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COLONY AND PROTECTORATE OF KENYA



LEGISLATIVE COUNCIL
DEBATES, 1930

VOLUME I.

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List of Members of Legislative Council, 2nd April, 1930.

President :

HIS EXCELLENCY SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G.,
K.C.V.O., D.S.O., M.C. (GOVERNOR).

Ex officio Members :

COLONIAL SECRETARY (HON. H. MONCK-MASON MOORE).
ATTORNEY GENERAL (HON. A. D. A. MACGREGOR, K.C.).
ACTING TREASURER (HON. H. L. BAYLES).
CHIEF NATIVE COMMISSIONER (HON. G. V. MAXWELL).
COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT,
(HON. H. T. MARTIN, C.B.E.).
DIRECTOR OF MEDICAL AND SANITARY SERVICES (HON. DR. J. L. GILKS).
DIRECTOR OF AGRICULTURE (HON. A. HOLM, C.B.E.).
DIRECTOR OF EDUCATION (HON. H. S. SCOTT).
GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS
(BRIG.-GEN. G. D. RHODES, C.B.E., D.S.O.).
ACTING DIRECTOR OF PUBLIC WORKS (HON. W. M. LYNDE).
COMMISSIONER OF CUSTOMS (HON. G. WALSH).

Nominated Official Members :

HON. T. FITZGERALD, O.B.E. (Postmaster-General).
HON. SIR ALI BIN SALIM, K.B.E., C.M.G. (Liwali for the Coast).
HON. C. M. DOBBS, O.B.E. (Senior Commissioner, Nyanza).
HON. H. R. MONTGOMERY (Senior Commissioner, Coast).
LIEUT.-COLONEL THE HON. R. WILKINSON, D.S.O. (Officer Commanding
Troops).
HON. E. B. HORNE, O.B.E. (Senior Commissioner, Kikuyu).
MAJOR THE HON. H. H. BRASSEY-EDWARDS (Chief Veterinary Officer).
HON. W. F. G. CAMPBELL (Senior Commissioner, Ukamba).
HON. C. F. G. DORAN (Acting Solicitor-General).

European Elected Members :

HON. CONWAY HARVEY (Lake).
MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE, D.S.O. (Coast).
HON. T. J. O'SHEA (Plateau South).
CAPTAIN THE HON. H. E. SCHWARTZ (Nairobi South).
LIEUT.-COLONEL THE HON. LORD FRANCIS SCOTT, D.S.O. (Ukamba).
CAPTAIN THE HON. E. M. V. KENEALY (Kenya).
LIEUT.-COLONEL THE HON. C. G. DURHAM, D.S.O., J.P. (Kikuyu).
LIEUT.-COLONEL THE HON. J. G. KIRKWOOD, C.M.G., D.S.O. (Plateau
North).
HON. E. POWYS COBB (Rift Valley).
HON. F. A. BEMISTER (Mombasa).
COLONEL THE HON. W. K. TUCKER (Nairobi North).

Indian Elected Member :

HON. A. H. MALIK.

Nominated Indian Members :

[VACANT.]

Arab Elected Member :

HON. HAMED MOHAMED DIN ISSA.

Nominated Member Representing the Interests of the African Community :

REV. CANON THE HON. HARRY LEAKEY.

Clerk to the Legislative Council :

MR. G. R. SANDFORD, O.B.E.

ABSENTEES FROM LEGISLATIVE COUNCIL MEETINGS.

- 2nd April, 1930.
HON. HAMED MOHAMED BIN ISSA.
- 3rd April, 1930.
MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE, D.
HON. HAMED MOHAMED BIN ISSA.
- 4th April, 1930.
MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE, D.S.O.
HON. HAMED MOHAMED BIN ISSA.
- 7th April, 1930.
HON. THE TREASURER.
HON. THE COMMISSIONER OF CUSTOMS.
HON. HAMED MOHAMED BIN ISSA.
- 10th April, 1930.
HON. SIR ALI BIN SALIM, K.B.E., C.M.G.
HON. HAMED MOHAMED BIN ISSA.
- 11th April, 1930.
HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS
AND HARBOURS.
HON. SIR ALI BIN SALIM, K.B.E., C.M.G.
CAPTAIN THE HON. H. E. SCHWARTZ.
HON. HAMED MOHAMED BIN ISSA.
- 14th April, 1930.
HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND
HARBOURS.
HON. THE COMMISSIONER OF CUSTOMS.
HON. SIR ALI BIN SALIM, K.B.E., C.M.G.
HON. E. B. HORNE, O.B.E.
HON. T. J. O'SHEA.
HON. HAMED MOHAMED BIN ISSA.
- 15th April, 1930.
HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS
AND HARBOURS.
HON. SIR ALI BIN SALIM, K.B.E., C.M.G.
HON. T. J. O'SHEA
HON. HAMED MOHAMED BIN ISSA.
- 16th April, 1930.
HON. SIR ALI BIN SALIM, K.B.E., C.M.G.
HON. T. J. O'SHEA.
HON. HAMED MOHAMED BIN ISSA.
- 17th April, 1930.
HON. SIR ALI BIN SALIM, K.B.E., C.M.G.
HON. T. J. O'SHEA.
HON. HAMED MOHAMED BIN ISSA.
- 30th May, 1930.
HON. SIR ALI BIN SALIM, K.B.E., C.M.G.
HON. C. M. DOBBS, O.B.E.
HON. H. R. MONTGOMERY.
COLONEL THE HON. R. WILKINSON, D.S.O.
HON. C. F. G. DORAN.
HON. HAMED MOHAMED BIN ISSA.
- 31st May, 1930.
HON. SIR ALI BIN SALIM, K.B.E., C.M.G.
HON. C. M. DOBBS, O.B.E.
HON. H. R. MONTGOMERY.
COLONEL THE HON. R. WILKINSON, D.S.O.
HON. E. B. HORNE, O.B.E.
HON. C. F. G. DORAN.
HON. HAMED MOHAMED BIN ISSA.

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COLONY AND PROTECTORATE OF KENYA LEGISLATIVE COUNCIL DEBATES, 1930 FIRST SESSION.

WEDNESDAY, 2nd APRIL, 1930.

The Council assembled at 11 a.m. at the Memorial Hall, Nairobi, on Wednesday, 2nd April, 1930, His Excellency the Governor (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer—
The Proclamation summoning the Council was read.

ADMINISTRATION OF THE OATH.
The Oath of Allegiance was administered to—

Ex Officio Member :
Walter Mighells Lynde, Acting Director of Public Works.

Temporary Nominated Official Member :
Charles Frederick Garfield Doran, Acting Solicitor General.

Acting Members :
Frederick Arthur Bemister, Mombasa.
William Kington Tucker, Nairobi North.

COMMUNICATION FROM THE CHAIR.
HONORABLE MEMBERS OF COUNCIL.

It is three months, a little more than three months, since Legislative Council adjourned for Christmas, and I propose to ask your attention for a brief review of the affairs of the Colony and of the work of Government during that period. The remaining business this morning is purely formal, but in spite of that I shall endeavour not to make an unduly large draft upon your patience or your time.

First and foremost, I would express on behalf of the whole Colony the pleasure and satisfaction given us by the visit of the Prince of Wales. That visit, as you all know, was purely private in character, but it was nevertheless an honour and a source of pride to East Africa that His Royal Highness should have wished to return to visit it informally so soon after his first formal and official tour. We were, I think, particularly delighted that the greatest joy of this country, life on safari, should so appeal to him. It was a misfortune which we all greatly deplored that he should have got an attack of malaria during his travels, but we rejoice that his recovery was so rapid and complete—a sign, as His Royal Highness said, that attacks of malaria promptly and properly handled are but a passing tribute levied by untamed nature upon civilized man.

I should like also to refer with gratitude to the visit of Mr. Neville Chamberlain. The son of his father, Joseph Chamberlain, would be welcome at any time in any part of the British Empire. But Mr. Neville Chamberlain was doubly welcome here on his own account. It is very much to us in Kenya that one of England's leading statesmen should come to study our problems and our prospects at first hand, and to form his opinions accordingly. I can assure him that his visit gave great pleasure and encouragement to the Colony wherever he went.

I have also been delighted to receive another visit from a distinguished Belgian, much interested in colonization, the Prince de Ligne. The Prince de Ligne is deeply interested in settlement and development in the Kivu area, and I value very much all opportunities of discussing with him such common subjects as railway communication, other forms of development, and research.

Finally, and before I come to the public business of the Colony, I should like to record my very sincere appreciation of the munificent gift recently made to the Colony by Mr. G. R. Mayers, of Mivani, to establish the Horace Russell Mayers Memorial Homes at the Coast. Travelling in South Africa and Rhodesia, one sees evidence on all sides of how much has been done for those territories by private generosity. Hitherto, and through no fault of ours, that has been a great lack in Kenya. This splendid gift therefore is a signal event in the history of the Colony.

The McMillan Memorial Library, which Lady McMillan is raising to the memory of her husband close by this hall, is another example of private wealth devoted to public ends. The Library will be welcome both as adding to the resources of the capital and as a striking memorial to the generous and public-spirited personality which it commemorates. I hope

that other benefactors will before long follow this example, and I trust they will not forget the Highlands Cathedral Fund and the Coryndon Museum, both objects of vital importance to the Colony.

I come now to public affairs, and to the business of Council. I will try to deal briefly with the main features of the situation in regard to production, trade and finance; secondly, with the action taken by Government on the more important recommendations made by this Council at its last session; and thirdly, with certain items of legislation. The Bills before Council are ery numerous, and all of them have an importance of their own, but I propose to say a few words only about three of them—the Tariff Bill, the Native Lands Trust Bill, and the Land Bank Bill.

April is a good month for stocktaking in Kenya. The returns for the previous year are by then fairly complete and available for review, and it is also possible to estimate with reasonable accuracy the prospects for the current year. Looking back on 1929, we can only regard it as a year of very severe stress and trial. The domestic exports of the Colony fell short of the exports of the previous year by £520,000. The main items in that short-fall were a reduction in the value of coffee exports, which went down by over £400,000, and a serious reduction also in the export of carbonate of soda, which went down by £125,00. With regard to coffee, the short-fall was largely accidental, because, owing to the nature of the season, an unusually large proportion of that season's crop was not exported before the end of the calendar year.

With regard to soda, the Magadi Soda Company has been in considerable difficulties with its foreign markets of late, owing to certain qualities in the soda which it exports, and it has found it necessary to establish new machinery. Both Government and the Railway Administration very carefully investigated the position of the Company in order to assist the industry if we could. We found that in addition to the million pounds sterling which the Company has already invested in the Colony, it will be necessary for the Company to invest another £250,000 for new machinery if its exports are to be increased. We have arrived at an agreement with the Company in regard both to railway rates and royalty which should not mean any loss of revenue for the Colony, and when the new machinery is established we have good reason to hope the export of soda will go up to and perhaps exceed 100,000 tons annually.

Taking these facts regarding the short-fall of coffee and soda into consideration, and taking also into account the fact that 1929 was the end of a cycle of short rains, aggravated, I fear, by much political uncertainty, the 1929 returns are in fact by no means discouraging.

I come now to the current year. The yields of the crops now awaiting export, both in Native Reserves and on European holdings, have on the whole been remarkably good. Cereal crops have produced record yields, and it is estimated that on European holdings the maize crop will produce approximately 2,000,000 bags and wheat about 350,000 bags, leaving a surplus for export of European and native-grown maize of approximately one and a quarter million bags and wheat a quantity in excess of a hundred thousand bags. Unfortunately, owing to heavy and unseasonable rainfall, harvesting operations have been much protracted, and are only now approaching completion. As a consequence, grain has not been sufficiently dry for export until recently, and it is feared that some may depreciate in quality before it is exported.

The season has been particularly favourable to dairy farmers. Increased quantities of milk, butter, cheese and ghee are being produced. Consignments of butter and cheese, surplus to the Colony's requirements, are now being exported, and trade connexions are being established.

Apart from the price, the prospects for next season are good. The rainfall all over the Colony has been heavy, and the menace of the locusts appears to be rapidly passing, if it has not yet entirely passed. There is a bountiful supply of food crops throughout the Native Reserves, and no sign of famine should recur. Coffee plantations are, I am told, in a remarkably healthy condition, and show promise of bearing a record crop. It is estimated that this year's crop will be 70 per cent larger than the crop of 10,000 tons picked last year. Increasing areas of sisal are also reaching the bearing stage, and there will be a large increase in the export of sisal.

If it had not been for the heavy fall in prices, this season would have been a record in respect not only of quantity but of value. It is impossible to forecast what prices may be realised in the coming year, and although I think it not unreasonable to expect that market prices will recover somewhat, it cannot be safe to assume that there will be a return to the comparatively high prices of previous years. The whole world, in fact, is exercised in finding a solution of the depression in trade for primary products, and an endeavour is being made to secure some stabilisation of prices. Government in such circumstances is beset with difficulties, but I should like to say we will welcome any practical suggestions from Honourable Members in helping producers, and more particularly the grain-growers, in a trying situation, and we will give such suggestions immediate consideration.

With regard to revenue, the Colonial revenue in 1929 naturally reflected the general conditions of trade and production. Native hut and poll tax fell short of the estimate by over £35,000, and other sources of revenue suffered in proportion. When the accounts were closed, the receipts for the year exceeded the normal expenditure by a little over £28,000, without allowing for a further £40,000 due to the sale of foodstuffs, which was not estimated for in the original Estimates; but heavy abnormal expenditure disposed of that balance. The locust campaign cost the Colony £55,272; famine relief, after allowing for revenue from the sale of foodstuffs, cost the Colony £59,886, and there was also capital expenditure voted by this Council against Surplus Balances on works such as anti-malaria measures and so on, amounting to £72,886—making a total of £187,396. The Colony's surplus balances, as they stood on the 31st December, 1929, were accordingly reduced to £707,396.

It is due to our surplus balances that the Colony has gone through this period of depression without increase of taxation or reduction of services. They have indeed enabled us to make a considerable remission of native tax in famine districts, and also to incur abnormal expenditure for necessary things, such as locust destruction. I wish therefore to thank Council for assisting Government during some very critical years to maintain taxation at a level which has enabled these balances to accue. Members will realise that it was impossible in such circumstances to remit the £70,000 which was set aside last year for remission of taxation. The only remissions were remissions of native tax.

The revenue this year is steady, but we must not presume too far upon it. The exports on the whole are going out later than usual, and the increase in imports will be correspondingly delayed. The volume of imports—also certain to be affected to some degree by the fall in prices. I do not think there is any reason to anticipate that the revenue will not exceed the estimate, but caution is desirable in regard to it. While therefore some reduction of taxation is, in the opinion of Government, desirable, it has not been possible to go to the full extent of the £70,000 promised two years ago. As Honourable Members know, there was a reduction of £7,900 in the Postal Revenue approved in this year's Estimates. In addition to this, Government has approved, by agreement with the other territories, for reductions in the tariff which will mean to Kenya a loss of £44,500. That means a total remission of taxation of £52,400. Against this we shall be able to set new revenue amounting to £18,000, which is being raised on items in the tariff which will not, we are confident, be felt by the consumer, so that the estimated loss of

tariff revenue on the year will only be £26,000. This is all that the country's finances can afford, and I hope it will be made good by increased importations during the year.

The Railway position also requires caution. When the Estimates were passed in October, it was expected that good crops would be realised in Uganda as well as in Kenya, and this Government only passed the Estimates on the understanding that the Railway Administration would provide for a hundred thousand pounds reduction of rates. Unhappily, however, through unseasonable rains, the Uganda cotton crop has deteriorated both in quantity and quality. The fall in prices must also affect the volume of imports on the Railway here. The receipts at the end of 1929 were £84,000 below estimate, and up to date this year the receipts are £37,000 less than they were in the corresponding period last year. Honourable Members will realise therefore that only small rate reductions are possible. The General Manager will make a full statement on the position later on in this Session when he brings in the Railway Supplementary Estimates. On the other hand, I am glad to be able to announce that by agreement at the Goeriors' Conference the country produce rates, to which this Council attach so much importance, are to be entirely retained so far as Kenya is concerned.

The more I look on the situation of the Railway, the more I am impressed by the weakness which is inevitable owing to the fact that it depends solely upon agriculture. It is essential in the interests of both the Territories which the Railway serves that it should be able to reach a mineral area at the earliest possible date. That will be of double value, for in addition to the mineral freight which it will give the Railway, it will also open to the producers of this Colony and of Uganda markets on the continent where they will realise better prices than in the markets of the world.

I have done my best for a long time to study this necessity, which was also very much on Sir Christian Felling's mind, and I visited Belgium in a purely private capacity when I was home in 1927 in order to discuss Belgian railway development with Belgians responsible for and interested in their Colonial possessions. I do not believe it is possible to attach too much importance to Belgian co-operation and goodwill. The question of railway extension to the Congo is now becoming urgent. Doubt has, however, always existed as to the direction in which the Railway should be extended to obtain this traffic. His Excellency the Governor of Uganda has also devoted much thought to this question during the

whole of his tenure of office, and I have had many discussions with him. When the present extension reaches Kampala there will be two main ways of carrying on the line through the western part of Uganda: either from Kampala, practically in a due west direction, to the Belgian Congo border south of Ruwenzori, or from Soroti in a north-westerly direction to the north of Lake Albert. Neither the Governor of Uganda nor I consider existing conditions warrant an extension of the Soroti line at present, but this may be necessary at some future date when it is known if the Egyptian Government proposes to construct a dam across the Nile in the neighbourhood of Packwach.

With regard to the possible extension from Kampala to the Congo border south of Ruwenzori, a different and a much more promising situation arises. Such an extension would open up mineral areas in the Congo, would serve productive districts on both sides of the border, and would provide a valuable market for the produce of both Kenya and Uganda. The Railway would then be in a position to get full traffic both ways, agricultural products to the mining areas and returning ore. Members of Council have doubtless read the speech of His Excellency the Governor of Uganda to his Council last October, when he pointed out with great force the advantages likely to accrue from such an extension and strongly recommended that the Railway should be continued as soon as it reached Kampala.

In view of the advantages of a possible extension to the Congo from Kampala, arrangements were made last year in consultation with the Uganda Government that the Constructional Engineer in charge of the Jinja-Kampala extension should carry out surveys and reconnaissances beyond Kampala. In the meantime, Mr. Varian, the Resident Engineer of the Benguela Railway, visited Kenya and Uganda on his way to England and on behalf of his principals, Tanganyika Concessions, Limited, found time to examine certain prospecting areas in Western Uganda, together with possible Railway connections to that area. Mr. Varian is in close touch with many of the Belgian development schemes, and it was therefore decided to take advantage of his experience and make available for him all information regarding local conditions and costs which was at the disposal of the Railway Administration and the Uganda Government. Mr. Varian prepared a comprehensive and useful report, from which it appears that Stanleyville, which is already connected by rail and steamer with Cape Town, must become the main centre of rail and waterway communication in the Eastern Congo; that if the Kenya and Uganda Railway is to be extended westwards, it

must eventually be connected with Stanleyville; and, further, that for any such extension there is only one possible gap in the Rift Valley on the western side of Uganda, and that is the gap just situated south of Ruwenzori, which would enable the Railway to run in practically a straight line from Nairobi through Kampala to Stanleyville.

The Railway Administration has already had rough surveys made of this possible extension to the Congo border. It has already been recommended to the Secretary of State as a scheme for consideration under the Colonial Development Fund, and he has expressed a very sympathetic interest in it. My honourable friend, the General Manager, has just returned from a three weeks' tour in Uganda, when he went over the suggested route, and there are four separate railway survey parties now thoroughly examining the proposed extension. In addition, the Uganda Government have reconstituted their Economic Committee to examine the prospects of such a line. The completion of these investigations will, of course, take some time. The Secretary of State has also undertaken to discuss the prospects of such a railway with the Belgian authorities. I hope that progress may be made on these lines, for such progress is very desirable for the welfare of the Railway and for producers in both Territories.

I feel strongly that two things are imperative in regard to Railway policy at the present time. We have to face new construction involving new capital commitments; other difficult issues are involved. It is therefore, in my opinion, extremely desirable that we should have at the earliest possible date the services of a high railway authority with wide experience of railway finance. It would be unwise to take such decisions as are now becoming urgent without advice from a high authority on railway finance. There is also the question of the liability for the loans which may be incurred, a question which of necessity comes up under the Closer Union proposals. These things are of such deep importance to us that on this account as on many others I hope the Closer Union proposals will not be much longer delayed.

The other thing that is imperative is the greatest possible measure of international co-operation, especially with the Belgian Government. We want such co-operation in communications and research, and I am quite certain we should do everything which we can to show our desire for co-operation and good-will. For that reason I have reconsidered the decision made by the Select Committee not to contribute the full sum required for our share in the East African Exhibit at the Antwerp Exhibition. Strong representations were made to me from various quarters on that subject, including the

Secretary of State, and the necessary money has been found partly by the Railway and partly by the Colony. I hope, in view of the great importance attaching to that Exhibition at the present time, that Honourable Members will support the supplementary vote.

I now come to the action taken by Government on the more important recommendations made to it last Session by this Council.

There was, in the first place, a recommendation regarding the housing of officials. The Committees promised were immediately appointed and they have done their work, but I understand there has been some difficulty in obtaining all the signatures. I have therefore not seen the Reports, but when the Reports are presented, I hope the Government will be able to take action on them without delay.

Perhaps of even more importance was the attention given by the Select Committee to the terms of service for the Civil Service. We have now heard from the Secretary of State and from the other Territories that both he and they are against any extension of the present length of tour. I understand that recommendations in that sense are also likely to be made by the Warren Fisher Committee sitting in London. I have, therefore, appointed a small Committee of Executive Council with an unofficial member to reconsider both the existing Reports on leave conditions, and to make recommendations. When this preliminary enquiry is completed, this subject of leave conditions and the length of tour is of such importance to the Colony that I am sure Government can rely upon the unofficial members of this Council to study it with due regard for authoritative opinion outside the Colony as well as within.

A third subject of importance was that of office-organisation in the districts. I have received and read in the last three days an excellent report prepared by Mr. Wade and Mr. Mayer, who very kindly undertook to carry out the enquiry with Mr. Wade. It is a most practical, helpful and thorough report. It will be laid before this Council as soon as it is printed, and Government will make every endeavour, so far as lies in its power, to carry out the recommendations.

I have travelled much in this Colony and I desire now, after more than four years, to pay a warm tribute to the zeal and efficiency of the Civil Service, from Provincial Commissioners, District Officers and officers of all Services down to the districts. I am particularly glad the report compiled was so sympathetic and appreciative of the work of the Civil Service.

They have done their work for some time past under special strain and difficulty owing to bad times, the anti-locust campaign, famine conditions and shortness of staff; and I consider they have done it admirably.

