposal. It has raised, and the Government side has raised it, very important principles, and as Government is responsible for raising those principles I think there ought to be ample opportunity to refute them.

MR. SHAMUD-DEEN: On a point of explanation, sir, may I make it clear that we do not think the changing of the wording so unimportant. We attach great importance to any change in the wording.

HIS EXCELLENCY: The debate will stand adjourned.

PATENTS, DESIGNS, COPYRIGHT AND TRADE MARKS (EMERGENCY) (AMENDMENT) BILL

SECOND READING

MR. BROWN: Your Excellency, I beg to move that the Patents, Designs, Copyright and Trade Marks (Emergency) (Amendment) Bill be read a second time.

At the outbreak of war a number of enemy subjects were the proprietors of patents, registered designs and copyrights, and many of the articles which were manufactured under the protection of those instruments were of an essential character. I mention German drugs as an example. We needed them, and so legislation was introduced to enable non-enemy subjects to manufacture substitutes for those articles or products and to protect those substitutes by the same patents, designs or copyright which belonged to the enemies who could no longer use them. This is done under section 2 of the English Patents, Designs, Copyright and Trade Marks (Emergency) Act. It empowers the Comptroller-General of Patents in England to make an order granting a licence to a person to use the patent, design or copyright of an enemy.

Similar legislation was enacted in this country, and by section 4 of our ordinance as it now stands every order made by the Comptroller-General in England shall extend to this Colony. That is possible in the case of an order dealing with a registered design or copyright, because a design registered in England or copyright granted in England automatically

extends to this Colony. Therefore, any order made by the Comptroller-General regarding them can extend to this Colony. But the position is different with regard to patents, because a patent granted in England does not extend to this Colony unless it is registered here under the Registration of Patents Ordinance, 1933. This amendment is necessary to make it clear that in the case of an order made by the Comptroller-General in England regarding a design or copyright, that order will apply, but in the case of an order made by him regarding a patent it will only extend to the Colony if that patent is registered here under our Registration of Patents Ordinance.

MR. RENNIE seconded.

The question was put and carried.

LOCAL GOVERNMENT (MUNICIPALITIES) (AMENDMENT) BILL

SECOND READING

MR. MORTIMER: Your Excellency, I beg to move that the Local Government (Municipalities) (Amendment) Bill be read a second time.

As indicated in the "Objects and Reasons", the main object of this bill is to bring the local law relating to contracts and other dealings between municipal councillors and their councils into line with the English law on this subject. Clause 4 deals particularly with this point, and will substitute new provisions for the existing section 41 of the principal ordinance.

It must not be supposed for one moment that this measure is prompted by any feeling that in our local government system corruption and improper dealings are in any way prevalent. On the contrary, I think we have very good reason for satisfaction that the general conduct of our local government bodies, both in their corporate capacity and as individual members, is so high. I have heard that in some countries local government is in the hands of the best councillors that money can buy. In Kenya this is certainly not so, and I take this opportunity of expressing the thanks of the community to the very large number of public-spirited ladies and gentlemen who devote so much of their

[Mr. Mortimer]

time and energy without fee or reward to the services of municipal and district bodies.

It is just because the general level of integrity is so high that it is important to maintain that high ideal. The fact that a recent inquiry excited so much public interest, quite out of proportion to the triviality of the incident out of which it arose, is sure proof, if any proof were needed, that the electors expect high ethical standards of their elected representatives. It is true, of course, that you cannot make a dishonest man honest by act of parliament. All you can do is to make it more difficult for his dishonesty to injure the public weal and to strengthen the penalties of being found out in order to make dishonesty less profitable. The real remedy, of course, lies in the polling booth.

There appears to be an impression in some quarters that hitherto we had no law governing this particular subject of relations between councillors and councils in the matter of contracts. This is not so, as the existing section 41 is fairly comprehensive, and differs only in a few matters from the English law which it is now sought to enact. The reason for the change is that Nairobi Municipal Council requested that, if possible, the law should be strengthened, and Sir Charles Belcher, the commissioner in the recent inquiry, recommended the adoption of the English law, which was introduced into England after a Royal Commission had exhaustively examined the subject in 1933.

I will now go briefly through the various sub-clauses of the new section 41, in clause 4, and explain how they differ from the existing law.

Sub-clause (1) is similar to the old section 41 (1) and (2) with small alterations. This clause differs from 41 (2) in that it does not demand the absence of a councillor from any meeting where a contract in which he is interested is under discussion. It requires that he shall take no part in the discussion on the subject. In the present bill, sub-clause (11) leaves it for councils to come to their own decision on this point by making standing orders.

Sub-clause (2) is new, and specifies what is to be regarded as an indirect interest as against a direct interest.

Sub-clause (3) is new, and introduces an important provision, that in the case of married councillors the interest of one spouse shall, if known to the other, be regarded as the interest of the other.

Sub-clauses (4) and (5) are new, and prescribe that a general notice of a personal interest given in writing to the town clerk shall be regarded as sufficient disclosure of an interest in any contract that a particular firm may subsequently have with the Council. They also require that the town clerk shall record in a book specially kept for the purpose any such notices.

Sub-clause (6) is the penalty clause, and is similar to section 41 (5) of the existing law, but the penalty for offences is reduced from £100 to £50, and the alternative of six months' imprisonment is removed.

Sub-clauses (7) and (8) repeat 41 (5) and (6), and disqualify a councillor convicted of an offence from continuing to be a councillor.

Sub-clause (10) gives to the Governor power to remove the disability if so many members of a council are at one time suffering from the disability that the business of the council is being hindered. One can imagine a case where practically all the members of a municipal council are shareholders in some local public utility company, such as an electric power and lighting company with which the council has contracts.

If that were the case, every councillor who was a shareholder would be precluded from discussing a particular contract, and so public business would be held up. Your Excellency has power to remove the disability if there is any danger of that happening.

Clauses 41A, B and C merely repeat sections of the existing law.

There are a few other and minor clauses in this bill to which I must now briefly refer.

Clause 2 amends section 10 (2) and it will give to the nominated Arab member of the Mombasa Municipal Board a three-years term of office instead of one

[Mr. Mortimer]

year as heretofore. That brings his nomination into line with similar nominations.

Clause 3 relates to municipal boards other than those of Nairobi and Mombasa, where some or all of the members are nominated, and gives legal authority to the practice always, in force of nominating those members for periods not exceeding three years.

Clause 5 will give municipal councils the right to enact by-laws to demand deposits or security bonds for fulfilment of conditions prescribed in a contract or licence. This clause has special reference to quarrying permits under by-law making powers, and has particular reference to Nairobi. There have been occasions when the municipal council has been left to bear the expense of filling in holes created by past quarry concessionaires, and it is sought to avoid that by giving power to obtain a deposit before-hand as a security for the proper fulfilment of the work.

Finally, clause 6 is merely an economy measure. Section 94 of the principal ordinance requires that councils publish a summary of the annual estimates when they are prepared and again publish a summary after they have been approved by the standing committee, even if the standing committee accepts them without amendment. The second publication is an unnecessary expense and waste of paper unless some major alteration is made at the instance of the standing committee. Clause 6 leaves the second publication to be at the discretion of the standing committee.

MR. BROWN seconded.

MR. SHAMSUD-DEEN: Your Excellency, I think the principle of the amendments is very sound, and I have only one minor suggestion to make to the hon. mover as regards the wording of clause 4 (8). This now says: "Any councillor disqualified under the provisions of sub-section (7) of this section shall not be capable, for a period of three years, of being elected or nominated a councillor for any municipality". Similar wording occurs in the Bankruptcy Ordinance, and one case has occurred in Nairobi Municipality where the person

was obviously disqualified but it did not prevent him presenting nomination papers at an election, and he did cause two elections, and it may be a third one, and there was no legal machinery to stop him from doing so. This particular clause is almost a repetition of the Bankruptcy Ordinance, and if such a person cannot be elected he can give all the voters trouble and the authorities of actually conducting an election, although after a few days there is no question about the result, for if he succeeds he is disqualified. I have written this matter to the notice of the Solicitor General as well as the hon. mover, and I hope in select committee due attention will be given not only to the wording of this clause but also to modify the wording of the Bankruptcy Ordinance as far as this point is concerned.

MR. MORTIMER: Your Excellency, I suggest that there is no necessity for the reference of this Bill to a select committee; it appears to have the support of all hon. members of this Council. Only one question has been raised, and that is one that has already been discussed by the Standing Committee for Local Government. The hon. and learned member Mr. Brown and I have been requested to go into the matter to see what amendments are necessary, if any, to the election rules. I submit that this is a matter that can quite well be dealt with under those rules. What we desire in the rules is to make quite sure that the returning officer is empowered to ascertain that anyone submitting a nomination paper is capable of being elected and is qualified to stand for election. If the nominee is not so qualified the rules should give the returning officer power to reject the nomination paper. That can quite well be provided for under the rules rather than in the Ordinance itself.

The question was put and carried.

WIDOWS AND ORPHANS PENSION (AMENDMENT) BILL

SECOND READING

MR. BROWN: Your Excellency, I beg to move that the Widows and Orphans Pension (Amendment) Bill be read a second time.

[Mr. Brown]

Under the existing section 16, if an officer is transferred from East Africa to another colony and there marries, his widow and children, if he dies, are not entitled to benefit under the East African scheme, even though he continued to contribute to the scheme after the date of his transfer. That is clearly inequitable, and this section 16 is amended by this Bill to provide that so long as the officer continues his contributions to the scheme, if he marries after his transfer before he retires from the public service his widow and children will be entitled to benefit.

MR. RENNIE seconded.

The question was put and carried.

NON-EUROPEAN OFFICERS PENSIONS (AMENDMENT) BILL

SECOND READING

MR. BROWN: Your Excellency, I beg to move that the Non-European Officers Pensions (Amendment) Bill be read a second time.

This makes it clear that if a non-European officer is killed as the result of enemy action while travelling to and from the Colony, he shall be deemed to have been killed on duty. Hon. members will recall that a similar amendment was made in the last session of Council to the European Officers Pensions Ordinance.

MR. RENNIE seconded.

The question was put and carried.

WAR LOAN (AMENDMENT) BILL

SECOND READING

MR. LOCKHART: Your Excellency, I beg to move that the War Loan (Amendment) Bill be read a second time.

The object of this amendment is to allow regulations to be made which will permit war bonds of one series to be transferred into another. In effect, the rules we propose to introduce will only permit Series B bonds to be transferred to Series A, and that for an obvious reason. The reason for the amendment is that Series B bonds are £1,000 to each individual holder, and such bonds are

lodged in a bank with a blank transfer as security for the overdraft. It rather diminishes the value of the bonds for that purpose because the bank cannot foreclose and it is not possible to transfer them to a nominee if after the first £1,000 transfer is lodged no more may be transferred.

MR. BROWN seconded.

MR. NICOL: Your Excellency, I am rather disappointed to hear the hon. mover say he is not contemplating converting Series A back to Series B. I put this particular point to him. A person may have, say, £2,000 of the Series A and his first £1,000 of the Series B. Some particular transaction or particular form of taxation or something like that has got to be met, and he can redeem his Series B by giving six months notice, or earlier if he puts up a sound case. Assume that he redeems £500 worth. He then pays that away. He may possibly at a later date have to find another £1,000. Under my suggestion he would be able to state a case and get his £500 increased to £1,000 by transference from Series A to B holdings. I submit it would be fair to enable bonds to be transferred as A to B or B to A.

MR. LOCKHART: Your Excellency, the case which the hon. member has put sounds all very well, but the point is that by allowing a transfer from A to B series you are in fact allowing a privilege which the prospectus under which you subscribed to the bonds does not permit. A bonds are not redeemable on notice and if transferred to B they will become redeemable. I can imagine a case in which a holding of A bonds is gradually redeemed by such a process of transfer. While we are considering the rules I shall be perfectly prepared for Government to consider the case and discuss it in detail with the hon. Member for Mombasa, but I certainly am not prepared to give any undertaking now.

The question was put and carried.

ADJOURNMENT

Council adjourned till 9 a.m. on Thursday, 26th June, 1941.

Thursday, 26th June, 1941.

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 26th June, 1941. His Excellency the Governor (Sir Henry Moore, K.C.M.G.) presiding.

His Excellency opened the Council with prayer.

MINUTES

HIS EXCELLENCY: The minutes of the meeting of Wednesday, 25th June, 1941, have been circulated. Are there any amendments?

LORD FRANCIS SCOTT: On a question of accuracy, sir—on page 1 it says "The Hon. H. R. Montgomery moved that the name of the hon. C. J. Wilson be added to the committee. The hon. Member for Rift Valley seconded". It was the hon. member for Ukamba who seconded.

MR. MONTGOMERY: I thought that the hon. member Mr. Pandya seconded.

MR. PANDYA: I did.

HIS EXCELLENCY: We want to get this as an accurate record of the proceedings—was it the hon. member Mr. Pandya?

MR. PANDYA: Yes, I seconded.

HIS EXCELLENCY: For "the hon. Member for Rift Valley" the minutes will be amended to read "the hon. J. B. Pandya".

The minutes were then confirmed.

ORAL ANSWERS TO QUESTIONS

No. 45.—ASSAULTS ON ARABS

MR. SHERIFF ABDULLA BIN SALIM asked:—

Is Government aware of the triple murders, attempted murders, and violent assaults on Arabs in and near Mombasa, and does Government consider that by placing an askari or two to investigate the cases they have discharged their responsibilities?

MR. RENNIE:—

The Government is aware of one double murder, one case of robbery accompanied by unlawful wounding, and

one case of robbery with violence in and near Mombasa this year, in which the victims have been Arabs. In each of these cases the investigation has been conducted by a European or Asian police officer under the supervision of the Superintendent of Police, Mombasa.