The Administration is understaffed in the sense that the existing establishment does not fully provide for reliefs and secondments or for illness. Every Province is therefore usually under strength. The under-staffing of the Administration needs careful consideration. The normal and natural remedy, which has been taken with success elsewhere, is increasing devolution of certain kinds of responsibility to native authorities. We are doing that as far as we can. There are recommendations in the Wade-Mayer Report which will have this effect, and we are also proposing to deal with the work of Native Tribunals and the trial of natives in magistrates' courts. But progress on that line must necessarily be slow. I am satisfied, for instance, after taking the opinions of Provincial Commissioners, that the most effective form of devolution, namely, the devolution to native authorities of the onerous duty of collecting revenue, is not yet possible here. All we can do in that respect at present is to continue training the native authorities in financial responsibility through the Native Councils. I am confident that many of the tribes will make rapid progress in that way.

But in the meanwhile, and for years to come, their welfare and the peace and good order of the Colony will depend upon the zeal, efficiency, and *esprit de corps* of the Civil Service. As the constitution here changes and develops, a good Civil Service will become more, rather than less, important. Closer administration of native areas and closer study of native ideas are in many ways desirable. They can only be achieved by a system which frees Administrative Officers sufficiently from routine office work to enable them to tour more thoroughly in their districts. They also necessitate an establishment sufficient to prevent frequent changes of post, so that officers may better know their people and be better known of them. Without that, it is idle to expect any great increase in the knowledge of vernaculars, greatly desirable though all consider such knowledge to be. I hope, before I leave the Colony, with the assistance of the recommendations made by Mr. Wade and Mr. Mayer, and by the help of other measures, to see effective progress made in these directions. One of the most essential of the necessary measures I have already referred to; it is the reform of procedure with regard to the trial of minor native cases, and with regard to appeals from native tribunals. I will not go into detail on that subject now, but I should like to inform Council that new Rules and a draft Ordinance on the subject have been prepared and are

now receiving the consideration of the Secretary of State. There would be, in point of fact, no necessity for Government to submit the new rules, because it is within the power of Government to make these Rules under the existing Ordinance, but I wish to submit them because a change of principle is involved and I think it important that changes of principle should not be introduced by the method of rule-making without the cognizance of the legislature.

I have also received and studied the Report on Land Tenure within the Kikuyu Reserve, to which some reference was made last Session. It is a most enlightening Report. It has now been printed and will be laid on the table. We are now obtaining the views of Provincial Commissioners with special experience of the Kikuyu tribe, and I hope Rules will be drafted without delay.

The most important of the remaining recommendations related to agriculture, education, and the medical services.

With regard to agriculture, the main point has been to implement the recommendations of the Agricultural Commission. The appointment of the Board of Agriculture has necessarily been delayed by the fact that the Secretary of State required our comments on the whole Report before sanctioning action, but I am now in communication with the Chairman, and the necessary members for the Board, and I hope to announce its appointment before long.

Another recommendation made with urgency by the Agricultural Commission was the establishment of a meat factory. We have worked out proposals for that in detail, and have submitted them to the Secretary of State as a project for consideration under the Colonial Development Fund. I hope Honourable Members will approve that course.

With regard to coffee and sisal services, which are also an urgent recommendation of the Commission, legislation is now in draft form and is under the consideration of Government.

Before I leave the work of the Agricultural Department, I should like to say a word of gratitude to my friend, the Director. He has been working short-handed for a very long time. The Deputy Director, Mr. Harrison, has now been promoted, and for many months before that he was away on the work of locust destruction. The Director has therefore been very hard-pressed and working under great strain, and I wish to endorse whole-heartedly the tribute paid by the Agricultural Commission to his unflinching industry and devotion to the welfare of the Colony.

With regard to Education, we have been seriously misrepresented overseas. The Education Vote was not reduced in any item except one, and that was the token vote regarding Goan education, which amounted to only £500. The statement frequently made in many quarters that the Education Vote was seriously reduced is therefore untrue. With regard to the recommendations made by the Select Committee, my friend the Director of Education has taken action on all of them, and wherever possible action is well advanced.

With regard to Medical Services, we have also been exposed to criticism, particularly in regard to the provision of funds for certain institutions dealing with the medical training of African women. Honourable Members will remember that they decided that the affairs of these institutions required further investigation, and also that principles should be laid down governing the grant of capital funds to institutions for Africans similar to those laid down in the case of institutions for Europeans and Indians. The Committee appointed to deal with that has sat, and I understand that it has submitted a Report which has been signed by all its members except one, who was away. By the courtesy of the Chairman, I have seen an advance copy of their Report. It recommends in regard to African institutions that it should be open to Government to make a grant up to 100 per cent of the capital required if the institution merits it. That is going further than Government has gone in the case of European and Indian institutions, grants to which may not exceed 50 per cent of the capital required. It has also suggested that a Standing Committee should be set up to go into the merits of the institutions concerned, and I hope to appoint that Committee as soon as the Report is in my hands.

I come now to legislation in order to make a very brief reference to three Bills.

First, the Tariff Bill. Some months ago, a Committee was appointed, of a very representative character, to make recommendations as to the policy to be followed by the Colony in the revision of the tariff which was being pressed by the two neighbouring Territories. The Report of that Committee was of a very comprehensive character. It was published and generally endorsed. It was accordingly adopted by Government. I myself took charge of the recommendations of that Committee in regard to protective duties, which were dealt with at the Governors' Conference, and I am glad to be able to inform Council that by agreement between the Governors, the protective duties are being retained so far as Kenya is concerned, and by the other Territories to a considerable extent. The general revision of the tariff which was

entrusted to an expert Committee. The instructions to our representatives on that Committee were to follow the recommendations of the Kenya Tariff Committee. I am glad to say that they have secured agreement with other territories, and that all the more important recommendations of the Kenya Committee have been carried out. There has been no departure of any moment from the instructions given, and I am sure therefore that the Tariff Bill will commend itself to this Council. The Colony owes a great debt of gratitude to my friend the Commissioner of Customs for the very expert and valuable work which he has done.

- As Honourable Members understand, it is not possible to discuss all the items of a tariff in an open legislature, and a tariff has to be passed on the same day through all its stages in all the three territories over which the tariff is to rule. The arranged date is the 17th April. The Tariff Bill will be introduced and passed through all its stages on that day but I shall be glad to arrange, if Honourable Members desire it, for a confidential preliminary discussion with them of the main features of the Bill.

I come now to the Native Lands Trust Bill. I promised this Council before the adjournment that the objections made by Honourable Members on that side of the House to the action proposed by the Secretary of State should be submitted to him. That course was duly taken, and this Government also forwarded certain new recommendations of its own which might in our opinion have assisted to overcome the difficulties which had arisen. I am laying the Secretary of State's despatch in reply, together with the proposals made by the Kenya Government, so that Honourable Members may fully understand the position taken up by the Secretary of State, who hopes this Council will agree to proceed with the Bill in the form which he originally desired. I hope that Honourable Members, whatever, they may still think of the clause under dispute, will not refuse to associate themselves with Government in passing the Bill as a whole through its remaining stages. It is of the greatest importance to the Colony.

I deeply regret the long delays which have taken place with regard to the Land Bank Bill. It has been delayed partly by the change of Government at home and partly by protracted negotiations with the commercial Banks. I am not complaining of the Banks. Their attitude has been most friendly, but the co-operation of the commercial Banks inevitably brings in certain difficulties regarding joint responsibility. The co-operation of the Banks and their branches in this Colony is essential to the Land Bank, but I am not so certain that it is necessary or desirable that we should also

secure their financial participation. I am therefore referring the matter back to the Select Committee in order to consider the Secretary of State's comments, and to decide whether or not to proceed with the Bill in its original form.

One word more, before I conclude, about a matter which has attracted some attention both in Kenya and Without. Honourable Members are aware from a statement made by the Colonial Secretary last session that this Government originally wished to make larger provision for an old servant of David Livingstone—Matthew Wellington, now living at Freretown in advanced old age. At the time, this Government were prevented from doing so by the Secretary of State and the Imperial Government. We are now informed that the adverse view then taken by the Secretary of State and the Imperial Treasury need not be considered binding. I propose therefore that Council should grant a further compassionate allowance to Matthew Wellington, and that a Committee of this Council should consider in what form that can best be done.

It would be intolerable that this Colony should seem indifferent to the memory of Livingstone or to the needs of any old servant of Livingstone's, especially when that servant has been in the service of Government. The care of such a man should not be left in any way to private charity. Livingstone may justly be regarded as the chief founder of British colonisation in East and Central Africa. His lion-hearted exploration first opened up the centre of the African Continent. More than any single man he brought about the suppression of the slave trade; and he was the first great advocate of civilisation in Africa by settlement. To show his foresight in that respect more than half a century ago, I quote the following passage from *The Life of Livingstone*, published last year by the Rev. Dr. R. J. Campbell:—

"In December, 1850, pressing his kindred to emigrate, he says he believes the cause of Christ will be better advanced by emigration than by missionaries. This conviction deepened with him as time went on, and we meet it repeatedly in his utterances, public and private, written and oral. In the opening chapter to it in the challenging statement that the promotion of commerce would do more good than the missionary with the Bible under his arm; and so sure was he of his ground in so saying that out of the profits of this, his first and most widely circulated book, he offered two thousand pounds towards the cost of equipping and sending out selected British families to colonise the shores of Lake Nyassa if Government would support the proposal.

"He was before his time in his belief in the psychological benefit of a good social example; and his foresight has been amply vindicated by the planting and growth of flourishing English and Scottish communities in this part of Africa."

It is a tragedy that Livingstone's wide and single vision has since been so heavily obscured by narrow partisanship in one cause or another and by the bitter controversy which partisans have aroused. These controversies are doing active harm to the interests of all races in East Africa, and are gravely prejudicing its development. I earnestly hope that a fair settlement of our political and constitutional problems will not be much longer delayed.

MINUTES.

The minutes of the meeting of 20th December, 1929, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table:—

By THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR, K.C.):

Report of the Select Committee on the Penal Code.

Report of the Select Committee on the Criminal Procedure Code.

Civil Procedure (Amendment No. 2) Rules, 1929.

By THE HON. THE ACTING TREASURER (MR. H. L. BAYLES):

Scheme to Advance Money to Asian Civil Servants to enable them to build their own houses.

Loan Statement.

By THE HON. THE CHIEF NATIVE COMMISSIONER (MR. G. V. MAXWELL):

Native Affairs Department Annual Report, 1928.

By THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS (BRIG.-GENERAL G. D. RHODES):

Kenya and Uganda Railways and Harbours Second Supplementary Estimates, 1929.

BY THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT,
LANDS AND SETTLEMENT (MR. H. T. MARTIN) :

Return of Land Grants, etc., from 1st October to 31st
December, 1929.

BY THE HON. T. FITZGERALD (POSTMASTER GENERAL) :

Statement required under section 150 of the Electric
Power Ordinance, for the year ended 31st December,
1929.

LT.-COL. THE HON. LORD FRANCIS SCOTT : On a point
of order, Your Excellency, is the hon. the Acting Director of
Public Works going to lay a Report of the Loan Works
Committee, as has always been agreed?

THE HON. THE COLONIAL SECRETARY (MR. H. M.-M.
MOORE) : Could you tell me to which particular Report you
refer?

LT.-COL. THE HON. LORD FRANCIS SCOTT : Some years
ago it was agreed that a Report of the Loan Works Committee
on what they had done in the meantime should be laid on the
table at each meeting of this Council.

THE HON. THE COLONIAL SECRETARY : On a point of
order, I think I should require notice of that question; it does
not seem to arise here.

HIS EXCELLENCY : Perhaps the Noble Lord will give
notice of that question.

BILLS.

FIRST READINGS.

THE PUBLIC TRUSTEES (AMENDMENT) BILL.

On motion of the hon. the Attorney General, the Public
Trustees (Amendment) Bill was read a first time.

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

THE IMMIGRATION RESTRICTION (AMENDMENT) BILL.

On motion of the hon. the Attorney General, the Immi-
gration Restriction (Amendment) Bill was read a first time.

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

THE WIDOWS' AND ORPHANS' PENSIONS (AMENDMENT) BILL.

On motion of the hon. the Acting Treasurer, the Widows'
and Orphans' Pensions (Amendment) Bill was read a first
time.

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

THE HARBOURS REGULATION (AMENDMENT) BILL.

On motion of the hon. the General Manager, Kenya and
Uganda Railways and Harbours, the Harbours Regulation
(Amendment) Bill was read a first time.

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

HIS EXCELLENCY : I understand that four of the Bills
down for first reading to-morrow can only be read a first time
by the leave of Council because they have been published for
two days only instead of fourteen :

The Food and Drugs (Adulteration) Bill,

The Native Liquor (Amendment) Bill,

The Mining Bill,

The King's African Rifles Bill.

I hope that Council will be prepared to facilitate business in
that manner.

THE HON. CONWAY HARVEY : I do not think there will be
the slightest objection to getting on with those Bills, Sir.

HIS EXCELLENCY : I am much obliged.

Council adjourned to 10 a.m. on Thursday,
the 3rd April, 1930.

THURSDAY, 3rd APRIL, 1930.

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Thursday, 3rd April, 1930, His Excellency the Governor (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MAOLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of 2nd April, 1930, were confirmed.

PAPER LAID ON THE TABLE.

The following paper was laid on the table :—

BY THE HON. THE CHIEF NATIVE COMMISSIONER (MR. G. V. MAXWELL) :

Summaries of Local Native Fund Accounts, 1929.

ORAL ANSWERS TO QUESTIONS.

FLOTATION OF NEW LOANS.

CAPT. THE HON. E. M. V. KENEALY asked :—

“ Will the Government state when, and for what amount, and for what purposes, it is proposed to float new loans? ”

THE HON. THE COLONIAL SECRETARY (MR. H. M.-M. MOORE) : As the hon. Member is aware, this Council has already approved by Resolution the advances shown on page 7 of the Sessional Loan Statement in anticipation of the flotation of a further loan or loans. The following resolutions of a similar character are to be considered by this Council during the present session :—

Rolling Stock	£25,000
Third Storey to Law Courts	£26,000

All these advances, and any others of a like character which may from time to time be brought before this Council for approval, will in due course be incorporated in a new loan or loans, but it is not possible for this Government to state when the Secretary of State's financial advisers will consider the time opportune for flotation.

CAPT. THE HON. E. M. V. KENEALY: Arising out of that answer, is it not a great embarrassment to Government to be forced to utilise our Surplus Balances in overdrawing upon the Crown Agents without any definite assurance as to when we shall be allowed to raise money on our own responsibility?

THE HON. THE COLONIAL SECRETARY: That is a question which I think my hon. friend the Treasurer could answer better than I, but, from my knowledge, I do not know that there is any embarrassment.

THE HON. THE ACTING TREASURER (MR. H. L. BASLES): There is no difficulty whatever in obtaining funds from the Crown Agents, and, I may add, the bank rate at the present moment is very favourable.

CAPT. THE HON. H. E. SCHWARTZE: May I ask whether it is Government's definite intention to start in the immediate future with the erection of the Law Courts?

HIS EXCELLENCY: I think notice should be given of that question. It hardly arises here.

CAPT. THE HON. E. M. V. KENEALY: In the definition of "embarrassment," I did not mean financial embarrassment. I was concerned more particularly with political embarrassment.

HIS EXCELLENCY: Order, order. The hon. and gallant Member must ask a question.

CAPT. THE HON. E. M. V. KENEALY: May I amend my supplementary question? Does not Government suffer certain political embarrassment in the postponement of an issue such as this, with uncertainty as to when a loan is to be raised, and for what amount?

THE HON. THE COLONIAL SECRETARY: I am not aware that we are suffering any political embarrassment. (Laughter.)

GENERAL COMBINED HOSPITAL AT MOMBASA.

THE HON. F. A. BEMISTER asked:—

"What is the present position of the question of the General Combined Hospital at Mombasa?"

THE HON. THE DIRECTOR OF MEDICAL AND SANITARY SERVICES (DR. J. L. GILKS): The matter has been under consideration by the Loan Works Committee and by the Government. Sketch drawings and preliminary estimates

have been prepared, but no decision has been arrived at. Consideration will be given to the inclusion of funds for the purpose in connexion with the next schedule of works to be undertaken from Loan Funds.

EMPLOYMENT OF PENSIONED OFFICIALS.

THE HON. F. A. BEMISTER asked:—

"How many, if any, persons already on the Pension List of the Colony are employed in the Public Works Department?"

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS (MR. W. M. LYNDE): There is one person already on the Pension List of the Colony employed in the Public Works Department.

THE HON. F. A. BEMISTER: May I ask the leave conditions in connexion with that appointment, Sir?

HIS EXCELLENCY: Kindly give notice of that question.

TRAVELLING ALLOWANCES.

CAPT. THE HON. H. E. SCHWARTZE asked:—

"Whether Government will appoint a Committee to consider the whole incidence of travelling allowance and to report thereon?"

THE HON. THE COLONIAL SECRETARY: If the hon. Member will give specific instances in which the sanctioned rules governing travelling allowances appear to him inequitable, Government will give further consideration to the matter; but in the absence of any proof that this incidence is generally inequitable Government is not prepared to set up the Committee suggested.

COST OF EDUCATION.

THE HON. F. A. BEMISTER asked:—

"What is the number of Arab and Native scholars in the following schools:—

Government Schools,

Mission Schools?

"What is the cost per head to the State under the two types of schools, excluding headquarters staff in both cases?"

THE HON. THE DIRECTOR OF EDUCATION (MR. H. S. SCOTT) : The figures as at the end of 1930 are not yet available; the figures for 1928 are as follows :—

Government Schools.

Number of pupils : 2,007.

Expenditure : £45,031.

Cost to State : £22-8-74 per pupil.

Mission Schools.

Number of pupils : 83,549.

Grants-in-Aid : £33,631.

Cost to State : Sh. 8/50 per pupil.

I may add, for the information of the hon. Member, that if the purpose of his question is to establish a comparison between the cost of education in Government and Mission schools, the figures given in answer to his question do not justify the comparison, because the numbers of pupils in Mission schools include all the pupils registered at catechetical centres, and also all the pupils at other Mission schools in respect of which no grants are made.

THE HON. F. A. BEMISTER : What I really wanted were the 1929 figures.

THE HON. THE DIRECTOR OF EDUCATION : I have not got them.

THE HON. T. J. O'SHEA : Arising out of that answer, are we to understand that in April, 1930, the headquarters of the Education Department does not know the number of scholars attending Government schools and Mission schools?

THE HON. THE DIRECTOR OF EDUCATION : Your Excellency, I do know how many children are attending Government schools, but it was not possible to give a full answer to the question for 1929 and therefore I thought it was best to give a full answer to the question in respect of 1928. It is now the beginning of April, and before the end of April I think the figures will be available.

ILLICIT TRAFFIC IN IVORY AND RHINO HORNS.

THE HON. CONWAY HARVEY asked :—

"What steps have been taken to secure the co-operation of the Italian Government in the suppression of illicit traffic in ivory and rhino horns?"

THE HON. THE COLONIAL SECRETARY : As the result of diplomatic representations, the question of formulating a joint policy for the suppression of illicit traffic in ivory and rhinoceros horn is under correspondence between this Government and the Government of Italian Somaliland.

LIMURU-ESCARPMENT ROAD.

THE HON. CONWAY HARVEY asked :—

"What is the cause of the delay in the constructing of the Limuru-Escarpment section of the main Nairobi-Nakuru Road?"

"What are Government's plans in connexion with this important thoroughfare?"

THE HON. THE COLONIAL SECRETARY : By notice under the Local Government (District Councils) Ordinance, 1928, the road from Nairobi to Limuru (Route A), thence to Escarpment, Naivasha and Nakuru, was classified as a main trunk road on the 12th March, 1929. It is therefore Government's intention that this road should be constructed and maintained as a main trunk road.

Construction work on that section of the road which lies between Limuru and Escarpment had to await the sanction of the Secretary of State to the expenditure included in Estimates for this purpose. This sanction was not received until the 24th March.

THE HON. CONWAY HARVEY : Your Excellency, arising out of that answer, has the Government made representations to the Secretary of State with a view to obviating the loss of the best period of the year for road-making, owing to the belated sanction of the Estimates as they are agreed to each year?

THE HON. THE COLONIAL SECRETARY : Your Excellency, such representations were made. In the first instance, approval was obtained for the immediate expenditure of a sum of about £16,000 (speaking from memory), which was required on the intimation of the Public Works Department to get on with urgent works immediately. Later, when delays occurred over the question of the sanction by the Secretary of State of the further road programme, telegraphic representations were made to him, and it was as a result of those representations that the sanction to which I have just referred was obtained on the 24th March.

ORGANISATION IN ADMINISTRATIVE OFFICES.

THE HON. CONWAY HARVEY asked :—

"When the report of the inquiry into the organisation prevailing in Provincial and District Offices will be laid by Government for the information of Members of Council, and what is the intention of Government with respect to the suggestion made by Elected Members in the Report of the Select Committee on the Draft Estimates for 1930 that the scope of an inquiry of this nature could profitably be extended to the offices of other Government Departments?"

THE HON. THE COLONIAL SECRETARY: The Report of the Committee to which the hon. Member refers has been sent to the Printer, and it is hoped that it may be available for circulation to hon. Members during the course of the present session.

The Government is not prepared to give a decision as to the desirability of extending the scope of the inquiry in the manner proposed by Elected Members pending consideration of this Report both by the Government and by hon. Members of this House.

SUSPENSION OF STANDING ORDERS.

HIS EXCELLENCY: I understand that hon. Members are agreed that Standing Rules and Orders shall be suspended in order to admit of the passage of the Courts (Amendment) Bill.

THE HON. CONWAY HARVEY: Your Excellency, I think there will be no objection to that course.

THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR, K.C.): With your leave, Sir, I beg to move that Standing Rules and Orders be suspended in order to enable a Bill to amend the Courts Ordinance to be taken through all its stages without due notice.

THE HON. THE ACTING TREASURER: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that Standing Rules and Orders be suspended in order to enable a Bill to amend the Courts Ordinance to be taken through all its stages without due notice.

The question was put and carried.

BILL.

FIRST READING.

THE COURTS (AMENDMENT) BILL.

On motion of the hon. the Attorney General, the Courts (Amendment) Bill was read a first time.

SECOND READING.

THE COURTS (AMENDMENT) BILL.

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

This, Sir, is a measure of a considerable degree of urgency, and that fact, of course, is the justification for the course which has been adopted in asking the leave of Council to take it through all its stages at this meeting.

Hon. Members are aware that in the judicial system of the Colony there are courts presided over by Liwalis, Cadis and Mudirs, which were established definitely to deal with cases between Arabs, Somalis and Swahilis. Primarily those courts were established to deal only with those classes of people. They have been functioning for a number of years. Sir, but, as will happen from time to time, the Supreme Court has just discovered that, inasmuch as there is no definition of the term "native" in the Courts Ordinance, they are driven back to the definition in the Interpretation and General Clauses Ordinance, and that interpretation, unfortunately, excludes both Arabs and Somalis and Swahilis; so that we have Liwalis, Cadis and Mudirs enjoying enforced holidays so far as their judicial work is concerned, and in consequence a considerable volume of work is cast upon subordinate courts which they not only have not time to perform, but which they are not fully qualified to perform. That, I think, Sir, is sufficient to justify the passage of this measure.

It consists purely of a provision that for the purposes of the Courts Ordinance the word "native" shall have the same meaning that it has in the Criminal Procedure Ordinance. In other words, the jurisdiction of the courts, civil and criminal, will be concurrent and the same.

With the leave of Council, Sir, I propose to move a further amendment to this same Ordinance, dealing with another matter of very considerable urgency. At the present time subordinate courts presided over by magistrates of the Colony have jurisdiction either a Province or over a District, and there is no statement as to what are the territorial limits of the jurisdiction of a magistrate. The result of that, Sir, is that

it frequently happens—as it must happen in an Administration of this size—that it is necessary to move a magistrate from one district to another speedily. He has already been gazetted as a magistrate in the first district, but when he is moved to the second district he cannot properly perform any judicial functions until a further Gazette notice has been issued appointing him to the second district. In practice, as hon. Members will see, it is invariably necessary that as soon as a magistrate reaches a second district he should assume judicial functions, but strictly speaking his exercise of those functions before the Gazette notice is issued is irregular and the proceedings are bad. It is therefore proposed, Sir, to leave the jurisdiction of the courts as it now stands, but to declare that the jurisdiction of magistrates shall be throughout the Colony. The effect of that will be that when a magistrate is sitting in any particular court he will have no greater jurisdiction than he now has—the jurisdiction will be subject to the same territorial limits—but if a magistrate has in an emergency been moved from one district to another it will not be necessary for him to await the issue of a Gazette notice before he is able to act as a magistrate in the second district.

I beg, Sir, to move that the Bill be read a second time.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Courts (Amendment) Bill be read a second time.

THE HON. F. A. BEMISTER: Your Excellency, if this is a Bill which is to bring Arabs under the definition of "native," I am instructed by my constituents to oppose it. The difficulty at the Coast is that the Arabs are very strong in considering themselves a different race from the natives, and I notice here it says—

"Native" means any native of Africa not of European or Asiatic extraction, but includes any Arab and Somali, and also any Baluchi born in Africa."

I would like to bring that protest before you, Sir, that the Arabs at the Coast do not wish to be considered "natives" in your courts at all.

THE HON. THE ATTORNEY GENERAL: So far as the criminal jurisdiction of the courts is concerned, this definition has been in force since the date of the enactment of the Criminal Procedure Ordinance, and so far as their criminal misdeeds are concerned, Arabs have been treated as natives.

All this does, Sir, is to bring the civil jurisdiction of the courts exactly into consonance with the criminal jurisdiction. It is a definition for the purposes of this Ordinance only. Under most Ordinances, and certainly under the Interpretation and General Clauses Ordinance, which governs all other Ordinances in the absence of any expressed definition in such Ordinances, Arabs are not natives.

HIS EXCELLENCY: The question is that the Bill to amend the Courts Ordinance be read a second time.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that this Council go into Committee of the whole Council for consideration of the Courts (Amendment) Bill clause by clause.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to second the motion.

The question was put and carried.
Council went into Committee.

In Committee:

THE COURTS (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 2.—Definition.

THE HON. CONWAY HARVEY: There is one very small point here, Sir. Does provision exist in the definition as drafted for natives of the Comoro Islands?

THE HON. THE ATTORNEY GENERAL: I have some difficulty in answering this, Sir, because I am afraid I do not know where the Comoro Islands are. I can only say, Sir, that in many Ordinances they are specifically mentioned. It was omitted from this Ordinance for reasons already stated. It is, I think, extremely important that for judicial purposes the definition should be exactly alike in both Ordinances.

THE HON. E. POWYS COBE: From the wording of the amendment, it appears to me that the objects which have just been stated by the hon. the Attorney General are not achieved. "Native" means "a native of Africa not of European or Asiatic extraction." Surely, an Arab is of Asiatic extraction? Is that not an extraordinarily contradictory way of putting it?

THE HON. THE ATTORNEY GENERAL: It is taken verbatim, Sir, from the other Ordinance.

HIS EXCELLENCY: I think, if the definition is taken verbatim from the other Ordinance, it meets the position required.
Now Clause.—Jurisdiction of Magistrates.

THE HON. THE ATTORNEY GENERAL: I beg to move that there be added at the end of the Bill a third clause, to be numbered 3, reading as follows:

"The following section, to be numbered 7A, shall be inserted between sections 7 and 8 of the Principal Ordinance:—

"The Governor may from time to time assign each or any magistrate of a subordinate court of the first, second or third class respectively to such Province or District as he shall think fit, but every such magistrate shall have jurisdiction throughout the Colony."

CAPT. THE HON. H. E. SCHWARTZ: May I ask the Attorney General, Your Excellency, whether it is quite clear that this does not give the right to bring an action in the magistrate's court, where the cause of action arose at Kisumu and an action is brought in Mombasa? That is not altered?

THE HON. THE ATTORNEY GENERAL: That for certain I can give the hon. Member the assurance he desires. Section 7, which limits the jurisdiction of the court, remains unamended. It is merely the magistrate who is affected, and he cannot be a magistrate except when presiding over a court.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I think a protest should be lodged against this method of introducing a matter of this kind. We have not even got copies of this amendment, and I think Elected Members would be failing in their duty if a protest Standing Orders, but I think, Sir, that it is improper to introduce a matter which we have only heard read out, and which we have not even seen in print.

HIS EXCELLENCY: The hon. and gallant Member should have made that protest on the second reading.

The question is that the following clause be added at the end of the Bill:—

"3. The following section, to be numbered 7A, shall be inserted between sections 7 and 8 of the Principal Ordinance:—

"The Governor may from time to time assign each or any magistrate of a subordinate court of the first, second or third class respectively to such Province or District as he shall think fit, but every such magistrate shall have jurisdiction throughout the Colony."

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill, as amended, be reported to Council. Council resumed its sitting.

On resuming:

HIS EXCELLENCY: Order, order. I have to report that a Bill entitled a Bill to Amend the Courts Ordinance has been considered in Committee of the whole Council and has been reported with amendments to Council.

THIRD READING.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill be read a third time and passed.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to second the motion.

The question was put and carried.

The Bill was read a third time and passed.

MOTIONS.

REPORT OF SELECT COMMITTEE ON THE PENAL CODE.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Report of the Select Committee of Legislative Council appointed to consider and report on the provisions of a Bill to establish a Code of Criminal Law be adopted.

It is within the recollection of hon. Members, Sir, that as far back as the beginning of September of last year a Committee was appointed to consider the provisions of the two new Criminal Codes, both of which are particularly voluminous documents and each of which requires a very great amount of detailed and close consideration. Subsequent to the sittings of that first Committee, Sir, a Select Committee of this Council was appointed for the same purpose, and the Report which hon. Members have in their hands represents the result of their deliberations.

Before I go further, Sir, I should like to pay a very sincere tribute indeed to the Unofficial Members who sat on this Committee. It was not an interesting subject, Sir; it was a subject that required a very great deal of detailed examination; and all the Unofficial Members very unstintingly gave a tremendous amount of very valuable assistance. I should be lacking in my duty, Sir, if I did not say so.

The Report at first sight appears to be rather lengthy, Sir, but I do not think hon. Members will find there is a very great deal in it requiring explanation.

The first recommendations of the Committee to which I will draw attention are those numbered 5 and 8. They introduce, Sir, a new punishment into the Law of the Colony—the punishment of forfeiture. Strangely enough, that has not been a part of the punishment hitherto; there have been a few odd Ordinances which have provided in certain sections for forfeiture as part of the penalty for a breach of the law. I am sure that hon. Members will agree that in such a case, for instance, as a charge of being in possession of housebreaking implements by night, or a charge of being in possession of implements for coining, it is not only right and proper but it is extremely important in the interests of the State and the administration of justice generally that the accused person, after having served his term of imprisonment, should not be in a position to admit of the return to him of those implements or of those coining instruments. It is only in a few cases such as these, Sir, that forfeiture is imposed, and hon. Members will find passing through the Code itself and in the

Report the specific offences for which forfeiture can be imposed. There are offences such as I have mentioned, and others, such as the possession of obscene literature, the possession of forged bank notes, clippings from coins, and things of that sort.

Recommendations 13 to 20, Sir, are extremely important because they introduce very greatly extended law as to seditious publications into the Colony. At the present moment the law on that subject is—I think it is common knowledge—extremely unsatisfactory. The importation into the Colony of seditious literature is prohibited by the Customs Ordinance, but the practical difficulty arises, Sir, that no Customs officer is prepared to take upon himself the responsibility of declaring whether or no any particular document is or is not seditious. At present that is a matter which a court has to decide, and as long as that is so, Customs officers are naturally a little chary about taking the responsibility of taking that decision upon themselves. The position, of course, is exactly the same under the Post Office Act, and the result is, as the Committee were informed, Sir, by responsible police officers, that a very great quantity of seditious literature is going about the country at this moment. Under the clauses which the Committee have recommended should be incorporated in the Code it will be open to the Governor in Council to declare by proclamation that any specific publication is a seditious one, and thereupon the task of the Customs officers, either at the port of entry or at the post office, is made a very much easier one. They have not got to make any decision as to whether or no a particular document is seditious—that will be done by proclamation. That, of course, does not oust the ordinary jurisdiction of the courts to declare as to any particular publication whether or no in their opinion it contains seditious matter. It is simply an additional power, and in no way supersedes the inherent power of the court. It will be an offence to be in possession of seditious literature, and there is a provision made that if seditious literature innocently comes into the hands of anyone they are under an obligation to take it and hand it over at the earliest possible moment to the authorities. It is not novel law. It exists in several other Colonies, and has existed in some of them for a large number of years. I venture to express the hope, Sir, that no hon. Member of this Council can possibly object to any of those provisions. If seditious literature is coming into the Colony, Sir, then it is time we took steps—and very drastic steps indeed—to deal with the situation.

Recommendation 23 deals with a subject which again is found in many of the Legislatures of the Empire—the offence of deliberately making, publishing or circulating false rumours and false reports. At present it is not an offence in this Colony, Sir. I might say no more, I think, than that I think it is high time that it was an offence.

Recommendation 26 is a very lengthy one, Sir, dealing with the subject of unlawful societies. It provides that the Governor in Council may declare a society to be an unlawful society, and thereupon the authorities may enter upon the premises and take over their bank balance, which is an extremely useful weapon to have against organisations of that sort, may seize and confiscate their regalia and banners, books and papers, and generally put them out of business. In addition to that, of course, there is a salutory heavy penalty attaching to membership of such a society.

Recommendation 33 does what ought to have been done many years ago, Sir, if I may say so; it declares that a subordinate court has got the right to punish contempt of itself without having to call in the aid of the Supreme Court, and it defines exactly what contempt of court means.

Perhaps I might say a word on recommendation 35, because it imports a change in the existing law. The subject is that of escape from lawful custody. As the law stands, if a person charged with or convicted of a felony escapes, he is liable to seven years' imprisonment; if, on the other hand, the charge against him or the conviction recorded against him is for misdemeanour only, he is liable to only two years' imprisonment. Why that rather invidious differentiation between a person charged with a felony and a person convicted of a misdemeanour should exist, I am afraid I cannot explain, Sir. The suggestion of the Committee is that all cases of escape, no matter what the circumstances for which the escaper finds himself in custody may be, should be dealt with uniformly. Escape should be a misdemeanour which imports a maximum punishment of two years' imprisonment.

There is a slight change in recommendation 45 which possibly hon. Members will allow me to draw their attention to. The clause, as drafted in the Code, was taken from the Nigerian Criminal Code. There, the offence of procuring abortion or of attempting to procure abortion is, unfortunately, an extremely common one, and it was found necessary in that Colony to alter the English law so as to cover cases of women attempting to procure abortion when they were in fact not with child. That was necessitated purely and simply by local conditions, and the large number of cases of that nature

that had to be dealt with. There is no such necessity, I am glad to say, here; and the Committee therefore recommend that this Colony should follow the English law, which makes it an offence only in a case where a woman is with child.

Now, Sir, we come to a more interesting branch of Criminal Law—recommendations 53, 54 and 55. These deal with the subjects of gaming, betting and lotteries. The Committee had to devote a very great deal of time and attention to these provisions, Sir. I think I may say that none of us exactly liked the Code as drafted, particularly in one respect, because the published Code would make it an offence for the Race Club to run a totalisator. I do not think that Kenya has quite advanced to that high level yet, Sir; a little innocent amusement of that sort is perfectly proper; and therefore in recommendation 54 we propose to legalise the totalisator and other similar devices. Hon. Members will also be glad to have the assurance that the use of dice shortly before luncheon and dinner will not be an offence now, as it is under the Code as printed.

On the subject of lotteries, Sir, we had a very great difficulty indeed, and we have decided therefore to stick to the present law, the law as embodied in the Indian Penal Code. Hon. Members will find that in recommendation 55.

Now, Sir, I would ask hon. Members to turn to recommendation 62. These are quite new, Sir. They are well understood principles of English Law, but your Committee thought, Sir, that it was better that they should be specifically embodied in the Code rather than left to the fruits of research of individual magistrates. They deal with the subject of the performance of surgical operations by qualified men, by the excessive use of force by persons who have been authorised by the victim to use a certain amount of force. The last one, Sir—clause 221, the third part of recommendation 62—specifically declare that a person may not consent to any deed by another person which causes his death or maim. These, I repeat, Sir, are well understood and well established principles of English Law. The Committee felt, Sir, that it was hardly fair to ask the magistrates of the Colony to conduct prolonged and profound research with a very limited number of textbooks to discover just what the law was on a subject like this. That, I think, is our justification for including these provisions specifically in this Report.

Recommendation 60, Sir, deals with what very soon will be the offence in England of joy-riding. Here we are a little ahead of England. Hon. Members are no doubt aware that at the present moment the borrowing of a friend's motor car

without permission, for your own purpose, is stealing, under the Indian Penal Code. It will not be stealing under the new Penal Code, inasmuch as it will be impossible to prove that there was any intention permanently to deprive the owner of the property of his vehicle, and therefore, Sir, we have recommended that there should be this specific offence of what is popularly known as "joy-riding" included in this Code. It will very shortly be the law in England. At the present moment, hon. Members will recollect there are two Bills before the House of Commons which seek to achieve the same object. The wording of this clause is taken from the one the Committee prefers of these two Bills.

Recommendations 86 to 93, Sir, are necessitated by a recent International Convention on the subject of the counterfeiting of coin. At the present moment the punishments for counterfeiting domestic coin are very much heavier than the punishments for foreign coin. The powers to the signatories to that Convention—one of which was Great Britain—provided that the punishments for the two offences should be the same, and it will therefore be necessary, in order to adhere to the provisions of that Convention, that these amendments in the law should be made.

I come now, Sir, to recommendation No. 99. The necessity for that is a curious one, Sir. The Penal Code purports to repeal the Criminal Law (Amendment) Ordinance (Chapter 78 of the Laws). It does incorporate in the Code all the provisions of the first two parts of the Criminal Law (Amendment) Ordinance, but apparently the fact was overlooked that there was a third part to that Ordinance, dealing with secret commissions and corrupt practices. The Committee was unable to discover anywhere in the correspondence, Sir, any reason for repealing and not re-enacting any part of the existing law of the Colony, and we therefore came to the conclusion that it must have been due to inadvertence that this was omitted, and we have recommended that it be inserted here, and that these provisions should still form part of the law.

There is only one more recommendation, and that is No. 102. The well-known terms of "abatement" and "abetting" are now gone. People no longer "abet" offences. They are parties to an offence, or accessories, and that is the reason for recommendation 102, Sir. It goes a little further than the law at present does, because the circumstances—and I think very rightly and properly—of soliciting and procuring in Kenya for the commission of an offence outside, or the hiding outside the Colony, are tantamount to the commission of an offence within it.

One member of the Committee, Sir, has stated—hon. Members will see it appended to his signature—the signature of the hon. Member for West Kenya—a statement that he wishes to reserve certain points. I think perhaps I owe an apology to the hon. Member. He did send me a copy of the Report with what I now understand to have been the notes of the points on which he desired to make reservations. Those I have not published, but I have the Report here, and I shall hand it to the hon. Member now.

I beg to move that the Report, with a slight amendment to recommendation 69—a slight but very important amendment—that the word "not" be inserted after the word "but" in the second line, be adopted.

HIS EXCELLENCY: Perhaps the hon. Member will move the amendment after the motion for the adoption of the Report is put.

THE HON. THE ATTORNEY GENERAL: I beg, Sir, to move the adoption of the Report.

THE HON. C. F. G. DORAN (ACTING SOLICITOR GENERAL): Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Report of the Select Committee on the Penal Code be adopted.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I am not going to make any remarks in regard to this Report, but as the hon. the Attorney General has expressed his thanks to the Unofficial Members who were on this Committee, I think it only right to say, without in any way wishing to indulge in undue admiration, that the vast bulk of this work—practically the whole of this work—was done by the hon. Member himself, and the assistance we gave was very small compared with the labour which he indulged in.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I have just got my notes. I will have to mention one or two points of principle in regard to the adoption of this Report, although, taken as a whole, I think the Report is an admirable one. (Laughter.) Perhaps my opinion is not of much value. May I deal with it in detail, Sir, or are we going to take the thing clause by clause.

HIS EXCELLENCY: Oh, no. Deal with any clause you like now.

CAPT. THE HON. E. M. V. KENEALY: In regard to the first matter, Sir, of principle—that is, in connexion with the clause dealing with forfeiture—I feel that the court and not the Governor should be the instrument for deciding whether articles which are confiscated should be permanently forfeited to the Crown. I feel that it is not proper that the courts' discretion in a matter of that kind should lie in the hands of the Governor. I hope the Government will agree that it should be so, Sir.

There is a very unhappy reference—which I cannot find—to the Indian Penal Code, Sir, and—here it is, 141 (2), reference to an Act of 1872. Now, Sir, it is a very clumsy method of arriving at a fact continually to have to refer to other existing Acts, and I think that when we are starting with a new Code entirely

THE HON. THE ATTORNEY GENERAL: On a point of order, Your Excellency, the hon. Member appears to have overlooked the fact that we are discussing the Penal Code and not the Procedure Code. (Laughter.)

CAPT. THE HON. E. M. V. KENEALY: I withdraw that last remark, Sir, but there is another matter of principle which is concerned, and that is in regard to recommendation 91, which deals with the right of an individual to advertise for stolen property. Under this new Code it becomes a criminal offence to do so. Now, Sir, one relies on the civil authority, and the police, to effect the return of stolen goods, and I feel, Sir, that they should be given time in which to enable them to carry out their functions; but, Sir, I think that if, after the police have failed for a considerable time, and the individual—who may have a very great sentimental regard for what is lost—is prepared to offer a reward, and promises to ask no questions of the person who brings it back to him, that he should be allowed to do so. I think the police should be given a period for recovering goods, but then, if they fail, the individual should have that right. When we discussed this matter in Committee a new draft was promised. I have a note made against this particular item for further consideration, and I feel, Sir, that in recommendation 91 there should be

THE HON. THE ATTORNEY GENERAL: Clause 91?

CAPT. THE HON. E. M. V. KENEALY: Yes, clause 91—that after a certain passage of time the individual who has lost the property should be empowered, without any legal penalty, to advertise for that property.

I feel, Sir, that in considering the adoption of a new Code, that the procedure to be followed would have been better if we had taken the whole thing clause by clause. I do not know if that is the intention later on, Sir, but if it is not, I feel that a protest should be registered against this method of adopting an entirely new Code. I feel that each individual clause of the new Code should be subjected to scrutiny, and that the Code should not be accepted *en bloc* on the adoption of a report. This is a very important departure from our previous legal guidance, and I think, Sir, that it is worthy—although it would involve a certain amount of delay—it is worthy of consideration clause by clause.

In clause 271, Sir, the Report makes no comment upon an individual who intends to exercise any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes, and so on. Where it is claimed—if his claim can be substantiated, I feel there should be some distinction made, because after all witchcraft is only another form of medical science—perhaps a less articulate form than the present one.

Then, Sir, there is another rather important thing, and that is, that although an individual can be punished for destroying a will, apparently there is no provision for punishment for merely hiding a will, and I feel that in a Code of this kind the punishment for hiding a will should be very nearly as severe as the punishment for destroying one. I cannot find the reference to that, but it is here somewhere.

In clause 302, Sir, dealing with forgery—which has been considerably amended—this clause still has failed to incorporate the words "involving fraud" when it deals with another use—in 302, sub-paragraph (3), page 65.

HIS EXCELLENCY: Is the hon. Member dealing with the Bill or with the Report? His references are very hard to follow.

CAPT. THE HON. E. M. V. KENEALY: Well, Sir, there is no reference in the Report to the clause in the Bill. I am dealing with the Bill. If there is a reference in the Report I will deal with the Report.

HIS EXCELLENCY: I suppose the hon. Member means that these are omissions from the Report?

CAPT. THE HON. E. M. V. KENEALY: Yes, Sir. But, Sir, if the whole Code is not to be taken clause by clause, it becomes very difficult to incorporate in it any further amendments.

HIS EXCELLENCY: I think perhaps it would be useful if the hon. the Attorney General made a statement on the question of procedure, as the hon. Member has raised that point more than once. With the permission of Council, I will ask him to do so.

THE HON. THE ATTORNEY GENERAL: I find myself rather at a loss entirely to appreciate the point advanced by the hon. Member who has just spoken, because it appears to me that the procedure adopted here is adopted in the case of every substantial Bill, certainly since the present Standing Rules and Orders came into force. The Bill, in the ordinary course, was read a first time. After due notice, it was read a second time. It was then for the Council as a whole to endorse or to refuse the suggestion made on second reading that the Bill should be made the subject of reference to a Select Committee of this Council. It could equally easily, though perhaps not so conveniently, but equally correctly, have been committed to a Committee of the whole Council. In that case, undoubtedly, the Bill would have been gone through formally in this House clause by clause. But the Council saw fit to refer it to a Select Committee, and the motion now before the Council is the perfectly regular and proper one that the Report of that Committee be adopted. If that resolution is adopted, then, Sir, the Bill will be read a third time. It certainly will not be read clause by clause in this Council. It does seem to me that it is a little late in the day to take that point now. The proper time at which to take it would, in my submission, Sir, have been on second reading, when the suggestion was thrown out that a Select Committee to consider the Bill should be set up. I would like to remove one possible misunderstanding, Sir. I do not know whether the hon. Member meant to state that the Bill had not been considered clause by clause in Select Committee; I can only say that my recollection is particularly vivid and acute, in a sense painful, on that subject, Sir; not only did we consider each one carefully, but several of them *ad nauseam*, and I do not think it would serve any useful purpose now to depart from the prescribed procedure of this Council and refer the matter back to a Committee of the whole Council.