No. 46.—ARABS' ARMS LICENCES

MR. SHERIFF ABDULLA BIN SALIM asked:—

Is Government aware that the very few Arabs who have been in possession of arms licences for a number of years have recently been deprived of those licences and arms without any reason whatsoever and that this action has taken place just at the time when the Arabs were being murdered and assaulted?

MR. RENNIE:—

Government has recently been informed that a number arms licences held by Arabs have been revoked and the Provincial Commissioner, Coast Province, has been asked to investigate the matter. The hon. member will be informed of Government's decision in the matter in due course.

No. 48.—ADMISSION OF ARABS TO HOSPITAL

MR. SHERIFF ABDULLA BIN SALIM asked:—

Is Government aware that Arabs are not admitted to Asian wards in Government Hospitals unless they pay the fees laid down, but other Asian poor are treated in those wards free of charge, and will Government remove this disability?

DR. PATERSON:—

It is not the case that Arabs are not admitted to Asian wards in Government hospitals unless they pay the fees laid down. As, however, the accommodation in these wards is limited and as it is not always easy to determine whether any particular person is entitled to be admitted to them, instructions were issued to the Medical Officer, Mombasa, in 1939 to the effect that any Arab of reasonable status, and any on whose behalf representation is made by a prominent member of the community, should be admitted to the Asian wards if possible.

No. 50.—KENYA POLICE FORCE
COL. KIRKWOOD asked:—

(i) In view of the large scale of thieving which is now apparent, will Government state what steps they propose to take to expedite and facilitate the granting of search warrants for active areas and generally to deal with the situation?

(ii) In this connexion will Government also state (a) what number, if any, of Kenya European Police Officers have been seconded for service in the O.E.T.A. and (b) what number they propose to allow to leave for these territories?

(iii) If the answer to the above is other than "nil", will Government please state whether they consider the time opportune for depletion of the Kenya Police Force of European personnel?

MR. RENNIE:—

(i) There has been a marked decrease in reported cases of stock theft, house-breaking and burglary in recent months in comparison with 1940, and a slight decrease in reported cases of theft. It is not considered that any alteration in the law governing the issue of search warrants is necessary, since section 29(1) of the Police (Amendment) Ordinance, 1934, enables any police officer to search without warrant in any case where the issue of a warrant would cause undue delay.

(ii) (a) One; (b) the question of releasing two more officers is at present under consideration.

(iii) The Government is alive to the danger of depleting the Police Force of European personnel at present and has no intention of doing so. In recent months there have been more European officers in the Police Force than ever before and the change in the military situation has relieved the pressure on the Force and freed several officers from quasi-military duties on which they were formerly engaged. The number of officers engaged on normal police duties is not being reduced, and the hon. member may rest assured that only such officers as can be spared without detriment to the efficiency of the Force will be released for duty with the O.E.T.A.

MR. COOKE: Your Excellency, arising out of the answer, will Government give an assurance that junior subordinate officers will be promoted, where possible, and where deserving of promotion, because there seems to be rather a gap in promotion at present?

MR. RENNIE: I hardly think that arises out of this particular question.

COL. MODERA: Your Excellency, a few days ago I handed in a question relating to the Post-War Settlement Committee. I hoped it would be on the Order paper this morning. May I be told when I may receive an answer?

MR. RENNIE: The reply has been drafted but has not yet been finally approved. I think I am right in saying that the hon. member will receive a reply in the course of a day or two.

COL. KIRKWOOD: Your Excellency, arising out of the answer to my question No. 50, I have not had an opportunity of standing up before, may I ask whether, in view of the answer to paragraph (iii), Government do not consider it advisable to allow other officers to be seconded, thus leading to promotion in what is a badly paid Force?

MR. RENNIE: That question too, I think, is not supplementary to the question formerly asked.

LADY SIDNEY FARRAR: Your Excellency, I have not yet received an answer to my question on the subject of thefts in gold mining areas, and I would ask if I could receive it shortly?

MR. RENNIE: I have the papers with me, and I could allow the hon. member to see the draft reply at any time convenient to her.

CROWN LANDS ORDINANCE
SETTING ASIDE OF CROWN LANDS AS NATIVE RESERVES

On this Order being called,

HIS EXCELLENCY: Since the debate yesterday morning, I have had an opportunity of discussing the terms of this motion further. Since it was clear from the debate yesterday that the general principle of making these areas available was not in dispute but rather the manner in which it was proposed to effect this in the terms of the motion,

[His Excellency] and since doubts have been raised as to the suitability of section 57(1) to effect this purpose, I am prepared at a subsequent meeting of Council to have introduced an *ad hoc* ordinance to deal with these particular matters; and when that ordinance is introduced it will give hon. members who have not spoken an opportunity to bring to the notice of Government any particular point in connexion with these areas. That being so, I would suggest to the hon. Commissioner for Lands and Settlement that he should by leave of Council withdraw his motion.

COL. GROGAN: Your Excellency, are we to understand the debate is not adjourned but has been suffocated, which is highly undesirable in my opinion, in view of the fact that hon. members on the other side have taken advantage of the occasion to loose off a cloud of mephitic doctrines which urgently require dispersal.

HIS EXCELLENCY: The hon. Member for Nairobi is also prepared to withdraw his amendment.

The motion and amendment were by leave of Council withdrawn.

COFFEE INDUSTRY ORDINANCE, 1934

SELECT COMMITTEE TO CONSIDER AMENDMENTS

The debate was resumed.

MR. MONTGOMERY: With the permission of my seconder I beg leave to withdraw my amendment for the appointment of the hon. member Mr. Isher Dass.

The amendment was by leave of Council withdrawn.

The question of the amendment moved by the hon J. B. Panyda was put and carried.

The question of the motion as amended was put and carried.

SCHEDULE OF ADDITIONAL PROVISION

No. 1 of 1941

MR. RENNIE: Your Excellency, I beg to move that the report of the Standing Finance Committee on Schedule of Additional Provision No. 1 of 1941 be adopted.

This report has been in the hands of hon. members, and in accordance with the usual procedure the Standing Finance Committee has examined this particular Schedule carefully and has recommended that it be adopted. The Schedule is No. 1 of 1941, and refers to the period 1st January to 31st March. The amounts concerned are in respect of Kenya and total £80,975. Of that, some £18,000 is specifically offset by savings, and it is hoped that approximately £42,800 will be recovered by consequential increased revenue.

MR. BROWN seconded.

The question was put and carried.

EXCESS PROFITS TAX BILL
SELECT COMMITTEE REPORT.

MR. MUNDY: Your Excellency, I beg to move that the select committee report on the Excess Profits Tax Bill be adopted.

The report is divided into two sections. The first contains some of the more important matters considered by the committee, and in the second are the specific recommendations made for amendments to the Bill. I propose to take the second part first. It starts about half way down page 3 of the report, and I will go through the proposed amendments in detail in view of the importance of the measure.

The first one amends clause 3, merely a drafting amendment, and inserts the words "upon him" after the word "charged", so that the clause will now read: "the amount of excess profits tax to be charged upon him under this ordinance".