CAPT. THE HON. H. E. SCHWARZE: On a point of order, Your Excellency, and I speak on this point of order with Your Excellency's permission, I think that though the hon. the Attorney General's view of the suggestion is a perfectly correct one, it makes it extremely difficult, when you get a Bill like this, with 190 or whatever number it is of suggested amendments, simply to take it *holue-bolue*—yes or no. My suggestion is that the hon. Member should have tabled any

amendments he wished to the Report, and that the Report should be adopted with the following amendments. I think that he was unaware that this procedure was going to be followed, and I would ask Your Excellency, if he is anxious to put these amendments down to the Report as it stands, that he should be given an opportunity of doing so.

HIS EXCELLENCY: The procedure which has been followed in regard to this Bill is the normal procedure, and it would be giving very special indulgence to any hon. Member of Council to make this provision for him if he has not made use of it in time himself.

THE HON. THE ATTORNEY GENERAL: On a point of order, Sir, may I say that, assuming the present motion is resolved in the affirmative and the Report is adopted, it is my intention, Sir, on the third reading to-morrow, to move the recommitment of the Bill for certain very minor further amendments, and it seems to me that the hon. Member will have the same opportunity on that occasion, Sir, to-morrow morning, to move that the Bill be recommitted for the consideration of specific and stated amendments in accordance with Standing Order No. 83.

HIS EXCELLENCY: I do not think I can accept the suggestion of the hon. the Attorney General. I think, speaking at the moment without having consulted Standing Orders, that recommitment is usual only for the purpose of dealing with amendments which the Government wishes to move, but in order that this point may be a little more fully discussed—I do not wish to deprive the hon. Member of any of his rights, but merely to find out the proper procedure—I suggest we adjourn while I consider it. It is time for the normal adjournment, and I will take it up after the adjournment.

Council adjourned for ten minutes.

HIS EXCELLENCY: Order, order. I have looked into the point of order which was raised before the adjournment, and I find that the established practice of this Council is that a Member moving a motion for recommitment on third reading shall specify in that motion the amendments for which the recommitment is being moved. If the hon. and gallant Member will take that course, of putting down his motion in to-morrow's Order Paper, I will arrange for the third reading to be put off till Monday, so that after giving notice of his amendments he can move them on Monday. Will that procedure be convenient to him?

CAPT. THE HON. E. M. V. KENYALY: Thank you, Sir; yes.

THE HON. THE ATTORNEY GENERAL: Your Excellency, the question now before the House is that the Report of the Select Committee on the Penal Code be adopted. Before the question is put, Sir, I beg to move that recommendation 69 be amended by inserting the word "not" after the word "but" in the second line of the new clause recommended. It is an extremely important amendment, Sir, and I very greatly regret the omission. I am indebted to the hon. and learned Member for Nairobi South for detecting it.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to second the amendment.

HIS EXCELLENCY: The question is that in recommendation 69 the word "not" be inserted after the word "but" in the second line of the new clause recommended.

The question was put and carried.

HIS EXCELLENCY: Do you wish to reply?

THE HON. THE ATTORNEY GENERAL: I think, perhaps, Sir, it would be more convenient if I deferred replying till the hon. and gallant Member for West Kenya puts his points in detail on his motion for recommitment.

HIS EXCELLENCY: If no other Member wishes to address Council, I will put the question. The question is that the Report of the Select Committee on the Penal Code be adopted.

The question was put and carried.

REPORT OF SELECT COMMITTEE ON THE CRIMINAL PROCEDURE CODE.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee of Legislative Council appointed to consider and report on the provisions of a Bill to make provision for the procedure to be followed in criminal cases be adopted.

This is not quite such a lengthy report as that with which we have just dealt, Sir, and a great deal of it, I am afraid, must appear extremely cryptic, because the Report consists largely of altering figures which occurred in the draft clauses, these alterations being necessitated by the renumbering of various clauses, not only of the Criminal Procedure Code itself, but also of the Penal Code. At the same time, the Report does embody certain important alterations in procedure as it now exists, to which it is only right that I should draw the attention of hon. Members.

There are three points, Sir, in which I think I can say, on behalf of the Committee, we pride ourselves. We have recommended the abolition of the existing Indian system of the proclamation of offenders, a system which is entirely un-British and which has, I am glad to say, fallen into complete desuetude in the last few years; we have also recommended the abolition of the wicked system whereby a person charged with an offence can have the depositions of witnesses against him taken in his absence, even before he has been found, and those depositions may be used against him later, on his arrest, even though the witnesses at that time may be out of the Colony; the third point, Sir, is that your Committee recommend that poverty should no longer be a crime. As the law now stands, it is a crime punishable not only very severely but in a very curious manner, because the punishment imposed for having no money is that of being called upon to enter into a bond. (Laughter). When that proves impossible, twelve months' imprisonment follows as a matter of course. (Laughter). There are ample powers, Sir, under the Vagrancy Ordinance to deal with people who fall upon hard times, and there is no reason why you should duplicate those powers in the Code of Criminal Procedure. There is certainly no reason why a person, whose only offence is that of poverty, should have to go to prison for it.

The specific recommendations of this Code, Sir, to which I desire to draw attention are very few.

Recommendations 6 and 11 add to the Code, as drafted, provisions which are already in the present Criminal Procedure Ordinance, provisions which your Committee felt, Sir, were salutary and necessary and useful, and should therefore be embodied in the new Code.

Recommendations 13 to 15 and 28 deal with a small, but, I think, important point. If it is to be within the power of any member of the community to have a brother member brought before a court to show cause why he should not be put upon a bond, your Committee thought it was only fair that that information should be conveyed to a magistrate on oath. If that is not so, there is obviously a very great incentive to malicious charges and malicious prosecutions.

Recommendation 41 deals with a clause which, as drafted, bears the side note, "Previous conviction or acquittal, how proved." The recommendation is that all reference to acquittals should be deleted. The reason for it is a very obvious one. The clause, as drafted, provides that a previous acquittal has got to be proved by the production of the finger prints of the person acquitted. These finger prints are not taken, and I think it would be beyond even the competence of the

very efficient Police Force of this Colony to move quick enough to catch and take the finger prints of the ordinary person who finds himself suddenly fortunately at liberty again. It will now be open to him to prove acquittal in the ordinary way; it will no longer be obligatory for him to produce finger prints.

Recommendation 53 again incorporates in the law an existing provision, and a very useful one indeed. It is generally known as the "General Deficiency Clause." If a clerk or employee has been found peculating over a considerable period it would, under the Code as drafted, be necessary to prove that on a certain date (which has to be specified) he had misappropriated certain sums of money. In ordinary circumstances, it is quite impossible to do that, and if this recommendation is adopted, Sir, it will be sufficient to say that between such and such a date and such and such another date he at various times misappropriated money amounting in all to so much or goods amounting to such and such a value.

Recommendation 59, Sir, deals with the language of the Court, and provides that the language of the Supreme Court shall be English, and that the language of the subordinate Court, other than a subordinate native Court, shall be English or Swahili. That is the present law, Sir, but I would ask the indulgence of the Council to enable me to move a very small amendment, of which notice has not been given, on that recommendation. The amendment is that the word "or" in the last line be deleted and that there be added after the word "Swahili" the word "or a vernacular language." I ask this leave with every confidence, Sir, because I feel convinced that it is the feeling of every hon. Member of this Council that the more we can encourage the magistrates of subordinate Courts to acquire a conversational and colloquial acquaintance with vernacular languages the better. There is no reason why they should be limited in the scope of their judicial work merely to the use of English or Swahili. If a magistrate sufficiently understands the vernacular language to feel competent to conduct his Court proceedings in it there is no reason why he should not do so and why he should be forced to conduct those proceedings through the medium of an interpreter who very frequently has a much poorer knowledge of both languages than the magistrate himself has.

Recommendation 69 is a very important one indeed, one that I am quite sure will commend itself on the grounds of elementary justice to every Member of Council. It deals with the position before the Courts of Medical Officers and Government Analysts. The curious position that exists at present is this. When a prisoner is charged with a serious offence, which will ultimately take him to the Supreme Court for trial, a

Medical Officer is bound to appear before the magistrate, no matter how far away the magistrate may be, and he is bound to give evidence before the magistrate on oath; but when the case is committed for trial, when the accused person is represented, when possibly his life is at stake, the Medical Officer need not attend at all. The deposition which was taken before the committing magistrate is sufficient, and there is no opportunity for cross-examination unless the Court sees fit to order that Medical Officer to appear before it. That in itself necessarily connotes and entails delay. The recommendations of the Committee is that the position should just be reversed; that there should be no necessity for a doctor or analyst to appear before the committing magistrate, that his report on the circumstances of the case should be sufficient for the purposes of the committing magistrate, but that the doctor or analyst should be bound to appear before the Supreme Court and be subject to cross-examination. I do not think there can be any doubt, Sir, in the minds of hon. Members, that that is a juster and more equitable provision than the existing one. I think it will also have the effect that, as the Supreme Court only sits at the larger and more populous centres, it will entail much less travelling and delay on the part of Medical Officers and Analysts.

Recommendation 76 removes what has been a very real practical difficulty in the existing law. If, on the committal of an accused person, the case is not, in the opinion of the law officer, sufficiently made out, and further evidence is requisite, as the law now stands the accused person has got to be sent back before the magistrate who committed him for the taking of that further evidence. In many cases I can assure hon. Members that that entails very great inconvenience indeed. In the case, for instance, of a European accused person, he may have to be sent up to a country district where there is no accommodation for him and where his custody is not only a matter of considerable difficulty but of real hardship to him. The recommendation, Sir, will enable law officers, after giving due notice to the accused person of their intention to call further witnesses and a proof of which those witnesses are going to say, to call those witnesses before the Supreme Court, although they did not give evidence before the committing magistrate.

Recommendation 81 will, I think, rejoice the hearts of hon. Members, because it exempts them from jury service. For some reason that had been omitted in the draft Code; I think it must have been purely inadvertent. Anyhow, there it is now, Sir, and that is one further obligation of citizenship from which membership of this House exempts one.

Recommendation 91 is also designed to deal with a practical difficulty which is apt to occur in a Colony as large as this is. The subject is a grizzly one—that of executions. At present, you, Sir, have got to fix the time and place of every execution, and if that execution cannot be carried out at the time prescribed, then in law it is murder. In the case of such a place as the Northern Frontier Province, it is frequently extremely difficult to say exactly when the Governor's order will reach a particular place where an execution is to be carried out. This recommendation therefore provides that in such cases you, Sir, may delegate to another officer of Government the power of fixing the hour and place of the execution.

Recommendation 97, Sir, gives a right of appeal from the Appeal Court of the Supreme Court to the Eastern African Court of Appeal. It is only right, in the views of the Committee that as the Eastern African Court of Appeal had been set up with appellate jurisdiction to vary the decision of the original judge, there was no reason why a similar right should not be conferred on the right of appeal from the appellate jurisdiction of such a judge.

Two more points, Sir, and I am done. Recommendations 96 and 101 deal with the constitution of the Court of Appeal on appeals from magistrates and on cases stated by magistrates. At present, the Appeal Court is constituted by two judges, and if the case before them presents a point of such difficulty that the two judges are divided in opinion, then the opinion of the magistrate prevails. It seems rather illogical and rather absurd. Your Committee felt, Sir, that if the point was of sufficient importance to cause two judges of the Supreme Court to differ in opinion on it there was no reason why a magistrate should hold the scales, and that in such a case it was more equitable and proper that the appeal or stated case should be re-argued before a bench of three judges.

I beg, Your Excellency, to move that the Report of the Select Committee of Legislative Council appointed to consider and report on the provisions of a Bill to make provision for the procedure to be followed in Criminal cases be adopted, with the amendment to recommendation 59 by the addition of the words

HIS EXCELLENCY: I think the amendment should be separately moved.

THE HON. THE ATTORNEY GENERAL: That the Report be adopted.

THE HON. C. F. G. DOBAN: Your Excellency, I beg to second the motion.

HIS EXCELLENCY : The question is that the Report of the Select Committee on the Criminal Procedure Code be adopted.

I think it will be best if the hon. Member will move the recommitment of the Bill for the purpose of that amendment on third reading.

CAPT. THE HON. E. M. V. KENEALY : I trust the indulgence of the President will extend to the inclusion of this also in regard to the decision for recommitment, because there are some matters that I should like to mention

HIS EXCELLENCY : If the hon. and gallant Member will give notice of his recomittal motion, with the amendments he desires to move, in tomorrow's Order Paper, that also can be taken on Monday.

CAPT. THE HON. E. M. V. KENEALY : Although they are mostly matters of detail, there are one or two matters of principle, Sir, which I feel I ought to refer to now. In regard to recommendation 30, clause 102, there appears to be on European landlords in this country an obligation to arrest accused persons. I think it is right that there should be that obligation, but I feel, Sir, that that is a matter of principle in dealing with procedure which should be discussed in this House.

In clause 126, Sir—38 of the recommendations I think it is—anyhow, in clause 126 in the Procedure Code, the individual is allowed to deposit property, but I feel that the Court should have discretion in regard to that property, because, after all, perishable property might be collared. Over this property, apparently, the Court has got no discretion.

In 141 (2) Sir, there is a reference to an Indian Act of 1872, and I feel that that should be excised.

In 146, Sir, witnesses apparently can be condemned by a Court without trial, and I feel that is entirely wrong and requires consideration.

Then, Sir, in 198 (3) there is a very important matter which does deserve further consideration, and that is that the sentence imposed shall date from the date of apprehension of the individual, which means, of course, that the individual will suffer far less than he should be made to suffer if there is a postponement or an adjournment over a long period, because the conditions under which a man is imprisoned or is retained in custody prior to his conviction vary very considerably from the conditions under which he is in custody after

conviction, and it would mitigate the severity of the sentence unless the date of his sentence is not to be the date of his apprehension. I feel that is a matter which deserves further consideration.

In 222, Sir, there apparently is no obligation imposed on the individual to give his reasons for refusing to sign the report. I think such an obligation should be thrust upon him.

In 249 and 257 (1) I feel it should be the Governor in Council and not the Governor upon whom this responsibility should be thrust.

In regard to 278, which deals with the number of jurors challengeable, I thought the Committee had agreed to reduce the number of jurors which can be challenged, because, in a country which is small and distances great—and distances between centres of population are also great—anything which can reduce the number of jurors who are required to attend is desirable, provided it does not involve any hardship; but, Sir, under the present Procedure Code, as drafted, it will be possible for the individual or the advocate to challenge a large number of persons, and it is questionable whether it would be possible to provide such a large surplus of persons if we allow for this right to challenge such large numbers. We did discuss this in Committee and I thought we had come to a decision which was favourable to a reduction in the number of challengeable jurymen. I believe that in recommendation 18—I am not sure, but I believe, Sir, the reference should be to section 42 and not 43. I am not quite certain or that.

Those are the only points, Sir, but, since some of them embrace matters of principle, I feel they should be mentioned before the Report is adopted.

CAPT. THE HON. H. E. SCHWARTZ : With reference to the last point raised by the hon. Member, I cannot find in the Report any recommendation in regard to the alteration of the numbers allowed to be challenged. It may be there but I cannot find it. If it is not there, that leaves it at three—three on each side. At the present moment it is eight on each side. I was under the impression we agreed to six. At the present moment, either the Crown or the prosecution have the right to challenge eight jurors without reason assigned, and thereafter, naturally, they can challenge any number of jurors. The Bill, as drafted, reduced that eight to three, and in my opinion—and I understand the Attorney General agrees—three is not sufficient. It is not always easy to satisfy the Court that reasons exist, whereas, as a matter of fact, they may very well exist.

The only other point, Your Excellency, is in recommendation 53. Are those figures 257, 258 and 259 correct? I understood that this recommendation 53 dealt with theft, and also with misappropriation and embezzlement. Clauses 257, 258 and 259 renumbered—the clauses as renumbered presumably is meant—deal with theft by a public servant of His Majesty's property, theft by a clerk or servant, or theft by a director or officer of a corporation or company. I would ask the Attorney General whether other words should not be added to cover the whole question of theft, criminal breach of trust and embezzlement generally.

THE HON. T. J. O'SHEA: I should like to support the suggestion of the last speaker, Your Excellency, that the number of challenges without cause assigned should be increased beyond three, as that is an important protection to accused persons.

THE HON. A. H. MALIK: I have signed this Report, Sir, subject to certain reservations. I was surprised to find them omitted from this Report yesterday, but I understand from the hon. the Attorney General, Sir, that he did not receive my comments, which I sent to him two days after I signed this Report.

The most important question affecting the Indian community of this country under this measure—namely, the extension of the right of trial by jury to Indians—was taken up by me with the hon. the Attorney General in Committee. I have found out, much to my regret, that the Unofficial Members of the Committee were not sympathetic on that point, and the Official Members, though sympathetic, were unable to make any recommendations, especially in view of the fact that the recommendations involve a principle which could not be put into effect without the prior sanction of the Secretary of State; and I understand, Sir, if the matter is taken up now, it would mean delaying the measure, which the Secretary of State is not prepared to countenance. In order, therefore, to carry out the wishes of the Secretary of State, I also have not pressed the point at this stage. I do, however, trust, Sir, that the Government will take early steps to introduce amending legislation to extend this privilege to Kenya Indians.

Before I resume my seat, Your Excellency, permit me to direct the attention, particularly of the Unofficial European Members of this side to the sublime attitude, crying sense of justice, fair-play, and hope for the peace and prosperity of their country displayed by the Official and Unofficial Members of the Uganda Legislature, when they refused to accept the right which was offered to them, without their asking, the

right which is enjoyed by everyone of their race throughout the British Empire, saying that they would sooner forego this inherent right and privilege than create friction between the races. The proverbial sense of fair-play and justice of the British race has to my mind been beautifully maintained by the European Members of the Uganda Legislature. Their attitude reminds me of the couplet of Longfellow when he says:

“ Know how sublime a thing it is to suffer and be strong.”

I assure you, Sir, that if, throughout the British Empire, the same spirit was shown by Britishers as has been shown by these fair-minded ones of Uganda, the Empire would be run on much better and sounder lines. I for one have confidence in the British community of this country, and I am sure, Sir, that if the representatives here gave this question their serious consideration they would not find any reason for not including Indians in this system. It is one of those cases where it does you no harm—it does not take anything from you—but, on the other hand, you get an atmosphere of peace, goodwill, understanding, and compromise. To strengthen the hands of Government before the Secretary of State, Sir, I intend, with Your Excellency's permission, to move this session that this Council sympathises with the point I have raised, and I have no doubt that the hon. Members on this side of the House . . .

HIS EXCELLENCY: Order, order. I am afraid that the subject, when it has been disposed of by the passage of this Procedure Code, will come under the six months rule, and it should not be raised again.

THE HON. THE ATTORNEY GENERAL: At the outset, Sir, I wish to save any possible criticism by the hon and gallant Member for West Kenya by giving him an assurance that I found some difficulty in following his references to the Procedure Code, and it is possible that I may not be in a position to deal with all of them. But there were one or two, Sir, on which I was able to make notes.

The hon. Member's first point, Sir, was the absence of any discretion by the Court under clause 126 of the Bill to specify what sort of property might be deposited. The property, as hon. Members will see, is a sum of money or Government currency notes except in the case of natives. I do not know whether the hon. and gallant Member meant by “ perishable goods ” Government currency notes. From one point of

view, they are extremely so, but, on the other hand, if locked up in the coffers of a Court, that element of impermanence seems not to exist. Money is hardly regarded as currency quite in the same light by natives as by us, and if they choose to deposit a certain number of head of stock, there is no reason why they should not do so. The word used is in the discretion of the Court—the word is “may” throughout, and if the Court takes perishable foodstuffs as deposited properly, then the Court will probably find itself in a very awkward position when the time of the bond has expired.

I entirely agree with the hon. Member in his second point. I do not like any reference to the Indian Act. We have set out to replace Indian legislation by English legislation and, while it has been necessary in three places throughout the Code to make specific reference to the Indian Act, in so far as my personal feelings and views go, I propose to put before the Government draft legislation to repeal and replace the Indian Evidence Act as soon as I possibly can; and as soon as that is done the blot to which the hon. Member has drawn attention will cease to exist.

I really was surprised, Sir, to hear the hon. and gallant Member cavil at the provision that the sentence of an accused person should run from the date of apprehension. It seems only elementary justice that it should do so. Once he is apprehended he ceases to be a free agent, and very frequently a very long period must elapse between the date of his apprehension and the date of his final conviction, and why he should have to bear the burden of that time I absolutely fail to appreciate. Even to take one commonplace instance. When cases come before the Supreme Court, as they will here on Monday, every accused will like to be dealt with last, but someone has got to be dealt with first. Someone has got to decide, and the Court decides that for them, and there is no earthly reason why all their sentences should not run from the same time. The obvious period is the date of apprehension. The hon. and gallant Member need not be afraid that they will do less time than they ought to. It is a fact that the Court frequently takes into consideration, that a man has been idling for the previous six months, and it may and frequently does entail a more severe sentence than it otherwise would if a conviction is antedated to the date of detention.

The hon. and gallant Member is fortunate in not having such familiar acquaintance with criminal cases that some of us have. The idea that you may call upon a truculent accused, who refuses to sign his depositions, to give his reasons for so refusing, is, I am afraid, quite impracticable, Sir. We would not get any reasons: if so they would be impolite—many magistrates would not care to record them.

On the question of the right of challenge, Sir, I am afraid there has been a little difference of opinion. The impression left in my mind was that the majority of the Committee were in favour of the clause standing as drafted. My personal views, Sir, for what they are worth, are in accordance with those expressed by the hon. and learned Member for Nairobi South. The present right of challenge extends to eight jurors by the accused and the prosecution, and I can see no objection, personally, to making the number now six. Perhaps, Sir, the hon. Member will be content with that assurance, and if Government is prepared to accept that amendment, Sir, an opportunity of moving it can be taken on Monday on the motion for recommitment.