Paragraph 2 adds a proviso to clause 4(3). This has been put in at the request of the Tanganyika Government to deal with estates which have been leased by the Custodian of Enemy Property in Tanganyika. It only affects Kenya in the case where a resident of this Colony has leased an estate from that Custodian. It really is a domestic matter, but we have to put it in this Bill because we must meet the case of Kenya residents who take over leases.

In paragraph 3 the first amendment (a) is to clause 6(6), where the word

[Mr. Mundy] "section" is deleted and "ordinance" substituted. This deals with partnerships which are to be treated as non-resident, and as it reads originally would only apply for the purpose of section 6. As we have to treat partnerships as non-resident for the purpose of the whole Bill, the word "ordinance" is substituted. It does not in any way change the effect of the law as proposed.

(b) and (c) can be taken together as the words "co-operative society as defined in section 2 of the Co-operative Societies (Registration) Ordinance 1931" are to be inserted before the word "the" on line 2 of clause (6B). It provides that the relief whereby money spent on development may be exempted from the tax can be extended to agricultural co-operative societies. The definition of a co-operative society in the Co-operative Societies (Registration) Ordinance covers the case of agricultural co-operative societies which are either marketing the products of their members or arranging co-operative buying. The effect is, therefore, that this relief will be extended to that type of co-operative society and will not be extended to co-operative societies carrying on ordinary trading with the public. Where you have a co-operative society doing that in addition to agricultural work, then the computation will be split so that this relief will be applied only to the agricultural portion.

(d) and (e) may be taken together. They refer to clause 6(9) under which contributions to war funds will be allowed up to the 1st July, 1941. At the end of the sub-clause the words "in computing the profits of a chargeable accounting period" are added, so that if contributions to war funds were made in 1939 they will be disallowed and will have the effect of increasing the standard profits and not penalising persons who made contributions in 1939.

(f) deals with sub-clause (10), and inserts the word "roads" in ten places in this sub-clause. It makes it clear that where money has been spent on roads for the purpose of carrying out war work, any decrease in the value of them or any loss will be allowed as a deduction in the same way as any loss on buildings, plant, or machinery will be allowed.

(g) is merely to correct a drafting error in paragraph (a) of sub-clause (13), and (h) is to deal with a printer's error, the word "of" having been printed twice in error in (14).

In paragraph 4 of the report, the first amendment to clause 9 contained in sub-paragraph (a) corrects a drafting error in sub-clause (1). In (b) is a new proviso to the same sub-clause dealing with professions. It will be seen from page 2 of the report that the committee paid the most careful attention to the question as to whether professions should be exempt from the tax altogether, and their recommendation is that they should not be exempted; but they do realize that the reliefs in the Bill for trades are somewhat unfair, in comparison with professions. In the case of trades, there are allowances for increased capital and also for depreciation of capital, but there is no corresponding relief for professions. The amendment proposed is to allow some relief to compensate for that difference. The amendment proposes that there shall be added to the standard profits the sum of £250 in the case of all professional men. It means that if you have a partnership of three people, you will add £250 for each of the partners, to give an increased standard of £750. If a man is working on his own he will merely get £250 added to his standard.

(c) is merely a consequential amendment because of that proviso. (d) is an alteration in sub-clause (2) in line 17 on page 9 of the bill, where the reference is to "sub-section", and because in the new proviso to which I have referred the words "working proprietor" are used we must now speak of "section" and not subsection. There is a typing mistake in this report: You will find (d) at the bottom of page 4 repeated in error at the top of page 5, and this should be deleted. I would explain that the report was completely prepared in one hour.

(e) amends the definition of "working proprietor" by inserting a proviso under which any individual who would have been a working proprietor but for the fact that he is serving with H.M. Forces or is engaged on work connected with the prosecution of the war, may be deemed to be a working proprietor even

[Mr. Mundy] if he does not fulfil the conditions of the definition. It means, if you take the case of a group farm manager who is probably looking after other farms and on two days only out of seven is on his own farm, he would not be debarred from claiming this allowance merely because he was doing other work in connexion with the war.

(f) deals with clause 9(8)(b) at the top of page 10 of the printed bill. It is the Uganda cotton industry which is particularly concerned. As the clause was originally drafted the Commissioner may permit them to take the profits of the year ending 30th June to be the profits of the previous calendar year. The amendment makes it quite clear that if a ginner makes application he shall be granted this relief without question.

Clause 10 is then amended by paragraph 5(a), which has to do with a printing error—businesses instead of business. In clause 12 again two drafting errors are amended, the first on line 22 and the other on line 44, the word "are" being inserted in one case after "arrangements" and in the other the word "falls" for the word "fall". In clauses 13 and 14 there are corrections of drafting and printing errors.

Paragraph 9 of the report renumbers clauses 15 to 21 as 16 to 22 to allow for the insertion of a new clause 15. This new clause has been inserted as a result of a very long discussion of the very difficult question of farmers who are in debt and are unable to have control over the proceeds from their crops or who have incurred debts and borrowed money and are tied up in such a way that they are compelled to use the proceeds of crops in repayment. It is proposed that there shall be power to remit the tax charged in such cases. The position was that, under the Bill, we allow sums expended on development to be relieved from the tax, but there are cases in which, owing to past debts and losses, a farmer is not in a position to spend any excess profit on development, because the money must be used for the redemption of debts and a farmer in that position is not able to take advantage of the development clause. This new clause therefore allows the tax to be remitted

in such cases. It was necessary to insert a rather lengthy clause to lay down in general terms the sort of cases in which the tax should be remitted.

Briefly, it means that the farmer must find himself in the position that he has no control or only partial control of the receipts of his business. He must also not have outside the business sufficient funds to enable him to relieve himself of that obligation. We appreciated that there are a number of farmers here who, although they have substantial debts in respect of their farms, also have very substantial outside assets, or they have their own private income which they do not wish to bring into their farm interests, so that it will be necessary to consider the question of how far a farmer has outside assets before he is given relief from the tax. There is a further condition to be fulfilled, and that is that the fixed capital in the farm must be twice the amount of the capital owned by the farmer himself; that is, if a farmer has put £20,000 into his farm and has lost half of it, he will come under this clause for the purpose of relief. It has been necessary also to provide that in the case of a partnership or company in which the directors have the controlling interest that the assets of all the partners and of all the directors must be taken into consideration. The relief is to be granted by the Commissioner, but anyone who is dissatisfied with his decision may appeal to the board of referees.

I have dealt with the agricultural side of the clause first, but also, in the opening words, it empowers the remission of the tax on the grounds of poverty and hardship so that while the clause provides special relief for agriculture it nevertheless covers all persons and businesses where there is a question of poverty or hardship.

Paragraph 11 of the report, page 6, deals with clause 15(2), now clause 16, and extends the due date on which the tax must be paid from 40 to 90 days in the case of a chargeable accounting period ending on or before 30th June, 1941. The position is that up to that time there is no doubt that there will be some difficulty in estimating what will be the liability under this Bill; but after then traders should be in a position generally

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to estimate their liabilities with reasonable accuracy and make provision for payment within 40 days.