The question of extension of the General Deficiency Clauses in the Select Committee Report, limited as it is to sections 257, 258 and 259 of the Penal Code, is one, I am afraid, for which I must take responsibility. When I drafted the clauses, it seemed to me that the only cases in which it would be necessary to invoke the assistance of such a clause was where the accused was an employee, or a clerk, or a servant of the prosecutor. In the case of ordinary theft, where the thief picks something, it is quite unnecessary to proceed under anything like a General Deficiency Clause, and I thought justice was sufficiently met by limiting the application of the clause to offences by clerks or servants or persons employed in public services, private employment or directors and officers of companies? These are the three clauses of the Bill which I specifically put in. I feel sure, Sir, that Government will have no objection to an extension of the principle. After all, we do wish to extend the penal net sufficiently wide to catch as many as possible of those who offend and if the wording has been narrowed unnecessarily I take full responsibility for it, Sir, and express my contrition.

I should like to extend to the hon. Indian Member, Sir, my renewed assurance that I have received nothing from him in the nature of a reservation. I was aware that the hon. Member contemplated, at the time when the deliberations of the Committee came to an end, making a reservation on this subject, but I do assure the hon. Member that I received none. Had I done so, it would naturally have been published as an integral part of the Report. The question of the extension of the jury does not form a recommendation by the Committee by jury does not form a recommendation by the Committee. It does involve a question of principle, but I feel sure I can give the hon. Member the assurance that if he makes representations on that subject they will be very carefully and sympathetically considered at a subsequent date.

I beg, Sir, to move that the Report, as amended, be adopted.

HIS EXCELLENCY: There was one point to which the hon. and gallant Member for West Kenya called attention in clause 18 of the Report.

THE HON. THE ATTORNEY GENERAL: I beg your pardon, Sir; the reference is correct.

The hon. and gallant Member has failed to appreciate that sections 18 to 42 now read 19 to 43, and the reference, of course, is to the section as it will ultimately stand, Sir.

HIS EXCELLENCY: I think that the motion had best stand without the amendment; the amendment which the hon. the Attorney General wishes to introduce in clause 189 should be introduced on recomittal.

The question is that the Report of the Select Committee on the Criminal Procedure Code be adopted.

The question was put and carried.

BILLS.

FIRST READINGS.

HIS EXCELLENCY: I understood yesterday that Council would see no objection to the three Bills which are down next on the Order Paper being read a first time to-day, although they have only had twelve days' notice.

THE HON. CONWAY HARVEY: That is so, Sir.

HIS EXCELLENCY: I will call upon the hon. the Attorney General to move the suspension of Standing Orders.

SUSPENSION OF STANDING RULES AND ORDERS.

THE ATTORNEY GENERAL: With your permission, I beg to move that Standing Rules and Orders of Council be suspended to enable me to move the first readings of the three Bills which stand next on the Order Paper.

THE HON. THE ACTING TREASURER: I beg to second.

HIS EXCELLENCY: The question is that Standing Rules and Orders be suspended in order to enable—

The Food and Drugs (Adulteration) Bill,

The Native Liquor (Amendment) Bill,

The King's African Rifles Bill,
to be read a first time.

The question was put and carried.

THE FOOD AND DRUGS (ADULTERATION) BILL.

On motion of the hon. the Attorney General, the Food and Drugs (Adulteration) Bill was read a first time.

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

THE NATIVE LIQUOR (AMENDMENT) BILL.

On motion of the hon. the Attorney General, the Native Liquor (Amendment) Bill was read a first time.

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

THE KING'S AFRICAN RIFLES BILL.

On motion of Colonel the Hon. R. Wilkinson (Officer-Commanding Troops), the King's African Rifles Bill was read a first time.

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

SECOND READINGS.

THE PUBLIC TRUSTEES (AMENDMENT) BILL.

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

There is so little to say about this Bill that I hardly know how to say it. The law at present provides that when the intervention of the court, which is invariably costly and frequently involves delays, is sought, the Official Receiver and his *ex officio* agents may personally deal with estates which do not exceed £50 in value. The object of the Bill, Sir, is to extend that provision, which has worked extremely well, to estates not exceeding £100 in value.

I beg, Sir, to move that the Bill be read a second time.

THE HON. THE ACTING TREASURER: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE IMMIGRATION RESTRICTION (AMENDMENT) BILL.

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

In 1928, Sir, Your Excellency appointed a Committee to consider the provisions of the Immigration Restriction Ordinance (Chapter 62 of the Revised Edition of the Laws), and to make recommendations for the purpose of amendment. There were frequent changes in the personnel of that Committee, Sir, with the result that the Bill which is now before this House has run the gauntlet of the careful scrutiny and criticism of a very large number of Members of this House. The Committee consisted, in addition to my predecessor in the office of Attorney General, of my hon. friend the Director of Education, the hon. Member for the Lake, the hon. Member for Nairobi South, the hon. Member for Plateau South, the hon. Member for Kikuyu, the hon. Member for the Coast, and the Rt. Hon. Lord Delamere; at one time or another all of those Members have been members of that Committee. The Report was an unanimous one, and attached to the Report was a draft Bill, which is the measure now in the hands of hon. Members.

The changes which it imports, Sir, are, I think, of a threefold nature. Perhaps the most important one is that the liability of Government for the cost of repatriation of prohibited immigrants is now rather less than it has been, because the sum which now has to be deposited or has to be covered by bond is increased from £37-10-0 to £50. That is the natural outcome of enhanced steamship costs and railway costs, and it is a provision which I am sure must commend itself to every Member of this House, inasmuch as there is no reason at all why Government, in undertaking the repatriation of prohibited immigrants, should be out of pocket by so doing. There is also the provision that the period of the bond or deposit should be extended from six months to twelve months. That, I think, is perhaps the most important provision in the Bill.

There are one or two others, Sir, of what I might call a more humanitarian trend. For instance, in clause 7 of the Bill, which amends section 8 of the Ordinance, opportunity is given to a prohibited immigrant for leaving the country of his own volition within a reasonable time instead of finding himself in the painful position of being arrested at once and kept in custody until he goes. It will now be competent for the Immigration Authorities to give a person a reasonable time in which to leave the country before the more drastic and penal provisions of the law are put into force against him.

Similarly, clause 8 makes an important alteration in the existing law. It is now provided, Sir, that proof adduced within three years after a person has entered the Colony that he was at the time of entry a prohibited immigrant shall deem him to be a prohibited immigrant. At the present moment,

Sir, proof adduced within three years that he has at any time been a prohibited immigrant is sufficient. I might, Sir, while dealing with this clause, mention that the hon. and learned Member for Nairobi South signed the Report with a reservation on that clause. The hon. and learned Member was of the opinion that it was preferable that we should legislate to provide that such proof, adduced within three years after any person has entered the Colony, should be that he belonged at the date of entry or has subsequently become a prohibited immigrant. That matter, Sir, has been referred to the Secretary of State, and he has expressed the opinion that the amendment as now incorporated in the Bill, the amendment which was the unanimous recommendation of the members of the Committee with the exception of the hon. and learned Member, should stand.

The third heading under which this Bill falls to be considered, Sir, is the formal and technical aspect of it. A good deal of the existing procedure has been found to be so cumbersome and inapplicable to actual circumstances of cases that it has gradually fallen into disuse. The use of certain forms in the schedule has been discontinued by the Immigration Authorities, and as long as that is so, there is no reason to perpetuate them. It was suggested therefore that those schedules should be repealed at once and that a greatly improved procedure regarding conditional permits and temporary visiting permits to the Colony, which will now entail the payment of money or the entry into a bond, just as permanent immigration into the Colony, should be substituted for the existing inoperative and unworkable provisions.

The opportunity has also been taken, Sir, to make it quite clear that immigration may occur otherwise than through a port. A great deal of the most important part of the existing law limits immigration—limits the penalties for immigration—only to persons who come in on board a ship. With the enormous land frontier the Colony possesses, and with the facilities for travel by air which exist, and which will in even greater plenitude shortly exist, there is no reason for that restriction. A change has been made—a very important and very necessary change—in that regard, that persons who enter into the Colony, either by land, sea or air, are all subject to the provisions of the Ordinance.

One other point, Sir. There is at present a provision that any person who has been convicted of murder, or of an offence which is punishable with imprisonment, can be deemed to be a proscribed immigrant. The Committee took the reasonable and proper view that that provision offended in two ways: firstly, that there was no reason why a person who had been

domiciled for many years in this Colony—a person who had deliberately chosen to make this Colony his home—should be liable to be deported from it for an offence which he might commit, possibly many years after he had given up his domicile of origin and acquired domicile of residence in the Colony. That liability will not now apply to persons who have been domiciled in the Colony for five years. The second respect in which the existing clause offends, Sir, is the use of the words "for which a court may impose a sentence of imprisonment". The number of cases in which it can impose a sentence of imprisonment is legion: the number of cases in which it does are relatively few; and the Committee recommend that the tests should be either conviction for murder or conviction for an offence which is actually punishable by a sentence of imprisonment.

Those are the main alterations of the law which this Bill provides. I can only repeat that as it has already had the approval of such a large proportion of the Unofficial Members of this House, that I feel it is almost presumption on my part further to commend it to their favour. I therefore move that the Bill be read a second time.

THE HON. THE ACTING TREASURER: I beg to second.

THE HON. CONWAY HARVEY: In enumerating the galaxy of talent concerned with the recommendations on which this Bill has been based, my learned friend omitted to mention that we had the advantage of representatives of the Police Force. This Bill, Sir, does undoubtedly represent a very considerable tightening up of the present immigration laws, and on behalf of Elected Members, I have been asked to say, Sir, that we support the measure in its present form on its merits as it stands. But our support must be considered entirely without prejudice to consideration of major immigration issues which may arise in the future on the lines of representations made to Government in the year 1923.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I do not wish to refer to clause 8 of the present Bill, on which I am in a minority of one, except to say that I think, with all this talk of so-called unemployment, and fears expressed—I think probably without any cause—of a "poor white" population growing up in this Colony, it is a very great pity not to take powers within the first three years of a man's arrival in this Colony to get rid of him if, within that time, it can be shown that not only was he a prohibited immigrant when he came in but that he has since become one. Clause 10, sub-clause (3), which provides that when a person has been given a conditional permit lasting twelve months, if at the end of

twelve months he cannot show that he is no longer a prohibited immigrant out he goes: this sub-clause provides that if he can satisfy the immigration officer, before the expiration of twelve months, that he is no longer a prohibited immigrant, and is not likely to become one, then that conditional permit can be cancelled before the expiration of the twelve months, and he becomes an ordinary resident of the Colony.

The reason the Committee put that in was because they thought it would be a considerable hardship upon a person coming into this Colony with a conditional permit, if he settled down to proper work and could satisfy the immigration officer that he was a worthy citizen, that he should have a conditional permit hanging over his head, but since that time the Committee made this suggestion there have been very strong views expressed by the Chambers of Commerce that the people who have to pay a deposit or enter into a bond are getting back their deposits as soon as they get into work. Over and over again they have said: "Here, I am in employment. What about it?" They have got back their deposit, and then they have been thrown out and become unemployed, and the whole object of taking the deposit is lost. In view of that, I would ask Government earnestly to consider the deletion of clause 10, sub-clause (3). Although possibly it may be a hardship, it is a very small hardship, because a man enters into a bond. Nobody knows except the immigration officer, and it is very important that we should not let people come into this Colony, enter into a bond, get that bond cancelled or returned and then become unemployed; and leave it to the Colony to pay his passage out. I ask for a reconsideration of that clause because of the situation which has arisen since the Committee first considered it, which is now a considerable time ago.

THE HON. F. A. BRIMSTER: Your Excellency, I lodged an amendment, which I understood the hon. the Attorney General would make a statement on. May I remind him about it.

THE HON. THE ATTORNEY GENERAL: I am very sorry. I did give an undertaking. I have every intention of implementing it.

HIS EXCELLENCY: Perhaps the hon. Member will deal with that when he rises to reply. Does anyone wish to address Council first?

THE HON. T. J. O'SHEA: Your Excellency, I rise just to ask whether "His Majesty King George V" of the "United Kingdom of Great Britain and Ireland" is correct, in Schedule A, on page 6. I am under the impression, Sir, that it is no longer a United Kingdom of Great Britain and Ireland.

THE HON. THE ATTORNEY GENERAL: The word "Northern" will be inserted.

HIS EXCELLENCY: If no other hon. Member wishes to address Council, I will call upon the Attorney General to reply.

THE HON. THE ATTORNEY GENERAL: As I stated a moment ago, Your Excellency, I was supplied with a copy of an amendment which the hon. Member for Mombasa proposed to move, or had intended to move, and I had undertaken to make mention of it, Sir, in my speech on the second reading. I am extremely sorry, Sir, that I forgot to do so, and I welcome this opportunity of doing so now. The suggestion is, Sir, that the following section be included in the Bill: "That all passengers from India intending to land at Mombasa shall be refused permission to land unless they have been vaccinated against smallpox at least fourteen days before embarkment."

I would like to say, firstly, that that amendment does not in the very slightest degree say what it is intended to say. Vaccination at least fourteen days before embarkment would cover vaccination in infancy. That, I do not think, was quite what the hon. Member meant to say; but apart altogether from the form of the amendment, I would say this, Sir: The amendment offends against the International Sanitary Convention to which the Governments of the United Kingdom and Northern Ireland are parties. It is a matter which obviously, in my submission, would much more appropriately be dealt with under the Public Health Ordinance. Thirdly, Sir, and lastly, it is a matter which is being dealt with under the Public Health Ordinance. It is inspired, I have no doubt, Sir, by what we all read as to the reported action of the Government of Tanganyika Territory a short time ago. I can give an assurance to the hon. Member that similar action is being taken here, Sir. It does not require statutory provision to achieve the end which all of us have in view. Ample action can be taken and will be taken, and in the light of that statement, Sir, I hope the hon. Member will not see fit to press his amendment.

As to the question which the hon. Member for Nairobi South has raised, it is, I am inclined to think, one of very considerable importance, Sir, which perhaps can be more appropriately dealt with in the Committee stage.

HIS EXCELLENCY: The question is that a Bill to amend the Immigration Restriction Ordinance be read a second time.

The question was put and carried.

**THE WIDOWS' AND ORPHANS' PENSIONS
(AMENDMENT) BILL.**

THE HON. THE ACTING TREASURER: Your Excellency, I beg to move the second reading of a Bill to amend the Widows' and Orphans' Pensions Ordinance.

This is a very brief Bill, Your Excellency, designed to remedy an anomaly which has been discovered in the present Ordinances. Under those Ordinances an officer who is employed in Kenya and is transferred to some place outside Eastern Africa, and later on comes back to another East African Dependency, has the option of contributing twice and thereby securing to his widow two pensions. Such a case is unusual, but one has actually occurred—not in Kenya. I think it is desirable that the Ordinance should be brought into line with other Territories to cover such a case. Your Excellency, I do not think it is necessary for me to say more.

I beg to move that this Bill be read a second time.

THE HON. THE ATTORNEY GENERAL: I beg to second, Your Excellency.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE HARBOURS REGULATION (AMENDMENT) BILL.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS (HON. GEN. G. D. RHODES): Your Excellency, I beg to move the second reading of a Bill to amend the Harbours Regulation Ordinance, 1928.

This is also a very short Bill, and follows similar action that was taken in connexion with the Railway Ordinance, to remove from the Bill a section dealing with a matter properly provided for in another Ordinance.

At the same time, Sir, with the indulgence of this House, I propose to move a small amendment to section 49 of the Principal Ordinance, providing for suitable notice being published before regulations are made by the High Commissioner.

I propose to move the second reading.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that this Council resolve itself into a Committee of the whole Council for the consideration of—

- The Public Trustees (Amendment) Bill,
- The Immigration Restriction (Amendment) Bill,
- The Widows' and Orphans' Pensions (Amendment) Bill,
- The Harbours Regulation (Amendment) Bill.

THE HON. THE ACTING TREASURER: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that this Council resolve itself into a Committee of the whole Council in order to consider—

- The Public Trustees (Amendment) Bill,
- The Immigration Restriction (Amendment) Bill,
- The Widows' and Orphans' Pensions (Amendment) Bill,
- The Harbours Regulation (Amendment) Bill.

The question was put and carried.

Council went into Committee.

In Committee:

THE PUBLIC TRUSTEES (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 1.—Short title.

THE HON. THE ATTORNEY GENERAL: I beg to move that the figures "1930" be substituted for the figures "1929" in the second line of the clause.

The question was put and carried.

HIS EXCELLENCY: The question is that the clause as amended stand part of the Bill.

The question was put and carried.

THE IMMIGRATION RESTRICTION (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 1.—Short title.

THE HON. THE ATTORNEY GENERAL: I beg to move that the figures "1929" be deleted in the second line of the clause and the figures "1930" substituted therefor.

The question was put and carried.

HIS EXCELLENCY: The question is that the clause as amended stand part of the Bill.

The question was put and carried.

Clause 6.—Repeal of section 6 (2) of the Principal Ordinance.

THE HON. THE ATTORNEY GENERAL: I beg to move that the figure "1" in the first line of section 6 of the Principal Ordinance be deleted. Your Excellency will see that the clause consists of two sub-clauses; we are now deleting sub-clause (2).

HIS EXCELLENCY: The question is that the following words be added to this clause:

"That the figure '1' in the clause in the Principal Ordinance be deleted."

The question was put and carried.

HIS EXCELLENCY: The question is that the clause as amended stand part of the Bill.

The question was put and carried.

Clause 10.—Insertion of section 11a between sections 11 and 12 of the Principal Ordinance. Conditional permits.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I beg to move the deletion of sub-paragraph (3) of clause 10, with the consequential renumbering of the other sub-clause, for the reason I have already stated.

THE HON. THE ATTORNEY GENERAL: While fully appreciating the point made by my learned friend

HIS EXCELLENCY: I have not put the amendment yet; I have not quite got

CAPT. THE HON. H. E. SCHWARTZ: My amendment is to delete sub-clause (3) altogether.

HIS EXCELLENCY: The question is that sub-clause (3) be deleted.

THE HON. CONWAY HARVEY: Your Excellency, it seems to me that line 22 "and is not likely to become a pauper or a public charge" adequately meets the situation. Surely, Sir, no responsible officer in his right mind would release a man from his bond unless he was absolutely satisfied that it would not be necessary to incur public expenditure in repatriating him. I should like to ask, Sir, if there is not something in that.

CAPT. THE HON. H. E. SCHWARTZ: The position is that it is happening. The man is in employment and he goes to the Immigration Officer, who cannot possibly say that he is likely to become a pauper or a public charge at that moment. He then gets his deposit back or his employment immediately afterwards. Personally, I and my colleagues like Government to accept this amendment, but if, on consideration, they are not prepared to accept it, I do certainly ask them to accept the alteration of the word "shall" to "may," thus giving the Immigration Officer discretion, not compulsion.

THE HON. THE DIRECTOR OF EDUCATION: As a member of the Committee that discussed this Bill, may I remind my fellow member of the Committee that we all discussed this point very carefully. The Commissioner of Police was very anxious that this power should be put into the Bill because the inconvenience of pursuing perfectly respectable immigrants until they are able to become domiciled is a very serious matter. I should like to ask the hon. the Attorney General if the point is not really covered by the wording of the new section 8. It does seem to me that people will still be, at the date of entry into the Colony, prohibited immigrants, and it might still be possible to get rid of them under the circumstances referred to by the hon. and learned Member. If that is not so, I hope that consideration will be given to the suggestion of the hon. and learned Member to substitute the word "may" for "shall" in this clause.

CAPT. THE HON. H. E. SCHWARTZ: As there is no urgency, and in order to save time, might I ask that this point be put back to the Committee for consideration?

THE HON. THE ATTORNEY GENERAL: So far as I am aware, there is no extreme urgency about it at all; a few days delay cannot lead to any bad consequences, Sir. I beg to move that the Committee report progress after further consideration.

HIS EXCELLENCY: The question is that the consideration of this Bill be deferred until a later date.

The question was put and carried.

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

The Bill was considered clause by clause.

Clause 1.—Short title.

THE HON. THE ACTING TREASURER: I beg to move that in line 2 the figures "1929" be deleted and the figures "1930" be substituted therefor.

The question was put and carried.

HIS EXCELLENCY: The question is that the clause as amended stand part of the Bill.

The question was put and carried.

THE HARBOURS REGULATION (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 1.—Short title.

THE HON. THE ATTORNEY GENERAL: I beg to move that the figures "1929" be deleted in the second line and the figures "1930" substituted therefor.

The question was put and carried.

HIS EXCELLENCY: The question is that the Bill as amended stand part of the Bill.

The question was put and carried.

Clause 3.—

THE HON. THE ATTORNEY GENERAL: Your Excellency, in accordance with the notice given by my hon. friend, the General Manager, Railways and Harbours, I beg to move that the Bill be amended by adding, as clause 3 thereof, the following, and here, Sir, I would apologise for a typing error in the amendment as circulated. Hon. Members will say that it means nothing at all because the words "before the date" have been omitted after the word "days." The amendment I move is that the following clause shall be added at the end of the Bill:

"3. Section 49 of the Principal Ordinance is hereby amended by inserting before the last paragraph but one of the section the following:

"Any such regulations shall be published in the Gazette at least fourteen days before the date on which the High Commissioner proposes to make such regulations."

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that:

The Public Trustees (Amendment) Bill,

The Widows' and Orphans' Pensions (Amendment) Bill,

The Harbours Regulation (Amendment) Bill,

be reported to Council as amended.

The question was put and carried.

On resuming:

HIS EXCELLENCY: Order, order. I have to report that—

The Public Trustees (Amendment) Bill,

The Widows' and Orphans' Pensions (Amendment) Bill,

The Harbours Regulation (Amendment) Bill,

have been considered in Committee of the whole Council, and reported with amendments to Council again.

THIRD READINGS.

THE HON. THE ATTORNEY GENERAL: I beg to move that—

The Public Trustees (Amendment) Bill,

The Widows' and Orphans' Pensions (Amendment) Bill,

The Harbours Regulation (Amendment) Bill,

be read a third time and passed.

THE HON. THE ACTING TREASURER: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that—

The Public Trustees (Amendment) Bill,

The Widows' and Orphans' Pensions (Amendment) Bill,

The Harbours Regulation (Amendment) Bill,

be read a third time and passed.

The question was put and carried.

The Bills were read a third time and passed.

THE PENAL CODE AND CRIMINAL PROCEDURE CODE.

HIS EXCELLENCY: I hope that the amendments which are to be discussed on the recommitment of the Penal Code and the Criminal Procedure Code will be available for printing in the Order Paper to-morrow.

CAPT. THE HON. H. E. SCHWARTZ: On that point, did the hon. the Attorney General mean that I was to give notice with regard to number of jurors to be challenged? He said opportunity would be given; is Government going to move it?

THE HON. THE ATTORNEY GENERAL: I did not express my words in that manner, as I do not feel it is competent for me to say what amendments will be accepted. I, personally, have no objection to the extension of the number from three to six, nor should I advise you, Sir, that there was any practical objection from the Government point of view to such an amendment.

HIS EXCELLENCY: Have any members of the Select Committee objection to that amendment being made?

CAPT. THE HON. E. M. V. KENEALY: To increase the challengeable number of jurors? Yes, Sir, I have. I spoke against the number provided.

HIS EXCELLENCY: Who are the other members of the Committee?

THE HON. THE ATTORNEY GENERAL: The others are the Solicitor General, who is no longer in the Colony, the hon. Indian Member, who has just left, and the substantive Member for Nairobi North. There are no other members present here.

HIS EXCELLENCY: Inasmuch as only one member of the Committee apparently objects to that amendment, I think it will be desirable that the hon. and learned Member should give notice that he will move it.

CAPT. THE HON. H. E. SCHWARTZ: I beg leave, Your Excellency, to give notice that I will, on the recommittal of the Bill, move that amendment.

HIS EXCELLENCY: Council is adjourned until 10 o'clock to-morrow morning.

*Council adjourned to 10 a.m. on Friday,
the 4th April, 1930.*

FRIDAY, 4th APRIL, 1930.

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Friday, 4th April, 1930, His Excellency the GOVERNOR (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MACLEAY GRIGG, K.O.M.G., K.C.V.O., D.S.O., M.C.) presiding.

HIS EXCELLENCY opened the Council with prayer.

MINUTES.

The Minutes of the meeting of the 3rd April, 1930, were confirmed.

The following Paper was laid on the Table:—

By **THE HON. THE CHIEF NATIVE COMMISSIONER (MR. G. V. MAXWELL)**:—

Despatch from the Secretary of State for the Colonies on the Native Lands Trust Bill.

NOTICES OF MOTIONS.

THE HON. T. J. O'SHEA: Your Excellency, I beg to give notice of the following motion:—

"That the excessive reallocation of expenditure under Loan Works, as shown in the Statement submitted to Legislative Council this session, cannot be approved by this Council."

CAPT. THE HON. E. M. V. KENEALY: I wish to give notice of motion in the terms of the motion which I have handed to the learned Clerk in regard to the amendments to the Penal Code and the Procedure Code.

MOTIONS.

COMPASSIONATE PENSION TO MOHAMED BIN
ABDULLA KOMBO.

THE HON. THE ACTING TREASURER (MR. H. L. BAYLES): Your Excellency, the motion which is before this Council is one which will, I am sure, have the sympathy and support of all hon. Members:—

"In consideration of Mohamed bin Abdulla Kombo's 22 years, 4 months and 5 days satisfactory service in the Administration, this Council is pleased to award him a compassionate pension at the rate of Sh. 660 a year, with effect from the date of his retirement, viz., 16th July, 1926, instead of a gratuity of Sh. 1,015/38 (calculated at the rate of one week's salary for each year of service) to which he is strictly entitled under the Regulations."

This official, Mohamed bin Abdulla Kombo, has rendered very long and faithful service to Government. He gave of his best under very trying conditions and there is no doubt that those conditions very seriously affected his health. He retired in 1926 and was granted a gratuity, which, it was hoped, would enable him to live in a measure of comfort. Unfortunately, since then his health has further deteriorated and there is no doubt that he is now in very poor circumstances, both financially and physically. The Provincial Commissioner, Coast, has investigated the case and it has his unqualified support. In the circumstances, Government has given very careful consideration to the matter and has come to the conclusion that a gratuity is hardly a recompense for the very meritorious services he rendered, and that a pension is more suitable to the case, to enable him to end his days in the comfort that he merits. I may add that the gratuity that he received will, of course, be refunded.

THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MacGREGOR, K.C.): Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is:—

"In consideration of Mohamed bin Abdulla Kombo's 22 years, 4 months and 5 days satisfactory service in the Administration, this Council is pleased to award him a compassionate pension at the rate of Sh. 660 a year, with effect from the date of his retirement, viz., 16th July, 1926, instead of a gratuity of Sh. 1,015/38 (calculated at the rate of one week's salary for each year of service) to which he is strictly entitled under the Regulations."

CAPT. THE HON. E. M. V. KENEMLY: Your Excellency, while not wishing to oppose this, I feel that attention should be drawn to the memorandum which we have had supplied to us on the authority of the Chief Native Commissioner. In this memorandum, Sir, the Chief Native Commissioner vouches for the fact that he, personally, knew this Government Servant and that he did his work in trying circumstances satisfactorily, and that the present state of his eyes is directly due to Government service. I feel, Sir, that a statement of that kind should be supplemented by medical evidence, because once before we had an instance where a gratuity was granted to a man for a partially permanent disablement and the gratuity subsequently was not paid because it was found unnecessary for various reasons, and I feel that in a case of this kind one should have a medical endorsement of the opinion even of a Chief Native Commissioner.

THE HON. T. J. O'SULLIVAN: Your Excellency, this motion most certainly has my sympathy and it most certainly has not my support. It has my sympathy because everybody must sympathise with any unfortunate person who, after twenty odd years of hard work in Government service, finds himself unable to maintain himself in his old age. Nevertheless, Sir, I cannot give it my support because I think it altogether improper that Government's attitude towards its workers in their old age should be based upon the extent to which it is possible to arouse sympathy in individual cases. Apparently this unfortunately circumstanced individual has succeeded in securing the active sympathy of the Chief Native Commissioner and the Provincial Commissioner, Mombasa, and, as a result, we are asked, four years after he leaves Government service, to accept that gratuity—which, four years ago was considered ample recompense in the way of pension for his services—and give instead a pension. Now, Sir, how many more people are similarly circumstanced, who would not be justified in asking to be given somewhat similar treatment? In the course of my association with the Government I have come across quite a number of cases of people who, for one reason or another, have had to retire or be retired from Government service. In some cases they have had a gratuity and in others they have not. But all of them have been so circumstanced that they have had a claim on our sympathies. But, Sir, how much longer are we to continue in this way, basing our attitude to Government employees that are retired upon sympathies? I oppose this motion, Sir, because it gives me an opportunity to reiterate that the Government is failing in its duty to the country by not carrying out the recommendations of Members on this side of the House over a period of years in regard to a properly thought out pensions scheme. Government's inactivity in that matter is costing the country thousands and thousands per annum, and, in addition, is resulting in grave injustice being done to some of its employees on their retirement. The motion has my sympathy, Sir, but certainly it has not my support. I oppose it because it gives me the opportunity of protesting once again against the inactivity of the Government in not putting into operation a comprehensive pension scheme.

THE HON. THE CHIEF NATIVE COMMISSIONER: As I have been quoted in the matter, I think I ought to explain what my position was. I do know this man personally very well. He did remarkable work on the Tana River in extremely trying periods. It is well known to be a very unhealthy and trying district, and it was reported to me that, mainly as a result of his work there and the disability from which he suffered, that his eyesight has failed very seriously, and that

is really the chief cause of his present trouble; and while I personally, Sir, if I may say so, have every sympathy with the remarks of the hon. Member who has just spoken in expressing the hope that a pension scheme may eventually be found for such officers, I do feel that, in the absence of such a scheme, when we do get a case deserving of succour, we really must meet it.

LT.-COL. THE HON. C. G. DURHAM: May I ask if the man's failing eyesight was the cause of his retirement, and if so, why it was not taken into account when the pension was granted, because it must have been perfectly obvious that the man could not work for himself in his later years?

CAPT. THE HON. H. E. SCHYARTZ: Your Excellency, in view of what the hon. the Chief Native Commissioner has said in his concluding remarks, that this is a case of such hardship that we must be sympathetic, I think I can say that I am as sympathetic as anyone here, but it makes it very difficult when distinctions are drawn between persons who have been or are in Government service and persons who are not. A case has recently come to my notice in which, from a perfectly legitimate action of Government, in which they are not in any way legally liable, an unfortunate person not concerned with Government has had to go bankrupt; and when application was made to Government for consideration on sympathetic grounds, when it was stated quite clearly that that application was only made on sympathetic grounds, the answer was that Government had the greatest possible sympathy, but they could not do anything for him because it would create a dangerous precedent. If that is going to create a dangerous precedent, so is this. I am only too anxious that the *ad misericordiam* argument should be made by Government, but if they are going to refuse it in cases such as I have quoted I do not think I can possibly support any case such as the one under discussion.

THE HON. THE ACTING TREASURER: Your Excellency, there is very little I can add to what the hon. the Chief Native Commissioner has said, though I can reply to the enquiry by the hon. Member for Kikuyu. When this official retired it was on the ground of illhealth, but his illhealth was not in such a state as it is at present, nor were his eyes so bad. I am afraid that is as definite a statement as I can make on that point, but I hope it will suffice. I share the hope of the Chief Native Commissioner that a pensions scheme will eventually materialise for such cases, but in the meantime, I can only reiterate that I think it is a most deserving case for a pension.

The question was put and carried.

ASIAN CIVIL SERVANTS' HOUSING SCHEME.

THE HON. THE ACTING TREASURER: Your Excellency, the scheme which has been drawn up to enable Asian officials to build their own houses by means of advances from Government is similar in its main features to the scheme which has already been approved by this Council for a similar arrangement in respect of European officials. The amounts to be advanced have, of course, been brought into line so that they are proportionate to the salaries; that is the only real difference between this and the European scheme. I may mention that up to now 29 applications have been received from Europeans, and the Asians have represented that a large number of their staff will be submitting applications. There is no doubt, I think, that the shortage of housing for the Asian staff is very acute, and it is hoped that this will be one means of ameliorating it.

Your Excellency, I beg to move.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is:—

“That this Council approves the adoption of the scheme set forth in the Memorandum entitled ‘A Scheme to Advance Money to Asian Civil Servants to enable them to build their own houses,’ which has been laid on the Table of this Council.”

THE HON. T. J. O'SHEA: Your Excellency, the scheme being on the lines of that already passed for the benefit of the European staff of Government in certain centres, I of course have no objection to it in principle, but when that original scheme was before this House I did raise a number of objections to items which are also embodied in this scheme, and so I must repeat them on this occasion. There are various other points in this document too, Sir, to which I should like to draw the attention of the House.

In clause 3 it is stated that the scheme will be for houses to be built within a ten miles radius of Nairobi House. Presumably, Sir, that has just been taken from the document covering the European scheme and in doing so it was overlooked that non-segregation applies only in the townships and it would be a violation of the White Highlands understanding to give out land for this scheme outside the township of Nairobi except in one certain specified direction.

It is set out, Sir, that advances up to 90 per cent, of the cost of any plot and building may be advanced, and in addition it says in clause 19 that the Government may advance the amount of a single premium by the participator to the insurance company. I have the strongest possible objection to as much as 90 per cent. of the amount required for the building of a house being advanced under this scheme. I think it is an excessive amount. It does not take into consideration the various factors that may result in the property being worth less than its cost on the very day it is completed, and it involves Government in undue risk. If, in addition to that, the Government advances the amount of a single premium paid by the participator to the insurance company, then I ask whether that might not possibly result in an amount in excess of the actual cost of the house being advanced.

Again, Sir, it is said in paragraph 14 that the maximum advance shall be £1,000. I consider that an excessive amount of money to advance under this scheme to these people. It may be that some of these Asian servants of Government require a house worth £1,000, but I think it is hardly fair to the ordinary citizen of the country, the man outside Government service, that the credit of the Colony should be tied up to this extent for the benefit of the favoured service. The service is pampered in a hundred-and-one ways; this is just one of the many ways in which it is pampered, and I consider that the man who is in a position to justify the ownership of a house worth £1,000 should be in a position to advance some reasonable proportion of the cost of that house. It is not fair to expect the community as a whole to put up the money for the house in its entirety.

Then again, I notice in clause 15 that the funds of the nebulous Land Bank may be drawn upon. Well, Sir, in one way I am glad to see that Government is preparing such a large amount of business for the Land Bank. I am pleased because it justifies the presumption that it is Government's intention to provide that bank with an amount of capital likely to be necessary for its numerous activities, but I do suggest, Sir, that if it is Government's intention to confine the capital of that bank not to exceed £750,000, the demands upon that capital have already been grossly exceeded.

Again, Sir, I notice in paragraph 28 that participators under this scheme are guaranteed House Allowance during the period that they will owe money to Government under this scheme. I am speaking from memory and I ask to be corrected if what I say is wrong, but in connection with the work of the Committee on the subject of Government Housing I extracted from Government a copy of the contract under

which these people serve Government, and, if my memory serves me correctly, only a very small proportion indeed of the Asian staff of Government are entitled to House Allowance under that contract. If I am correct in that, Sir, then I would ask whether it is the intention of Government that only that very limited portion of the Asian staff will be allowed to participate under this scheme in which they are guaranteed House Allowance. My recollection of the clause of the Asian contract in the matter of House Allowance is that only members of the Asian staff in Mombasa—I am doubtful about Nairobi—are entitled to House Allowance.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, there are only two points upon which I wish to have information.

There seems to be no provision for the construction of jointly owned houses, and I think there should be such provision.

And, Sir, in regard to the last clause, in the last Budget Committee we were told that the State's commitment in regard to House Allowance was indefinite; but, Sir, at that time we were told that it would be ascertained what the State's commitment was exactly and that we should be informed of what it was exactly. Until we have that information, Sir, I shall be forced to oppose this motion. We are entitled to that information; Government undertook to give it, and I trust that before this debate closes we shall have it.

THE HON. F. A. BEMSTER: Your Excellency, the first thing I notice about the motion is the word "Asian." I have tried to look it up, but I can find no dictionary which gives it—it is usually "Asiatic."

I was not a Member of this House at the time the European scheme was under discussion, but I should have opposed it entirely. I want to oppose this on the grounds of absolutely bad finance. The essence of the whole thing is that a man will draw House Allowance, which is your money, will buy a house with that amount of money, and in the end will own something which he has bought out of the money you have allowed him. I claim that it would be far better to set up a fund whereby you could build houses to the extent of the interest payable capacity of the House Allowance, and then the asset would eventually belong to the State. There would be no difficulty in this and you would have something to show at the end of a given period for the taxpayer's money which would be expended. I deprecate entirely the idea of Government assisting either their European or Asiatic servants in

buying something for themselves out of an allowance which, according to the strict letter of the law, is so actually infinitesimal but which has gone up to a very substantial amount and, as you will see in some of these accounts, is now £24 or £25 a year. This pledging of the finance of the country for a scheme of this kind appears to me to have no limit, and in the present circumstances of the country I do think great care should be taken before large amounts of money are locked up in such a peculiar scheme. There are building societies and companies who will assist people to build their houses, and I do know of an Indian society which is only too pleased to assist its Asiatic compatriots to purchase their own houses. I asked the man in Mombasa only about a month ago, and I do not think they have had one application, although the terms for the money which they are willing to lend are very advantageous to the individual. I deprecate entirely, Sir, this interference by the Government in private business. If the Government is going to turn into a money-lending concern, where is the whole thing to end? They are starting to-day with houses; they have already gone in for motor cars. Eventually, I presume, they will open grocery stores, and they will run, perhaps, to funerals or something of that sort. So that your Government servant is in this ideal position: he lands here and his ship is brought in by a Government pilot; he gets off the ship and his stuff is handled by a Government agent; he travels on a Government railway; he gets a Government job; he is given a Government house; and if he is poor enough, the Government will bury him.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, while I am not opposing this as a scheme—before, we agreed to it for the European Civil Servants—I do think there are certain things in the scheme as laid down here which do want going into very much more carefully. All my objections have been voiced by the hon. Member for Plateau South, and in particular—though I do not wish at all to raise the racial question—the ten miles radius does cut directly across the White Paper of 1923, and I feel, Sir, that we must protest against that, and I hope that that ten miles radius will be altered.

CAPT. THE HON. H. E. SCHWARTZ: With regard to the ten miles radius, I, perhaps, and Council, do not read it in the same way as the Noble Lord. I read it as being a maximum. That is not by any means to say that because you are limited to a maximum of ten miles that therefore you can cut across the White Paper. I do not think it was ever intended that this scheme should allow for the giving of land

to Asiatics outside the township of Nairobi. If so, I am certain the necessary alteration will be made by Government to make the matter quite clear.

With regard to the Mombasa Member's remarks, I very much regret that he was not here when the matter was debated on the European Civil Servants Scheme, because I do think the view-point is entirely wrong. Government is lending their money, and for those people who are participating in the scheme it really becomes a sort of scheme of compulsory economy, where they are definitely paying back out of their house allowance or whatever it may be, so much for a loan which they have been given. It is like a man who is frightened of over-spending and opens two accounts, and puts everything he possibly can into his No. 2 account. He looks at his No. 1 account and he does not look at his No. 2 account, and the result is he lives more economically. I can speak from experience in that respect. I am sure the scheme is an economically sound one, both from the point of view of Government and of the borrower. No one is getting an unfair advantage and it will be impossible to make any differentiation.

If the hon. Member for Mombasa is right in one of his points he can hardly be right on the other. First of all he said he objected to such large sums of money being locked up in such a scheme and then, that when he enquired in Mombasa a little while ago he was told that there was no applications. The two things don't seem to dovetail.

HIS EXCELLENCY: If no other hon. Member wishes to address Council I will call upon the hon. the Treasurer to reply.

THE HON. THE ACTING TREASURER: I think, in the first place, I would like to point out that, if I have understood the attitude of hon. Members correctly, there is a feeling that Government should not undertake the building of houses on a large scale when there is an alternative, and this scheme is in itself an alternative solution to that problem.

As regards the ten miles limit, I would like to endorse the remarks of the hon. Member for Nairobi South. He has correctly interpreted the intention, and I may mention that the Commissioner for Local Government, Lands and Settlement has in preparation a scheme for setting aside certain areas, and those are the areas which are specifically allocated for the Asians.

Then I would like to touch briefly on the question of security. It was suggested that on an advance of 90 or 100 per cent., plus the amount of the insurance premium, the

security might be inadequate. It might happen that values would come down, but, none the less, Government's main security is not the land, or the house, or the man, but a combination of all three. It will be seen from paragraph 3 that the scheme is limited to the permanent and pensionable staff, and that in itself furnishes a very considerable security.

Reference has been made to the maximum of £1,000. I cannot share the opinion that that is too high but I would like to mention that that maximum in practice, so far as the experience of the European scheme is concerned, is not often applied for. At the same time, I think it is desirable to have such a figure to meet exceptional cases.

Another point on which I gather there is perhaps an erroneous impression is in regard to the Land Bank. If I understand the hon. Member to say that the advances would be taken over by the Land Bank, I would like to say that that is not correct. The reference to the Land Bank is to the rate of interest, which at present is $6\frac{1}{2}$ per cent.

Another point was in regard to the minimum house allowance, which is to remain the minimum, as at present. That minimum is 15 per cent. The Asian staff are allowed their house allowance at present at that rate. Actually, they receive in many cases more than that, but the amount they would be entitled to under this scheme would be 15 per cent.

THE HON. T. J. O'SHEA: On a point of order, Your Excellency, I asked whether, under their contract, they are entitled to a house allowance.

HIS EXCELLENCY: You cannot enter into an explanation on a point of order.

THE HON. THE ACTING TREASURER: Your Excellency, the Asians on the permanent and pensionable staff do receive house allowance at the rate of 15 per cent. I think my hon. friend has in mind the conditions which were in force more than ten years ago. At that time they had not got this rate. At the present time all Asians on the permanent pensionable staff are entitled to house allowance.

The hon. Member for West Kenya has referred to the possibility of jointly-owned houses. I am in doubt whether cases could arise, and I think there would probably be a certain amount of difficulty in regard to security, etc., but at the same time I can state that if any application is received it will have full consideration.

I think the hon. Member for Nairobi South has dealt with all the points made by the hon. Member for Mombasa, except one, which I would like to refer to, and that is that the refunds made by the official will not be covered by the rate of his house allowance. Even if he spreads it over the maximum period of fifteen years, he will still have to make a considerable contribution out of his own pocket—unless he elects to build a very tiny house, and even then, I think, his house allowance will not quite cover it.

HIS EXCELLENCY: The question is—

“That this Council approves the adoption of the scheme set forth in the memorandum entitled ‘A Scheme to Advance Money to Asian Civil Servants to enable them to build their own Houses,’ which has been laid on the table of this Council.”

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, on a point—I do not know what to say, order or request—but would Your Excellency allow this to stand over to allow for the making of the matter of the ten miles radius quite clear? It can quite easily be amended in five minutes. I know I am out of order, but I do think it is rather important.

HIS EXCELLENCY: I think, as the resolution was in the course of being put, it would not be in order not to put it, but I will give an opportunity by which it can be considered afterwards.

The question was put and carried.

REGRADING IN POST OFFICE AND TELEGRAPHS DEPARTMENT.

THE HON. THE COLONIAL SECRETARY (MR. H. M. MOORE): Your Excellency, in speaking to the motion which stands in my name, it will not be necessary for me to keep hon. Members long. It is really in the nature of a formal resolution, implementing provisional approval which was given by them in Select Committee when the Estimates for the year were under consideration.

The only reason for these proposals—which were agreed to by them, subject to the agreement of the Secretary of State—was that at that time you were not sure how far the proposals might or might not cause embarrassment to neighbouring Territories in the event of a unified postal service. We have now received an assurance from the Secretary of State and the Territories concerned that these rates of pay will create no such embarrassment, and there is therefore,

Sir, no reason why we should not go ahead with them at once. I do not therefore propose to go into any details, particularly as I believe an explanatory memorandum has been issued to hon. Members. Should they wish any matter of detail further explained to them I have no doubt the hon. the Postmaster General will be able to give it.

I beg to move :—

"That this Council approve the proposals for revision of scales of salary and regrading in the Post Office and Telegraphs Department, as shown in the following Schedule, with effect from the 1st of January, 1930."

I beg to move that the Schedule be taken as read.

Schedule.

Deputy Postmaster General: £1,000.

Assistant Postmaster General (two appointments): £720 by £30 to £840.

Chief Telegraph Engineer: £1,000.

Postmasters (eight appointments), to be regraded as follows :—

3 Senior Postmasters: £600 by £30 to £720.

5 Postmasters: £500 by £20 to £600.

Junior Postmasters and Postal Clerks and Telegraphists (thirty-one appointments), to be regraded as follows :—

8 Postmasters: £500 by £20 to £600.

23 Junior Postmasters and Postal Clerks and Telegraphists: £372 by £18 to £426 by £18 to £480 by £20 to £500.

Supervisor (Female) Telephones (one appointment), Postmistresses (two appointments): £372 by £18 to £426 by £18 to £480 by £20 to £500.