Paragraph 12(a) really corrects a drafting error, because the Tanganyika bill is called the Tanganyika War Revenue (Excess Profits Tax) Ordinance, 1941, and we must use those words. (b) refers to clause 16(1)(o), where again an oversight in drafting occurred, because the words "year of assessment" appear in the Income Tax Ordinance and they are changed to "chargeable accounting period" when dealing with excess profits tax.

Paragraph 12 at the top of page 7 contains an amendment to clause 20(3). In that clause, any moneys standing to the credit of the fund shall be given to H.M. Government as a free gift towards the cost of the present war. Representations were made, and were mentioned in this Council during the debate on the second reading, that it would be unwise to tie down what should be done with this money when it might be four or five or even six years before the actual money was available. It is therefore proposed that the word "shall" shall be taken out and the word "may" used instead: "may be given".

Paragraph 13(b) deals with clause 21, which will now read: "This ordinance shall continue in force until the 30th of June or the 31st of December, whichever shall be the earlier next" following the end of the war. The effect is that if the war ends in January the tax will cease in June instead of going on to December.

That deals with the proposed amendments to the Bill, and I should like now to refer to one or two of the paragraphs in the first part of the report, because they do show that certain other matters were considered by the committee.

In paragraph 3 proposals to increase the rate of tax and apply a portion to the purchase of East African war bonds were carefully considered by the committee, but they did not recommend any change at the present time.

Paragraph 4 is important, because of the question whether an individual who is a partner in one business and has another separate business would be

entitled to set off the deficiency in the partnership against the profits in his own business. It is a question of how clause 4(3) would be interpreted. An identical clause appears in the United Kingdom Finance Act, and it is quite clear that the United Kingdom Board of Inland Revenue interpret it so that a partner in these circumstances is entitled to set off the deficiency of one business against the profits of another, even though it uses the words "carried on by the same person".

I have dealt with paragraphs 5, 6 and 7. Paragraph 8 deals with the question of how far an employee's remuneration could be allowed when he is remunerated by reference to a share in the profits of the business. Where he is employed on a service agreement the whole of his remuneration will be allowed, as long as there is no question of it amounting to such a figure that it could not be regarded as reasonable remuneration for the work he is doing.

Paragraph 9 is another matter concerning the interpretation of a clause of the Bill. Clause 8(4) on page 7 of the printed bill lays down that any borrowed money or debts shall be deducted in computing the capital employed in a business. It was before the select committee as to whether loans advanced by directors to a company would be regarded as borrowed money or allowed to be treated as capital employed in a business, and so allowed the statutory percentage under the Bill. This again is a question of interpretation, and the Board of Inland Revenue permit not only loans by directors but loans by shareholders to a company for the purpose of financing it, so long as those loans are roughly in proportion of their shareholdings. I know it is the custom here, particularly for directors and often shareholders, to finance small private companies by loans, and these loans will in the circumstances I have stated be treated as part of the capital employed and given the full benefit of the statutory percentage allowed under the Bill.

Paragraphs 10, 11 and 12 explain themselves, and 13 is already dealt with. The second sub-paragraph of 13 I would mention, because it makes it clear that

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East African war bonds will be accepted with accrued interest in payment of any tax which may be demanded. Paragraphs 14 and 15 I have dealt with.

Although the report does not put forward many important amendments, I should like to say that the select committee spent 15 solid hours on the consideration of the Bill, and I am quite satisfied myself that they gave it a very thorough overhauling.

MR. LOCKHART seconded.

COL. GROGAN: Sir, I beg to propose an amendment, that the report of the select committee be amended by deleting paragraph 12 on page 7 and substituting therefor: "That clause 20, now renumbered as clause 21, be amended by deleting sub-clause (3) therefrom".

I am glad to see that the select committee recognized the folly and impropriety of the sub-clause as originally drafted. By changing from "shall" to "may" the clause is admittedly emasculated, but there remains the question as to why it should be retained at all in its enunciated form. If you read the sub-clause carefully in conjunction with (2), (2) delegates certain authorities to the Governor, (3) does not delegate authority to anybody at all. It merely says "may". Of course, these residuary moneys may be lent to the Imperial Government, to the farmer at Christmas or to anybody, but if it is intended to be retained as a gesture I contend it is peculiarly worded and ought to be cut out altogether.

LADY SIDNEY FARRAR seconded.

MR. COOKE: Could we have a definition in the strictly legal sense of the word "may", because I understand it sometimes carries the weight of "shall" in legal phraseology?

MR. BROWN: Your Excellency, "may", when interpreted in court, is often interpreted as "shall". In this particular connexion it could not be, because it is only when the word "may" empowers some authority to do something for the benefit of the public or for the advancement of public justice that it is interpreted in a compulsory sense.

When the word "may" is used in that connexion the courts interpret it as "shall", but in this sub-clause that difficulty could not arise because the sub-clause is not concerned either with the public benefit or with the advancement of public justice.

COL. KIRKWOOD: As the seconder, I should like to point out, that I quite agree.

MR. LOCKHART: I thought the hon. Member for Nyanza seconded.

HIS EXCELLENCY: That is quite correct.

COL. KIRKWOOD: I am sorry, I was not aware of that.

HIS EXCELLENCY: Are you speaking to the amendment?

COL. KIRKWOOD: Yes. In my speech on this clause I ridiculed it but evidently it did not impress Government. I suggested then what is proposed now, that the sub-clause be deleted. Clause 20(2) covers everything: "The Governor is hereby authorized to lend, free of interest, to His Majesty's Government in the United Kingdom, any moneys which may from time to time be standing to the credit of the Excess Profits Tax Fund or to apply such moneys to such other purposes as the Legislative Council may by resolution direct". What else is required? (3) goes on: "Upon the expiration of this ordinance and when all excess profits tax due under the provisions of this ordinance to be repaid has been repaid, the moneys thereupon standing to the credit of the Excess Profits Tax Fund shall be given to His Majesty's Government in the United Kingdom as a free gift towards the cost of the present war". On page 7 the report in paragraph 12 states: "That clause 20 thereof, now renumbered as clause 21, be amended by deleting therefrom the word 'shall' which occurs in the fourth line of sub-clause (3) thereof and by substituting therefor the word 'may'". (3) only means that the Governor "may"—why not take it out altogether; (2) is all that is required.

The question of the amendment was put and negatived.

The question of the motion was put and carried.

MUSEUMS TRUSTEES (AMENDMENT) BILL

SECOND READING

MR. BROWN: Your Excellency, I beg to move that the Museums Trustees (Amendment) Bill be read a second time.

Section 4 of the original ordinance provides for the constitution of the board of trustees, and provision is made whereby one member should represent Nairobi Municipal Council. Provision is also made for all members to be appointed for a period of five years. This section is being amended at the instance of the Municipal Council to provide that if the member of the board who represents the Council ceases to be a member of the Council, another member may be nominated in his stead as a trustee, and also that the member of the Council so appointed shall be appointed for a period of one year only. In the committee stage it is proposed to move an amendment, of which hon. members have had a copy, not making it obligatory that the member representing the Municipal Council shall hold office for one year only but enabling the Council to elect at the time of the member's nomination whether he shall be appointed for one year.