Assistant Telegraph Engineers (five appointments), to be regraded as follows :—

2 Telegraph Engineers: £720 by £30 to £840.

3 Assistant Telegraph Engineers: £600 by £30 to £720.

Sub-Telegraph Engineers (six appointments): £500 by £20 to £600.

Telegraph Inspectors (twenty-one appointments): £400 by £20 to £500 by £20 to £600.

Electrician (one appointment): £500 by £20 to £600.

Telegraph Storekeeper: £500 by £20 to £600.

The following charge allowances to be abolished :—

Assistant Postmaster General (Uganda): £60.

Postmasters (Nairobi, Mombasa and Kampala): £50 each.

Assistant Telegraph Engineer (Uganda): £60.

THE HON. T. FITZGERALD (POSTMASTER GENERAL):
Your Excellency, I beg to second the motion.

THE HON. T. J. O'SHEA: Your Excellency, it is my intention to vote against this motion. I shall do so, Sir, very reluctantly, because I was present at the meeting of the Select Committee when these proposals were approved in principle, and I was satisfied—and I am still satisfied—that their adoption is advisable in the interests of the Service, and will tend to increase the efficiency of that Service. The Post Office is one of the very few departments of Government spending large sums of money with anything like reasonable efficiency, and I am sorry that my opposition should be to a well-conceived scheme connected with that Department. Nevertheless, I think it is very necessary that we on this side of the House should put a stop to the period in which we have been begging and imploring Government to do something in the way of putting the administration of this country on an economic basis. For a period of years we have been investigating the cost of that service, the return to the country for the money that is expended upon it, and I for one am satisfied after these exhaustive investigations that if this were a democratically controlled country the Government of this country would be impeached for the way in which it is squandering the public funds of the service. I am taking advantage of this opportunity to register my protest against the failure of Government to carry out the recommendations of the committee for a contributory pensions scheme—against the advice—against the failure of Government to act on the advice tendered to it from time to time after investigation in favour of such a scheme.

THE HON. THE COLONIAL SECRETARY: Your Excellency, does the subject of the hon. Member's remarks fall within the terms of the resolution to which he is speaking.

HIS EXCELLENCY: I was just about to warn the hon. Member that he is travelling very far from it. He is taking a very wide latitude.

THE HON. T. J. O'SHEA: Thanks. I am opposing this vote because the people who will benefit thereby are not contributors to a contributory pensions scheme. I am opposing it because the people who will benefit under this scheme are on a contract which sends them out of the country for six months at least every two-and-a-half years. I am opposing it because, in addition to the emoluments mentioned in the scheme, they receive the benefit of a comprehensive system of perquisites that is not covered by their contract. Your Excellency, I conclude by saying, by repeating, that I am sorry my first sighs of protest in this connexion should be brought forth by the introduction of a scheme for which we have already given our approval in principle. But it is necessary, because I think the time has arrived when it has become impossible for Members on this side of the House to support any further proposals of Government for the improvement and for the increased remuneration of the Civil Service.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I too intend opposing this motion, but I feel that Elected Members have to a large extent a responsibility in the situation which has arisen because, through their inconsistency, they have provoked it. Last year, I think it was, we were asked to amend the conditions under which married men served in the Northern Frontier, and instead of boldly facing the issue then and insisting that Government should face the anomalous position and rectify it on a permanent basis, equitable to the whole service, which would have been not difficult, we ran away from it because we were appealed to by the protestations of Government. Government by tears is an exceedingly bad form of Government, and we have been subject to it in this country for a long time.

HIS EXCELLENCY: I hope the hon. and gallant Member will shortly come to the subject before Council.

CAPT. THE HON. E. M. V. KENEALY: The lamentable inconsistencies of Elected Members have no doubt provoked this, but I feel that the time has now come for us to maintain a definite attitude. There has been a wanton interference with Kenya commonsense. Where that interference emanated from is not of much consequence; but we represent Kenya commonsense, and it is our duty to oppose a measure of this kind, irrespective of the claims of the individual, which no doubt can be substantiated. It is a matter of principle, and on a matter of principle we should stand consistently and oppose it.

THE HON. F. A. BEMISTER: Your Excellency, I won't take a minute. I only want to know one thing. If you remember, when this was put through, I particularly did not agree with the Schedule until I knew the position with regard to the appointment of a Deputy Postmaster General. The hon. the Colonial Secretary then told me that the appointment had not been made, and it would be the subject of further discussion. All I want to know, Sir, is whether it is intended that this should be a new importation or if a servant of the present Administration will be eligible for that appointment.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency. I trust that those two hon. Members who have stated that they are going to oppose this will, on reconsideration, not do so, more especially as the hon. Member for Plateau South in opening his speech said that he had no doubt whatever that the passing of this motion would result in greater efficiency in the Department.

Now, Sir, if we are all agreed—and the Select Committee were after an exhaustive inquiry into this matter—that this is a fair and equitable thing and tends for increased efficiency in the Post Office, I cannot see the logic of opposing it because one is dissatisfied with other actions of Government in connexion with the Civil Service. I agree with the hon. Member that we are bound to get down to a contributory pension scheme; I agree that the interim report of the Pensions Committee should have been acted upon quicker; I very much regret that nothing has been done in regard to leave and passage regulations, not only because of the saving it would make to the Colony, but because a large number of Civil Servants are also very anxious for alteration. But all these things seem to me not to be relevant to the point at issue. We have approved this in Select Committee; we agree it is the right thing. How can we logically say we are going to turn it down simply and solely because we are dissatisfied with the actions of Government in other regards?

HIS EXCELLENCY: I understand that the hon. Member for Mombasa asked for an undertaking from Government as to the appointment to be made to the post of Deputy Postmaster General.

THE HON. F. A. BEMISTER: I did not ask for an undertaking, Your Excellency. I wanted to know if it was the intention that the post should be eligible for a man on the spot, or was it going to be given to a new importation from England.

HIS EXCELLENCY: I can answer that, I think; anybody suited for the post is eligible.

The question is—

“ That this Council approve the proposals for revision of scales of salary and regrading in the Post Office and Telegraphs Department, as shown in the following Schedule, with effect from the 1st January, 1930 :

Schedule.

Deputy Postmaster General : £1,000.

Assistant Postmaster General (two appointments) : £720 by £30 to £840.

Chief Telegraph Engineer : £1,000.

Postmasters (eight appointments), to be regraded as follows :—

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8 Postmasters : £500 by £20 to £600.

23 Junior Postmasters and Postal Clerks and Telegraphists : £372 by £18 to £426 by £16 to £480 by £20 to £500.

Supervisor (Female), Telephones (one appointment),
- Postmistresses (two appointments) : £372 by £18 to £426 by £18 to £480 by £20 to £500.

Assistant Telegraph Engineers (five appointments), to be regraded as follows :—

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Telegraph Inspectors (twenty-one appointments) : £400 by £20 to £500 by £20 to £600.

Electrician (one appointment) : £500 by £20 to £600.

Telegraph Storekeeper : £500 by £20 to £600.

The following charge allowances to be abolished :—

Assistant Postmaster General (Uganda) : £60.

Postmasters (Nairobi, Mombasa and Kampala) : £50 each.

Assistant Telegraph Engineer (Uganda) : £60.”

The question was put and carried.

LOAN EXPENDITURE : ROLLING STOCK.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS (BRIG.-GEN. G. D. RHODES) : Your Excellency, in moving the proposed motion that stands in my name on the Order of the Day, I would like to apologise to this House for the late moving of this motion. It formed a part of a comprehensive scheme put up some two or three years ago to the Secretary of State by the late General Manager, and for some reason this particular item has not yet been dealt with. The other items in the Schedule, which included the completion of Berths 3 and 4 at the Port, further Port improvements, Thomson's Falls Branch, have received the definite approval of this House. This particular item was not then dealt with, and I now put it forward for consideration. The amount is a comparatively small one, and will not in any way meet our requirements, but in order to clear the field, and deal with the items that have already received the Secretary of State's approval, it is necessary to put it to the House this morning.

I beg to move the motion standing in my name.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I beg to second.

HIS EXCELLENCY : The question is—

“ That this Council approve the expenditure of a sum of £25,000 upon the purpose specified in the Schedule hereto and undertakes to approve the inclusion of such sum in the Schedule to a future Loan Ordinance together with such further sums as may be necessary to cover the cost of the issue of such Loan :

Schedule.

Rolling Stock £25,000.”

THE HON. CONWAY HARVEY : Your Excellency, I am very disappointed indeed that no provision has yet been made for even the preliminary expenses in connexion with the Sotik Branch Line. I have mentioned this on numerous previous occasions in this House during the last eighteen months, and

the hon. the Colonial Secretary has stated on more than one occasion, and I have agreed with him, that the Branch Lines Committee would be the proper forum in which to debate the question of this very important Branch Line. I must say I am profoundly disappointed that that Branch Lines Committee has not yet been assembled.

HIS EXCELLENCY: Order, order. I do not wish to interrupt the hon. Member, but we are discussing the special subject of rolling stock at the moment. His subject would be more properly raised when we deal with the Supplementary Estimates.

THE HON. CONWAY HARVEY: I bow to Your Excellency's ruling, but I hope there will be rolling stock provided for this very important branch line, Sir. (Laughter.) I thought the amount in the Order Paper was insufficient for it, but I bow to Your Excellency's ruling.

HIS EXCELLENCY: It is impossible to provide rolling stock for a line that does not exist.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I should like to ask the hon. the General Manager, Railways and Harbours, whether in this rolling stock is included any different type of carriage for the Railways here. As the hon. the General Manager knows—I do not want to go into details—there has been a lot of inconvenience and other things in connexion with the present type of carriage we have. I remember a little over a year ago he said there was a new type being brought out and that he hoped to be able to remedy some of the objections which have been raised by many people, especially the ladies of this country, to the present type of railway carriage.

COL. THE HON. W. K. TECKER: Your Excellency, there is just one point I would raise. Hon Members are no doubt aware that this vote of £25,000 is only a fraction of the amount which the Administration requires year by year for new rolling stock, demands which in the main I regard as not only reasonable, but essential; but when my hon. and gallant friend the General Manager replies to this debate, I should be glad of a specific assurance that the passing of this particular vote in no way prejudices a large, comprehensive and supplementary scheme for rolling stock recently submitted to the Railway Council, which has been held up pending further justification at the present juncture.

REV. CANON THE HON. H. LEAKEY: Your Excellency, I should like to ask whether the hon. the General Manager of Railways has taken into consideration at all in buying rolling stock the question of supplying some form of carriage something like the old intermediate class which we used to have on the Railway. I am certain, Sir, that for the use of the more educated natives such would be very much appreciated. We all know that there is a considerable difference between an absolutely raw native, who does not use soap and who does not wash at all, and those who are endeavouring to bring themselves to an improved standard of civilisation. It seems to me it would be a very great boon to such people if something of that sort could be considered, so that they could travel higher than third class and yet not so expensively as second class.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I have to oppose this expenditure on rolling stock as I consider it is most iniquitous that this money should be contributed by the general contributories to the revenue of this Colony. If the rolling stock was to be used equitably on all railways, including branch lines, then I would be in favour of it; there are so many anomalies existing in the tariff to-day that prohibit railway trucks being used under certain circumstances on branch lines, yet all the people who are living in the country served by branch lines contribute to the Railway. To give an instance: *posho*, I understand, is Sh. 2 a bag, maximum rate; on branch lines it is Sh. 2/46. That 46 cents prohibits branch lines using . . .

HIS EXCELLENCY: Order, order. The hon. and gallant Member is really not in order in discussing rates on the subject of rolling stock.

LT.-COL. THE HON. J. G. KIRKWOOD: I take it, Your Excellency, I shall have an opportunity on the Supplementary Estimates.

HIS EXCELLENCY: General policy can be discussed on the Supplementary Estimates but not on the subject of rolling stock.

THE HON. T. J. O'SHEA: Your Excellency, I am also opposing this motion. I think my reasons for so doing are sufficiently logical to satisfy even the exacting requirements of my hon. colleague on the right (the hon. Member for Nairobi South). I am opposing it, Sir, because it asks this House to approve an expenditure out of Loan Funds of £25,000 on rolling stock at a time when the Railway is building houses all over the country out of its Betterment and

Improvements Fund. If I am incorrect in that contention, then my argument falls to the ground. My opposition to this motion is based upon the assumption that the information I was given is correct, namely, that a large building programme is now being carried out by the Railway for its clerical and other staff out of the Betterment and Improvement Fund, which in turn comes out of the annual revenue of the Railway, which is based upon the comparatively high rates charged on large classes of goods carried by that Railway. If it be the case, Sir, that these houses are being built out of that Fund, then I think the financial system of the Railway wants very close investigation. We were under the impression when, year after year, we consented to the maintenance of those high rates for the purpose of building up a strong Betterment Fund, that this Fund was being expended upon the improvement of the Railway as a railway. We were not aware that this Fund was being used for the purpose of building, for the purpose of an extravagant scheme of housing for the clerical staff of the Railway. We take up the point of view, Sir, that the clerical staff of the Railway should be in a position to look after its own housing problems in most places.

I should like to take advantage of the opportunity, also, Sir, to ask whether, if this rolling stock includes passenger traffic accommodation, it will be of such a nature as to permit of effective disinfection. Complaints are general that since the introduction of the corridor coaches the verminous state of the corridors has become such that it is no longer in any sense a pleasure to travel upon the Uganda Railway. I think it is a disgraceful state of affairs that having paid (I do not, but many people do) first class fare on the Uganda Railway your night's rest should be impossible because of the presence of vermin. That state of affairs has become very much worse since the introduction of corridor coaches and since the cessation of any attempt at segregation on the Railway. I should like to ask the hon. the General Manager whether the purchase of this new rolling stock will improve the situation in that connexion in any way.

HIS EXCELLENCY: If no other hon. Member wishes to address Council, I will call upon the General Manager to reply.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: Your Excellency, with regard to the question of the type of rolling stock and the question shops, almost ready to be sent out on to the line, and I would that was raised by the Noble Lord, I would like to state that the new coaches which were on order are now in the work-

welcome an inspection of those coaches by any hon. Member who would like to see them. I believe they are a considerable improvement on the older type of corridor stock recently introduced, and I hope they will meet with the general approval of the travelling public when they have had experience of their use.

I may say, Sir, that the new stock is considerably more expensive in that it reduces the accommodation available in any one coach, because additional space has been reserved for lavatory accommodation.

With regard to the point raised by my hon. friend the Member for Nairobi North, I would like to assure him that the passing of this vote does not in any way involve the Railway Council in consideration of that proposal. All this does is to place the money at the disposal of the Railway Council for use if they think fit.

The question was raised in regard to the intermediate type of coach. I am glad to be able to state that these coaches are almost ready for sending out on to the line. They are being constructed out of older stock, converted to a suitable bogie, and I understand they are nearly ready. I hope they will meet the need pointed out by the hon. Member. I would again say that that again involves additional expenditure, because many of these coaches will be hauled empty for a greater part of their journey.

With regard to the point raised by the hon. Member for Plateau South, I would state that it is a fact that a considerable housing scheme is being financed out of the Renewals and Betterment Fund, and I would also state that it is a fact that a considerable amount of rolling stock is also being financed out of the same fund. It is considered a sound economic policy to build a number of houses for the railway staff, and so save the house allowance that would otherwise have to be paid. Our estimates for 1930 showed that the housing allowances to be paid for the present year amount to a sum of no less than £17,000. Anything that can be done on sound lines to reduce that expenditure is, I believe, fully warranted.

The question of disinfection, Sir, is a very difficult one in this country, as I have explained on several occasions. I have not, however, had complaints in this connexion for a considerable time. I believe the situation is very much improved by the fact that we have overhauled our disinfecting plant and have introduced new plant and new staff to deal with this particular matter. I believe the situation has very much improved indeed. Exhaustive inquiries have been made

in India in regard to methods of dealing with that particular problem, and we also arranged for a member of the Committee, the hon. the Director of Medical and Sanitary Services, to inquire into the question, and I think we are doing all we possibly can at the moment to deal with that particular problem.

I beg to move the motion standing in my name.

His EXCELLENCY: The question is—

“That this Council approves the expenditure of a sum of £25,000 upon the purpose specified in the Schedule hereto and undertakes to approve the inclusion of such sum in the Schedule to a future Loan Ordinance together with such further sums as may be necessary to cover the cost of the issue of such Loan :

<i>Schedule.</i>	
Rolling Stock	£25,000.”

The question was put and carried.

Council adjourned for ten minutes.

On resuming.

ASIAN CIVIL SERVANTS' HOUSING SCHEME.

His EXCELLENCY: Order, order. The hon. and learned Member for Nairobi South—whom I do not see back in his place yet—appealed to me, when I was putting the motion in regard to the Housing Scheme for Asian Officials, to postpone it pending some reconsideration of the ten miles radius clause. I could not postpone the motion then, but I have arranged that that clause shall be reconsidered, and I shall ask the leave of Council for the Government to move an amendment to it one day next week.

KENYA AND UGANDA RAILWAYS AND HARBOURS SECOND SUPPLEMENTARY ESTIMATES.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: Your Excellency, in introducing the first Supplementary Estimates and the Estimates for 1930, I gave a very full and comprehensive statement of the Railway position, with a number of statistics illustrating and pointing out the work which has been done up to that date. I think, Sir, in view of that statement, and also in view of the fact that my Annual Report, containing very full final figures on the working of the Railway, will be available shortly, that it will not be necessary for me to take up the time of the House in a lengthy statement in presenting the second Supplementary Estimates.

The first Supplementary Estimates dealt chiefly with Harbour finance, and covered the situation that at the Harbour a considerable amount of additional revenue had been earned.

The present Estimates before the House bring the figures of the Railways and Harbours to a final conclusion, based on the actual results for the year.

It will be seen, Sir, by reference to the memorandum prepared in support of this statement, that under two departments only have excesses in expenditure occurred. The first is in Abstract B—Transportation Expenditure, an excess of £42,678. The whole of that expenditure, Sir, is explained by the fact that additional work had to be carried out by the Transportation Department in moving traffic. That, Sir, means, naturally, additional cost of trains to carry the traffic, and, of course, the cost of fuel and oil and staff in connexion with those trains.

The other abstract which shows an excess is abstract D, where the expenditure of £6,703 is shown, due to the fact that during the year the Railway became liable for payment of the Municipal rates at Nairobi and Mombasa. Provision for that liability had not been made in the original estimates for the year.

Under all the other Heads, Sir, it will be seen that considerable savings are available, which have been obtained by the exercise of rigid economy in all directions.

Turning to the revenue aspect of the matter, it will be seen that we are some £82,000 less than the budgetted figure in the Estimates and some five per cent. only above the earnings for the previous year, in spite of the fact that the actual work carried out by the Railway was from fifteen to eighteen per cent in excess of the work done in the previous year. This, point, I think, is deserving of the serious attention of this House. It will be remembered that during 1927, rate reductions estimated to cost £111,000 were introduced; in 1928 rate reductions were estimated at £85,000, and again, in 1929, rate reductions estimated at £90,000. These are, I think, considerable figures, but it is now evident that the actual rate reductions introduced very much exceed those estimated amounts. Taking, for example a comparison between the last two years, it will be seen that in 1929 the average receipts per ton mile decreased in that one year from 11.5 cents per ton mile to 10.4 cents. That means in effect that we have given to the public a reduction in rates equal in value to the sum of £172,000. That figure, Sir, I think, fully accounts for the drop in revenue below the estimate, as shown

by the final results for the year. This fact too, Sir, supplements information given to this House by you, Sir, in your introductory speech, explaining why it was not possible during the present year to give the further £100,000 rate reduction which we had originally hoped to give. Actually, what has happened is that we have given those rate reductions for that £100,000 one year earlier than we anticipated.

The net revenue account, Sir, shows satisfactory figures, and I think the net result of £28,512 below the estimate is, in the circumstances, satisfactory.

Now, Sir, there are only two points in connexion with these Estimates that I should like to refer to now. The first is the question of whether we have done the work that we have been asked and called upon to do during the year. I think, Sir, the general opinion is that we have carried out the work to the general satisfaction of our customers. I feel that we have had very few complaints indeed about the movement of traffic, and I think that the cordial co-operation that we have received from all bodies and commercial organisations fully supports my contention in that respect.

The other point, Sir, a very important and vital one, is the cost at which we have done this work. That is a point that interests these Territories very much. The only way that I can illustrate that to you is by quoting the figure of working cost which, I think, measures the efficiency of the Railway in this direction—that is, the working cost per ton mile. This figure for the year in question is now 5.4 cents per ton mile. I may state that that figure is the lowest in the history of this Railway. It has been going through a series of reductions each year and that final figure for 1929 is, as I said, the lowest so far obtained in the history of this Railway. In making my statement at the end of last year I quoted comparisons with various other Railways. I do not wish to repeat those comparisons, but I stated at that time that we were unable to obtain comparisons with South Africa owing to the fact that they, up till that time, had not compiled ton-mile statistics. Since that time we have received their latest report, in which I am glad to note that ton mile statistics are now included, so that in future we shall be able to have comparisons with South Africa. So far as I have been able to compare at the present moment I would state that our working cost, the figure by which I ask you to judge of the work that we have been doing, is below the working cost of the South African Railways. I think we are entitled to draw attention to that fact, although in some few respects, such as, perhaps, the cost of labour, we have an advantage over South Africa; but in many others South Africa has a considerable advantage over

us. The fuel question is one: our fuel costs us some five or six times as much as South Africa; South Africa has a much larger system and can deal with transport on a wholesale basis while we have to deal more or less on a retail basis. I think, therefore, that I am entitled to say that our working costs have been reduced to a fairly satisfactory figure. We hope still further to improve this figure as we go along, and the question is being probed continually, but I want just to make this point, that in view of this fact there is not much room for drastic economy in the working costs of the Railway.

Now, Sir, I should just like to say a few words with regard to the prospects for the present year. Your Excellency has already drawn attention to the fact that there will be a serious decrease in the Cotton crop from Uganda. It will be remembered that last year the crop was somewhere in the neighbourhood of 200,000 bales, and we had budgetted for, and had very reason to expect, a similar crop this year. Actually, I believe, the crop will be something like 50 per cent of that total amount, so far as our present information goes. That, Sir, means a very serious drop in revenue in carrying the crop, because we shall only have half the crop to carry, and as the crop pays a very fair rate we shall lose considerable revenue in consequence. One further effect follows, of course, and that is that the amount of money available in Uganda for the purchase of imports will be very much decreased and the tonnage that we shall carry upwards on that account will also decrease.