The final paragraph in clause 2 of the Bill is also introduced at the instance of Nairobi Municipal Council, and provides that no paid servant of the board shall be a member of the board. A further amendment will be moved in committee to make it clear that the mere fact of an officer having a house rent free does not make him a paid servant of the board.

MR. RENNIE seconded.

The question was put and carried.

ESTATE DUTY (CONSOLIDATION) (AMENDMENT) BILL

SECOND READING

MR. LOCKHART: Your Excellency, I beg to move that the Estate Duty (Consolidation) (Amendment) Bill be read a second time.

This Bill deals with two questions, and I will refer first to clause 3 which replaces the schedule to the principal ordinance. This matter came up in the general consideration which was given earlier in the year or at the end of last year to an increase in taxation for war

purposes. I wish to make that perfectly clear, that that is the origin and object of this particular clause. The whole of our taxation was overhauled for that purpose, among it being estate duty. It was overhauled and considered on an East African basis, a policy with which I am sure no hon. member is likely to dissent, and it arose from this examination. A fact I was not aware of until then was that the schedule of estate duty in Tanganyika was rather higher than that of Uganda and a little higher still than in Kenya. Tanganyika was not disposed to increase this particular tax, but it did appear to the Government of Kenya and Uganda that this would form a suitable amendment as a war taxation measure.

On the basis of collecting additional taxation from those in a position to pay it, I think it is difficult to contend that anyone, succeeding to an inheritance of the order of the figures set out in the first two columns of the revised schedule of duty is not in a position to pay inheritance tax from his inheritance at the percentage set out in the last column. Assuming we have estate duty at all—and it is hardly necessary for me to say that such is not the point at issue to-day because we have estate duty and an Estate Duty Ordinance and the principle and practice of collection is not only on the statute-book but has been in operation for years, and if we have estate duty I do not think that even with this revised schedule anyone would seriously contend that it is unduly onerous, and especially as it is in the form of an increase for war purposes only.

That is one part of this Bill.

Whatever differences of opinion there may be about that, there will be, I think, none, at least certainly not in principle, to the remainder of the Bill. This deals with the exemption from estate duty of the estates of persons who have died as the result of active service in the war. So far as any estate under £7,500 is concerned, it gives complete exemption; over that figure exemptions are given up to £7,500, and thereafter duty is levied at one half of the standard rates. Should an estate pass twice in quick succession from the same cause, the estate duty on the second passing is remitted altogether.

[Mr. Lockhart] This follows what was done in respect of the last war. It is in order to meet changes since the last war that it is proposed in the committee stage to move an amendment granting the same concession to estates of civil defence workers, that is anyone who loses his life while engaged in A.R.P. or firefighting work.

MR. RENNIE seconded.

LORD FRANCIS SCOTT: Sir, as the hon. mover pointed out, this Bill is in two parts. One is to increase the schedule and the other is with regard to the exemptions of estates of people killed owing to war action.

I am speaking for all the members on this side of Council with whom I have had the opportunity of discussing the matter, when I say that they are in opposition to any increase in the schedule of the principal ordinance. I think we have shown very clearly our readiness to assist financially in the war effort, and only a few moments ago we passed a bill for that very purpose in the form of excess profits tax, but what we do feel is that any increase of revenue to be found for war purposes should not take the form of an increased levy on widows and orphans but should be found from the more legitimate ways of taxation— income tax, excess profits tax, and so on. Personally, I have never disguised my opposition to this form of taxation in a young country like this. I have always opposed it, and if the war had not come Government had agreed, in view of income tax being introduced into this country, to consider whether this tax could be abolished altogether. The war came, every form of revenue was necessary, so those of us who urged that particular line of policy did not pursue it during the war. But I do trust that Government will not proceed with this bill, the objects and reasons of which are to bring us into line with Tanganyika, which seems a poor reason.

With regard to the second part of the Bill giving exemption to those killed by enemy action, in spite of the amendments which are coming forward the general view is that under war conditions, when the civilian population are just as much liable as the military to suffer death

owing to war action, it should be of a more far reaching extent so as to cover the ordinary civilian population who may be killed as the result of war action.

I do trust very much that Government will not proceed with this bill but will go into the question of these exemptions so as to meet the general wishes of members of this Council.

MR. PANDYA: Your Excellency, I associate myself with the remarks of the noble lord the hon. Member for Rift Valley, and in doing so I should like to point out that while we do not wish, nor are we anxious, to oppose or be against any war taxation, in ordinary circumstances I should have examined this schedule very carefully and would not support the schedule as it stands. The point made that it does come into line with the Tanganyika measure does not appeal to me from this viewpoint, that it is only adding to revenue. We might as well say that Tanganyika should come into line with Kenya on an East African policy.

But one point has been made on which a very good case has been made out for the withdrawal of the amendment, that it bears harshly on the poorer sections of the community. It suggests reducing exceptions from £200 to £100, and the rate is 1 per cent where it does not exceed £500, and this presses very harshly on the poorer sections of the community. I hope Government will see its way to withdraw that amendment.

MR. SHERIFF ABDULLA BIN SALIM: Your Excellency, as far as the Bill has to do with the estates of the Arab community of Mombasa, I feel that I must associate myself with the hon. member Mr. Pandya in his remarks against the measure, and I shall be glad if Government can see its way to withdraw it. If Government thinks of bringing in an Estate Duty (Amendment) Bill, I would suggest that they do exempt the small estates of £100.

HIS EXCELLENCY: In view of the remarks of the last three speakers, I should like to make a statement.

Ever since I have been here, the response made by the whole of the unofficial population to the additional

(His Excellency) taxation measures imposed has been such that there has never been any question of other than complete unanimity and, particularly at a time like this, I should be most loth to force a measure of this sort through if, as I understand, all unofficial members here—to-day are in opposition to it, more especially in view of the fact that I have had the assurance that if later in the year the financial position is such that more revenue is required they would be prepared to co-operate as in the past in the imposition of additional taxation in another form. I am therefore prepared here and now to withdraw this clause 3, which contains the schedule. (Hear, hear.)

The only other question that is left for us to deal with this morning is whether we should proceed to deal with the other clauses. The suggestion has been made that there should be a general exemption of persons killed by enemy action, and whether we can deal with this proposal in the committee stage I am doubtful. I have not actually received the form of the amendment suggested, and I should like to ascertain the views of Council as to the procedure to be adopted.

MR. NICOL: Your Excellency, may I deal with one or two points regarding clauses 4 and 6 which we feel should be amended? First of all, may I say how pleased and grateful we all are that Your Excellency has withdrawn clause 3 of the Bill.

In regard to clause 4, the first point we feel—

COL. KIRKWOOD: On a point of order, sir, is the hon. member in order in discussing a bill already withdrawn?

HIS EXCELLENCY: It is not withdrawn. I intimated that in the committee stage, when we came to clause 3, Government did not propose to substitute the higher schedule.

MR. NICOL: For the benefit of my hon. friend the Member for Trans Nzoia, I am dealing with clause 4.

As I was saying, what we feel is that in clause 4 the words "on active service" should be omitted in any subsequent bill, as it has already been said on this date, that is a way in which the civilian

population is as much in the firing line in the towns and places which have been bombed as the combatant forces. We also feel that clause 4 should be made mandatory, and that permission should not be left to the discretion of the Governor. We also feel that the remission should extend to all individuals killed or who die from wounds or disease occasioned by enemy action or by any action caused through combating enemy action. I will just explain that point. Although there is an amendment tabled to cover people employed on recognized civil defence work, take the possibility of a bomb or shell landing in a house and the unfortunate occupant gets killed. We think first of all he should benefit under this Bill, and at the same time he might not be employed on actual recognized civil defence. Probably, if he is not killed, or some other occupant of the house, he might get killed in trying to combat fire or rescuing people from the debris.

We feel that this clause should be amended to cover everybody, whether they are killed or die from wounds or disease by enemy action, and also people should be covered who are trying to combat enemy action.

We also feel that the remission should not be confined to lineal descendants or ancestors, and I hope that some alteration will be made in that regard.

Before leaving clause 4, why should the 3rd September, 1939, be made the applicable date? because there are many who are sufferers from the last war and who possibly find now that they have inherited at an early age from demise which can be attributed to the causes of the last war. I feel that they should certainly benefit.

In regard to clause 6, this in effect means leaving out the schedule which you, sir, are withdrawing) the provisions of exemptions to the tax as it stands in the principal ordinance would come to an end at midnight on the 31st December following your proclamation notifying the end of the war. Anybody dying at one minute to midnight that night lets his descendants in for taxation which the descendants would not have to pay if he died at one minute after the new year.

(Mr. Nicol)

We on this side of Council have always opposed the principle anyway of this method of taxation, and any new bill should contain the provision that, on the termination of the war, this bill should be removed entirely from the statute book.

HIS EXCELLENCY: In view of my statement, I suggest that it might facilitate procedure if the Bill is formally read a second time, and I should like time to consider whether we should, in view of the other suggestions made, try and deal with it in committee or have a select committee to go into it.

MR. LOCKHART: Your Excellency, the suggestions made by the hon. Member for Mombasa can, of course, only be made by someone who does not believe in estate duty at all. If you think that the Estate Duty Bill should be withdrawn and the duty abolished altogether, quite obviously you can fix no limit to the exemptions because everybody should be exempt in order to meet your views. I do not think exemptions should be given in cases where persons die from disease or illness contracted during the war or from enemy action to which all citizens are now liable. That would be a very radical amendment indeed. If this is to be incorporated in the Bill, I think it will require consideration by a select committee. Clause 6, of which the hon. member complains, relates only to clause 3 of the Bill. Again, the hon. member's suggestion that we should introduce into this amending bill some provision that the whole estate duty should expire at the end of the war would be quite outside the purpose of this Bill altogether.

The question was put and carried.

MR. RENNIE moved that the Bill be referred to a select committee consisting of: Mr. Harragin, chairman; Mr. Lockhart, Col. Modera, Mr. Nicol, Mr. Shamsud-Deen, the committee to report at the next session of Council.

MR. BROWN seconded.

The question was put and carried.

BILLS

IN COMMITTEE

MR. BROWN moved that Council resolve itself into committee of the whole Council to consider, clause by clause, the following Bills:—

The Patents, Designs, Copyright and Trade Marks (Emergency) (Amendment) Bill.

Local Government (Municipalities) (Amendment) Bill.

Widows and Orphans' Pension (Amendment) Bill.

Non-European Officers Pensions (Amendment) Bill.

War Loan (Amendment) Bill.

Museums Trustees (Amendment) Bill.

MR. RENNIE seconded.

The question was put and carried.

Council went into Committee.

Museums Trustees (Amendment) Bill

MR. BROWN moved that paragraphs (b) and (c) of clause 2 be deleted and the following paragraphs be substituted therefor: (b) by substituting a colon for the full stop which occurs at the end of sub-section (4) thereof and by adding, immediately after such colon, the following proviso: "Provided that a councillor nominated by the Municipal Council of Nairobi may at the request of the Council at the time of nomination be appointed for a period of one year only"; and (c) by adding, at the end thereof, the following sub-section: "(12) No person who is a member of the Board shall be appointed as a paid official or servant of the Board, provided that for the purposes of this sub-section the occupation of a house rent free shall not be deemed to be payment".

The question was put and carried.

The question of the clause as amended was put and carried.

MR. BROWN moved that the Museums Trustees (Amendment) Bill be reported with amendment and the remaining Bills without amendment.

The question was put and carried.

Council resumed its sitting.

His Excellency reported the Bills accordingly.

THIRD READINGS

MR. BROWN moved that the following Bills be read the third time and passed:—

The Patents, Designs, Copyright and Trade Marks (Emergency) (Amendment) Bill.

Local Government (Municipalities) (Amendment) Bill.

Widows and Orphans Pension (Amendment) Bill.

Non-European Officers Pensions (Amendment No. 2) Bill.

War Loan (Amendment) Bill.

Museums Trustees (Amendment) Bill.

Excess Profits Tax Bill.

MR. RENNIE seconded.

The question was put and carried. The Bills were each read a third time.

ADJOURNMENT

Council adjourned *sine die*.

Written Answers to Questions

No. 2—SETTLEMENT AND PRODUCTION BOARD

BY MR. COOKE:

1. With reference to the report of the Auditor for 1939, paragraph 30, by what authority was the payment of allowances to members of the Settlement and Production Board charged to Head XXIII, Item 7, of the 1939 Sanctioned Estimates?

2. Was not the correct course to have put in a Supplementary Estimate for the sum required (namely £93-13-0) and so have afforded this Council an opportunity of criticizing an expenditure greater than that sanctioned by Council?

3. Will Government give an assurance that such an irregularity and breach of Colonial Regulations, which must be a bad example for junior Government officers, will not be permitted in future?

Reply:

1. The authority was the General Warrant. Government does not agree that the expenditure in question was incorrectly allocated.

In view of the answer to 1, 2 and 3 do not arise.

No. 13—DEFENCE (RESERVED OCCUPATIONS) REGULATIONS

BY MR. ISHER DASS:

In view of the fact that a certain number of Indian artisans prosecuted under the Defence (Reserved Occupations) Regulations, 1940 and 1941, and acquitted by the court, have suffered a considerable amount of inconvenience and incurred financial loss with no means of getting compensation, will Government give an assurance that no proceedings under the above Defence Regulations will be instituted in future by the Police without first obtaining the approval of the hon. Attorney General?

Reply:

With a single exception it has been the practice to consult the Attorney General before instituting prosecutions under the Defence (Reserved Occupations) Regulations, 1940 and 1941, and this practice will be continued.

No. 15—GAME RAIDING IN N.F.P.

BY MR. COOKE:

Will Government make representations to ensure that in the final settlement of the future government of Abyssinia and of the late Italian Somaliland provision will be made to stop raiding parties into this country in the pursuit of game and to prevent or control the illicit buying of ivory, rhino horn and other valuable trophies emanating from Kenya? And will Government give the assurance that in the interregnum period it will use any influence it possesses to prevent the excessive shooting of game by troops and others in those territories?

Reply:

Government will bear in mind the frontier problems referred to in the first part of the question, and will make, to the proper authority at the proper time, such representations with regard to them as may then appear desirable.

With regard to the second part of the question the answer is in the affirmative.

No. 17—WAR BONUS

BY MR. KASIM:

Is Government aware of the fact that during the Great War, war bonuses were granted to the European and non-European civil and railway servants according to the recommendations of Sir Alfred Lascelles, on the lines that the lowest salaried employees received the highest bonuses?

In view of the fact that the rise in the cost of living is at present about 30 per cent and that some of the commercial firms have already recognized this by increasing the salaries of their employees, will Government appoint a committee to inquire into the question of giving a war bonus?

Reply:

(a) The answer to the first part of the question is in the affirmative.

(b) The answer to the second part of the question is in the negative. Government does not agree that there has been a general rise in the cost of living of about 30 per cent. A detailed statistical examination which has recently been undertaken shows that in the case of non-natives at any rate the rise in what is commonly described as the cost of living between August, 1939, and December, 1940, amounted to approximately 15 per cent, on the basis of which such calculations are customarily made.

No. 18—DEFENCE (RESERVED OCCUPATIONS) REGULATIONS

BY MR. R. KASIM:

Is Government aware of the fact that a certain number of artisans employed by the Public Works Department and the K.U.R. & H. are provided with part time work only, which entails great hardship and pecuniary losses on such employees?

Has the attention of Government been drawn in this connexion to the judgment delivered by the learned Resident Magistrate, Nairobi (appearing in the *East African Standard* of 18th February, 1941), describing the present position of artisans under the Defence (Reserved Occupations) Regulations?

If the replies to the above are in the affirmative, will Government amend the Defence (Reserved Occupations)

Regulations to make it equally obligatory for employers to provide their employees with full time jobs and other usual privileges?

Reply:

Asian artisans normally employed by the Public Works Department are employed for not less than a full week's work of 45 hours and are employed continuously throughout the year.

Artisans employed casually for emergency works are, however, of necessity discharged on the completion of such work or works which normally last more than a week. Whilst employed, however, they are given a full day's work.

It is not the policy of the Department to engage artisans for three or four hours a day; but isolated cases have occurred in which artisans who solicit work have been given employment for such a period. Such cases are, however, few and far between, and the Government is unable to agree that such employment entails hardship or pecuniary loss to such employees since it must be presumed that if the conditions were unacceptable they would not have undertaken the employment.

The Government is informed that it is not a fact that any artisans are employed by the Kenya and Uganda Railways and Harbours Administration on a part time basis. Casual artisans, by letter of agreement, are subject to twenty-four hours' notice but in practice receive notice which may extend from one week to one month, usually the latter, the period of notice depending upon the length of service.

2. The answer to the second part of the question is in the affirmative. The Regulations under which this judgment was given have since been revoked and replaced by others, but the judgment is still *sub judice* the Supreme Court.

3. As regards the third part of the question, the Government sees no necessity for an amendment of the Regulations in the sense proposed.

No. 23—FOREST RESERVE EXCISIONS BY MR. COOKE:

Will Government give details of all portions of forest reserve which are recommended for or earmarked for future excision for European or non-European settlement?

(b) Is Government aware that the Government of the Union of South Africa has addressed to every member of the Union Defence Force an inquiry on the subject of post-war employment?

(c) Will Government consider the desirability of taking similar action in regard to individuals who have joined the East Africa Forces?

(d) Will Government, without further delay, establish in the Colony an office or offices at which individuals discharged from His Majesty's Forces can apply for advice or assistance?

Reply:

(a) The Committee held its first meeting on the 18th June and made a preliminary survey of the situation.

(b) The answer is in affirmative.

(c) The Government has already taken up this matter with the military authorities.

(d) In the opinion of Government this function can be adequately discharged in present circumstances by the office of the Director of Man Power.

**No. 49—THEFTS IN GOLD MINING AREAS
BY LADY SIDNEY FARRAR:**

In view of the serious proportions which gold thefts in mining areas have assumed, will Government please inform Council what steps, if any, they propose to take to remedy this evil, both as regards thieving and receiving?

Reply:

The following steps have recently been taken:—

(a) The Trading in Unwrought precious Metals (Amendment) Ordinance, 1940, which came into force on the 20th August, 1940, enabled imprisonment to be awarded for a first offence and increased the penalty for a second or subsequent offence, to a fine of £1,000 and/or imprisonment for any term not exceeding five years. The application of this legislation during the last four months of 1940 has led to a marked decrease in this category of offences during the first five months of this year.

(b) Since February of last year a police officer has been posted to the goldfields for special duty in connexion with the detection of illicit dealings in gold. The Chamber of Mines has expressed its satisfaction with the appreciable reduction in offences as a result of his work.

(c) Continued efforts have been made by officers of the Mines and Police Departments to persuade gold producers to co-operate by locking up their plates, traps and extractor boxes and all other points in a milling circuit at which gold concentrates may be accessible to unauthorized persons. These efforts have met with satisfactory response.

**No. 51—EUROPEAN TAXATION
BY COL. KIRKWOOD:**

Will Government please state:—

(a) The approximate estimated taxation, direct and indirect, paid by Europeans based on Lord Moyné's Report, for 1940?

(b) The amount estimated to be paid by Europeans under the Excess Profits Tax Ordinance in addition to (a)?

Reply:

(a) The information for which the hon. member asks is not available. The schedules in Lord Moyné's Report were prepared by the Statistical Department which no longer exists. Government does not consider that the appointment of the additional staff which would be necessary to prepare these figures could be justified in present circumstances.

(b) It is not possible at the present time to make any estimate of the amount of Excess Profits Tax which will be paid by Europeans. Statistics analogous to those maintained in respect of income tax will be kept, and it may be possible to furnish reasonably accurate figures by the end of the year.

**No. 52—ENDERESS POST OFFICE
BY COL. KIRKWOOD:**

Will Government please state:—

(a) Why it was found necessary to build a new post office at Endebess?

(b) The cost of building that office?

Reply:

(a) No suitable building was available on satisfactory terms.

(b) £200 approximately.

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OFFICIAL REPORT

SECOND SERIES

First Session: 16th April to 26th June, 1941

VOLUME XII

EXPLANATION OF ABBREVIATIONS

Bills: Read First, Second or Third time=1R, 2R, 3R;
Com.=In Committee; SC.=Referred to Select Committee; SCR.=Select Committee Report; Re.Cl.=Re-committed to Council.

Addendum—

Col. 154, after first paragraph insert
"Mr. Brown seconded."

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