One further point to which I should like to draw attention is the question of the drop in price of all primary products. That, of course, very much affects the buying powers of these two Territories and reduces again the imports into the Colonies. As I have already pointed out, Sir, there is not much room for further economy under the heading of working costs. We must look to other directions for finding these economies, if possible.

Naturally, Sir, the first point that we look to is our activities wherein we lose revenue. The first of those activities is the question of the low rates on certain export commodities. As is well known, we carry some export commodities to the Coast at a rate that does not cover the full modities to the Coast at a rate that does not cover the full working cost and loan charges. We anticipate that in normal years we shall obtain our profit on the imports those industries bring into East Africa. Particularly under the present circumstances of low prices and difficulties, I think it is impossible to anticipate considering in any way altering those rates. We cannot look to an increase in rates on export commodities for any additional revenue.

Another activity where we incur losses is in connection with the working of Branch Lines. On our Branch Lines we are losing heavily, but I would again say that those losses are largely involved in the first question, that is, the low rates on export commodities, because most of those Branches are shipping low-rated commodities.

One further service, Sir, under which we lose revenue is the passenger service. As this Council is aware, very full train services are now run between the Coast and Nairobi and Nakuru and up-country, and it has been estimated that our loss in revenue in working passenger services is something in the neighbourhood of £100,000 per annum. Apart from boat trains, our trains are not as a rule fully patronised. Many of our trains run with very few passengers now, except perhaps native passengers, and it would appear that here is a possible way in which we could reduce our services without inflicting too much hardship or difficulty on the country, and so perhaps avoid some of the losses that we already incur. I am examining the whole question, Sir, from that point of view, and propose putting the matter to the Railway Council at their next meeting towards the end of the present month.

It will be clear, I think, Sir, from these remarks, that there is not a great deal of room for finding savings without cutting down the facilities already provided and already given. That point I think I must emphasise.

Now Sir, my remarks so far have concerned the working costs of the Railway and have not referred in any way to the Loan and Betterment programme. That programme, Sir, is financed from Loan money and Betterment money definitely earmarked for this purpose, and the object of that programme is to ensure the future efficiency of the Railway. Existing programmes therefore should only be interfered with if we begin to lose faith and confidence in the future of these countries. Now, Sir, I for one have not lost faith and confidence at all in the future of these countries. I feel that at the present moment we should not interfere in any way with our existing sanctioned programme in connexion with Loan development and Betterments. I feel, however, Sir, that next year, in considering next year's programme, we should probably have to carry out a very much smaller programme than in the past, and that means that facilities that we like to give, such as increased sheds and things of that sort, improvements to the line, new sleepers, relaying, will all have to be cut down to some extent.

In conclusion, Sir, I should just like to emphasise the point that you raised in your introductory speech, and that is that this Railway appears to be dependent on almost every

shower of rain that falls. I think, therefore, that our activities and our efforts should be directed to extending our activities over a much larger area and in endeavouring to obtain other traffics that are not so dependent upon the weather and so to stabilise the revenue that we can count on obtaining each year. In this way only, Sir, can we hope to maintain services in times of stress such as this without having to cut down facilities.

With these few remarks, I now move the motion standing in my name.

THE HON. THE ATTORNEY-GENERAL: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is—

That this Council approves the Kenya and Uganda Railways and Harbours Second Supplementary Estimates, 1929, as laid on the Table."

THE HON. CONWAY HARVEY: Your Excellency, I am sure we have all listened with very great interest to the extremely clear, lucid and comprehensive statement of the position by the hon. the General Manager. Although, Sir, he visualises a very alarming reduction in the probable Uganda traffic, I do not think he laid sufficient stress on the extent to which the greatly increased Kenya traffic will be set-off. I am sure, Sir, we shall be very interested to have from those who have access to agricultural statistics which justify reliable forecasts some indication of the probable increase of traffic in that direction over the Kenya section of this Railway.

I was particularly glad, Sir, to hear the hon. gentleman sound a note of caution, and I sincerely trust that one of his eponymies will take the form of some curtailment of the very extravagant building programme which has been such a feature of Railway activities during the past two or three years.

Now, Sir, although he told us that most, if not all, of the Branch Lines at present in Kenya are being run at a loss, I think we are entitled to some indication of Government's intentions in regard to future Branch Line policy. Earlier in the morning, Sir, I mentioned the Sotik line in that connexion. A considerable number of economic reports have been made from time to time, and I fear, Sir, there is a very grave danger that the last report, like some of its predecessors, may be lost in the mists of antiquity. We should therefore be very very grateful indeed for some indication of Government's intentions in this matter. As you know, Sir, Sotik happens to be a large area containing some hundreds of thousands of acres of the most fertile soil in Africa, which is

at present unable to add its quota to the economic development of the Colony owing to its complete absence of communications and owing to the fact that the road or rail alignment traverses about 70 miles of country with a very heavy rainfall which makes road construction a matter of extreme difficulty. I hope, Sir, that in replying to the debate the hon. and gallant Mover will inform us that a date has been fixed in the very near future for a meeting of the Branch Lines Committee, where this very important matter can be discussed in relation to the claims of other parts of the country for expenditure on Branch Line construction. I have reason to believe, Your Excellency, and I have known this district intimately for 20 years—there is every reason to believe that a Branch Line from Kedoya to Sotik would prove a profitable proposition in about its third year. In that way it will help to carry the less prosperous Branch Lines which at present are in the nature of a dead weight on the Railway Administration.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, we have had mention made of the cost of primary products. One of the primary products of the world is transportation. There has been a reduction in the cost of primary products and there should be a reduction in the cost of that primary product—transportation. There must be. There has got to be a balance between the cost of all primary products. There is a direct and intimate relationship between them, and that relationship must be recognised by the Railway authority. I think it will be. Wool and livestock are the essential primary products which require consideration. We have had mention made, Sir, of the necessity for providing a reliable source of traffic for the Railway, and, although it was not mentioned, that reliable source, of course, is the mineral wealth of the Congo. But, Sir, we must not in our anxiety to provide for that source, let our own mineral possibilities be ignored. The Northern Frontier District is a mineralised area, and although Government activities have prevented the exploitation of that area to its fullest extent, I trust that that activity of Government will cease and that our own mineral activities in the Northern Frontier District, and possibly Turkana also, will receive Railway consideration. There is not the least doubt at all that mineral wealth is there, and the branch line which will be extended northward is the Nanyuki one. That is the one that is going to tap a firm and reliable source of traffic to the Railway. I hope the House will recognise that and manifest their recognition by extension. Although it is only a minor thing, that railway extension to Nanyuki has been held up recently by the lack of rails. We have a fairly large crop of wheat to move down and I trust that the lack of rails will cease forthwith.

Now, Sir, this analysis of the Railway position embraces to a certain extent consideration of Country Produce Rates. We have not yet had a complete and unqualified recantation of the General Manager's opinion in regard to Country Produce Rates, although, Sir, we have had a definite statement of Government policy, and an agreed policy, by the three Governors of the three Territories most concerned. I feel, Sir, that the country is now entitled to the recantation and I trust it will be made by the General Manager in his answer to this debate.

LT.-COL. THE HON. J. G. KIMWOOD: Your Excellency, I hope the remarks I have to make will not be taken as personal by the General Manager, but I realise that the constitution of the Railway is most unsatisfactory. Certainly, we are of the opinion that the Railway Ordinance, in divorcing the Railway from the control of Council, was not a satisfactory method by any means; and certainly the Railway Council, again, I consider, a most unsatisfactory body, and it has led to very unsatisfactory results. This Colony nominates, with Uganda, certain members on to that Council, but in the past I think that Kenya's representatives have not represented the public opinion of this Colony, or this Council, on the Inter-Colonial Railway Council. That being so, it is *ipso facto* an unsatisfactory body. We have no control over the members once they are appointed, and we have suffered accordingly. Again, I believe that the outcome of the Inter-Colonial Railway Council's deliberations has had the anomaly, and a very grave one, that in Kenya you have, I believe, six branch lines, as against Uganda, no branch line. It may be a matter of opinion, but I strongly hold that the present lines in Uganda cannot correctly be designated as main lines; and that being so, it must mean that this Colony is contributing in rates large funds towards cheaper Railway and cheaper railrage rates in Uganda.

We have, again, anomalies existing in the tariff. I have taken the opportunity on previous occasions to direct attention to these anomalies in the proper quarters, but they have had no results. Hence, I propose ventilating one or two of them here. You have the rate on line, which is a maximum rate. I believe it is Shs. 25 but it is immaterial. That will take a ton of lime, we will say for the moment, to Jinja. Later on it will take it to Uganda, but if it stops 250 miles short of it will take it to Uganda, but if it stops 250 miles short of the boundary and goes to Kitale, it costs another Shs. 6. Assuming Shs. 25 is correct, then it will cost Shs. 31 at Kitale and Shs. 25 two hundred miles further on. That is an anomaly which is an injustice, and I do implore the General Manager to use his influence to have these anomalies removed. Lime, I understand, is not required in Uganda; it is required

in other districts, which unfortunately are fed by branch lines. But the price, owing to these anomalies, is excessive and it is not used in the quantities that it would otherwise be used. The result is you are keeping back production, you are preventing progress, preventing increased crops going over the Railway with the resultant increased Customs return. You have again—as a result of branch line rates—not branch line rates—the maximum rates. I would have thought the maximum rate on the Railway would have meant to an intelligent individual what it states—the maximum—that you cannot charge any more. But that is not so. 'Take 'posho.' The maximum rate I believe is Shs. 2—Shs. 2/46 on a branch line. That 46 cents prohibits, to start off with, 'posho' being manufactured in the districts in which it is produced. *Ipsa facto*, it prevents 'posho' going over that line, not only preventing traffic to the Railway, but preventing economic development in the several districts served by the branch lines and cutting them off from that form of industry that they otherwise would be pursuing on an economic basis.

We have heard a good deal during the past year about reducing the cost of living. I maintain that the cost of construction is very closely wrapped up with the cost of living. I do not propose to give numerous illustrations. I will give you one—imported tiles approximately cost at Mombasa, loaded L.o.r. Kilindini, £10 per 1,000. The cost to an up-line station that I have in mind is £7-14-0 railage. Result, £17-14-0 per 1,000 for tiles. Incidentally, I would like to make it clear that these tiles—or similar tiles—are not being made in the country, and so there can be no justification for these rates to support local industry. If they were being manufactured—similar tiles even—I would be in agreement with an excessive Railway rate, but I maintain that that rate for imported tiles is far too high and should be reduced, I suggest, down to Class 10.

I think I am correct in stating that the figure given to me for the loss on the Kitale branch line for the twelve months ending June of last year was £21,000, and that would give a figure of something like Shs. 420 per ton mile. If that money was put into motor transport we should get free transport instead of paying the Railway for what they are doing now. It seems astounding that that sum of money can be worked out as a debit against a branch line covering 40 miles, and I believe the line certainly serves one of the most progressive and growing districts in the Colony and carries a great deal of freight. It is true that the bulk of that down traffic is maize, and on the present system of costing it has already created a debit before it has left the branch line. It also demonstrates that the greater the traffic from that district

the greater is the loss, and I think it is a subject that requires investigating as to whether the present system of costing on the Railway put up against branch lines is correct. I should also like to draw the attention of this House to the fact that there are at certain stations—up-country stations—maize graders. One of the objects in putting them up-country was to eliminate the possibility of wet maize going down the line and being held up at the Coast for regrading. We have the experience this year, owing to late rains, of great difficulty by maize producers in getting their maize dry and fit for market, and I suggest that where you have a grader that eliminates the wet maize going away, it helps the handling at the dock and clearing, and I think that every advantage should be afforded at these points in the supply of trucks. I realise that the question of trucks is a very big one, especially at this time of the year, which coincides with the shifting, not only of the maize crop but of the cotton crop, but I hope due consideration will be given to the point that, where a grader has been provided, facilities for handling the produce on the Railway will be given, and that the General Manager will endeavour as far as possible to see that the maize is removed from these stations in preference to stations where it is being sent away wet and blocking up the Port at the present moment.

COL. THE HON. W. K. TUCKER: Your Excellency, I am very diffident about joining in this debate because, on the one hand I have been closely associated with the working of the Railway in the last year, and, on the other hand, I little thought, at that time, that I should be a Member of this House when the Supplementary Estimates were being introduced.

I do not rise to traverse the views just expressed by the hon. Member on my right (the hon. Member for Plateau North) as to whether or not public opinion and the opinion of Elected Members has been reflected, and adequately reflected, in the Railway Council, beyond voicing the fear that silence might give consent to that view. What I wish to say to you, Sir, and through you to the hon. the General Manager, in the friendliest spirit, is to voice a mild protest against what I understood him to say—I may have misunderstood the hon. gentleman, with regard to the maize rate. In the course of explaining why the income was less in relation to expenditure, he mentioned these low rates, and in particular the maize rate, as accounting for some of these difficulties.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: Your Excellency, on a point of order, I did not mention any particular commodity.

COL. THE HON. W. K. TUCKER: I accept the General Manager's explanation, Sir, so far, but I am mindful of the fact that unfortunately, since it arises, that that maize rate is not a permanent one. If there is one rate which is less within the control of the Railway administration than any other it is this maize rate, and, in fact, all the rates on cereals in this country. This maize rate, Sir, is very much more favourable to-day than it was ten years ago when it was adopted as the very corner stone on which we were going to build up the economic structure of this country, and I can see no useful purpose—and I am sure the hon. the General Manager will recognise the friendly spirit in which I put it— that these Railway rates cannot be reviewed at present; though that will mean to great masses of people a strong possibility that someone or other will want to revise them at a later stage. It is unthinkable that these rates should be disturbed, and I do enter a mild protest against the undesirability of any such suggestion. A spark may be created which may be fanned into a flame by certain sections—this country really is concerned—who fail to realise quite what it means to the people who enjoy them, and equally what it means to the whole community that these rates should continue. I do regard this one rate as being fundamental, on which all the success which has been attained in this country during the past ten years depends.

THE HON. E. POWYS COMB: Your Excellency, I should like to associate myself very completely with all the remarks which the hon. Member for Plateau North has just made. I should like to carry the matter one step further. I was very disappointed this morning to hear the view which the hon. the General Manager takes of rates on cereals—his statement that there was no hope of any reduction this year. Now, I hope that applies only to the main system of those rates, and that he does not mean it to apply to the question of adjusting anomalies in those rates. I suggest to him that at the present time, when the world prices of agricultural products are particularly low, this is the right moment and the proper moment when anomalies in the rates on cereals should be given his attention. To give point to what I am saying, I will refer to one cereal as an example. This Council is no doubt aware that for some time past the Agricultural Department has been recommending the growing of barley in this country. That advice has been followed to a large extent, and followed successfully. Certain soils in this country have shown themselves particularly suitable to the growing of high quality barley, and a good deal of barley has already been exported. So far, certain types of Kenya barley have succeeded in obtaining the highest price of the day on

the markets on which they have been sold. The latest crop report—I speak from memory here—of the Agricultural Department estimates an export available this season of 60,000 bags of barley. It is therefore a considerable crop. But for some reason, which I cannot understand at all, the freight rate on it is about Sh: 2 a ton higher than that on wheat. These freights are supposed roughly to correspond with the values of the products, but in no figures that I have ever seen has the price of barley been above that of wheat; therefore, if the theory of these rates is that they shall roughly have some relation to the value of the product, there is a clear case for the reduction of the freight on barley to a point not above that on wheat but to a point below that on wheat. I would emphasise that at the present time, with the collapse of produce markets, that Sh: 2 is probably making the difference between the exportation of a large part of the barley crop and its retention in the country for consumption by feeding to pigs and local purposes of that sort. I venture to suggest to the hon. the General Manager that this unfairly high rate—unfairly on the theory that oversea rates are calculated—is actually losing freight to his Railway, and I very much hope, Sir, that in his reply to this debate he will be able to say something reassuring on this subject.

THE HON. F. A. BEMISTER: Your Excellency, the hon. Member for Kitale some time ago mentioned that I was parochial; I would like to be very parochial at the moment with regard to his question of tiles.

LT.-COL. THE HON. J. G. KIRKWOOD: On a point of order, Your Excellency, I am not the Member for Kitale—I am K. of K.

HIS EXCELLENCY: That is a point of personal explanation.

THE HON. F. A. BEMISTER: I did not hear it, Sir.

Now, Sir, he rather boasts of having imported tiles, and he complains that the rillage on imported tiles precludes him from presumably tiling his house. I would like to remind him

LT.-COL. THE HON. J. G. KIRKWOOD: On a point of explanation, Your Excellency, it does not preclude me from putting tiles on my house.

THE HON. F. A. BEMISTER: I would like to say—and in this he cannot correct me (laughter)—tiles are manufactured at the Coast of excellent quality and, I believe, will

come under country products, so that in future, if he will study Coast products, he will be able to get them much cheaper.

Now, Sir, I want to congratulate heartily the Administration of the Railways and Harbours on their very low deficit of £21,000; I think, Sir, that that is a record in the finance and working

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: On a point of explanation, Your Excellency, it is not a deficit. (Laughter.)

THE HON. F. A. BEMISTER: But actually it is a loss; I do not know if a loss is a deficit, but it says, "As the actual loss in working amounted only to £21,630 I consider that a loss or a deficit, that is all, Sir.

I still think my congratulations are due, but I should like to call attention to a few things at the Coast as to how perhaps this loss is made so small. The Mombasa Municipality has a very heavy question in dealing with the accumulation of camel manure. It is very difficult to handle, but recently a sugar plantation has started at Ramisi which was willing to take away the whole of this for the Municipality and save them very heavy expense in its destruction. Immediately the Municipality offered it free; the Ramisi Sugar Company brought their own boats round to Kisauni, they used their own boys for taking it from the dumping ground to the boats, they did the whole of the handling from start to finish, and then received a bill from the Kenya Harbours Administration for port charges through their agent.

A long time ago, Sir, Henry Ford wrote a book, and he showed there that at one time he was very handicapped in his finances, so he shut his gates and started searching inside for economies. I suggest that this would be an admirable example to be followed by the Government.

Now, Sir, I do not know if it costs more to pull a long train or a short train, but as the hon. the General Manager has mentioned that there is a heavy loss on the passenger service, I would like to know whether it would not be possible to send up or down many fewer carriages than he does at the present moment. Even if it does not cost less to haul, there surely must be a saving in wear and tear.

There is another small item I should like to mention: all these are very small—I only deal in small things—but they do strike one as capable of affording economies. If you could see the confusion at Kilindini when the boat train comes

in on account of the system of booking on the train it would appal you. The system to-day is that you put your name down, and when you are booked on the train you get a little ticket, and your name is put on the train. I want to suggest for the consideration of the Administration: Would it not be possible to number your carriages so that you are given a ticket just showing the carriage and number of the berth which has been allocated to you. That would save a great deal of trouble.

Take Mombasa Station—a train cannot go from Kilindini Harbour straight into Mombasa Station. To do this would necessitate about £150 to make a cross-over from the one line to the other. At the present moment, the train runs from Kilindini Harbour out into the yard of Mombasa, and is then backed on to the line from Kilindini Station to Mombasa and brought into the platform. I would suggest, Sir, that instead of that large engine pit, which must have cost hundreds of pounds, at Mombasa Station, they could have put a cross-over there.

My point is this: I only see a very few of these things, and they strike one right in the face; surely it is possible for the Railway Administration to examine thoroughly each small detail. They don't cut any ice among the public, but they would certainly save huge sums of money in your working.

LT.-COL. THE HON. C. G. DERRHAM: Your Excellency, I merely wish to associate myself with the remarks made about branch lines and branch line rates, which I think merit the immediate attention of the Legislative Council.

THE HON. THE DIRECTOR OF AGRICULTURE (MR. A. HOLM): Your Excellency, I did not anticipate that on the Second Supplementary Estimates presented by my hon. friend the General Manager I should be asked to make any statement with regard to the crop position and the future prospects in this Colony, but in response to the appeal made to me by the hon. Member for the Lake I shall be glad to give the House such information as I can, and necessarily, at short notice, without an opportunity of looking up records.

The first point I should like to make is this, Sir: the progressive rate of development has been less during the past year than in previous years. From the Agricultural Census Report the position is that the stated percentage increase of land under cultivation in European areas was 2.13 per cent. as compared with 3.3 per cent in the previous year, and 3.78 per cent in 1928. There is no reason why we should take a pessimistic view of that reduction, Sir, for the reason that

the higher up you get in figures of occupation of land or acreage under cultivation the more difficult it is to maintain the same percentage rate of increase per annum. There is no doubt whatever, Sir, that, unfortunately, due to a combination of circumstances which have obtained in the past few years, new settlement has to some extent been arrested, and therefore there has not been contributed to the progressive rate of production that increase which is due to new settlers coming on the land in each year.

I hope and believe that that situation will pass and that shortly we shall see a recurrence of new settlers coming on to the land in Kenya every year.

With regard to the position of agricultural industries, I should say, Sir, on the whole, that in my opinion it is entirely satisfactory. One finds in every direction different industries becoming securely established. One finds also that there is a steady increase each year in respect of them. Beginning with the grain crops, the position from the Railway point of view is this: that in 1929 we calculated that, as a result of the production of last season's crops, there will come on to the Railway rather more than double the tonnage of traffic that was carried on the Railway in 1929 in respect of these grain crops. There should be an increase in traffic of grain crops in 1930 on the Railway of between 60,000 and 70,000 tons.

In regard to sisal and coffee, it is very difficult indeed to forecast what will be the increased production and the increased tonnage of traffic, but we have estimated that the tonnage of traffic—which was about 10,000 from last season's coffee crop—will increase to something like 17,000 tons for the next coffee crop. In the same way, the tonnage of sisal is expected to increase by about 5,000 tons—from 17,000 to 22,000 tons.

The hon. Member for the Rift Valley has referred to a comparatively new industry, the growing of barley, and I should like to substantiate the figures which he has quoted to the House. In other directions, the tea industry and the sugar industry, one finds the same steady progressive rate of increase. Two other industries which I might mention, industries related to native production, which are advancing at a very satisfactory rate, are the wattle bark industry and the potato industry. These are two industries from which the natives of this Colony have, during the last year or two, derived a considerable amount of money; the output of wattle bark to-day from the native reserves is something in the neighbourhood of 5,000 or 6,000 tons per annum.

In the same way we have exported to the Indian market between 4,000 and 5,000 tons of potatoes during the last year, chiefly grown in the native reserves.

With regard to increased production in the native reserves, it is very difficult to arrive at any correct estimate, and the progress that has been made is perhaps less tangible than in other areas, but there is no doubt whatever that increase in production is taking place. It is true that many of the native products go into local consumption and are not reflected in export returns, but nevertheless progress is being made in native agriculture in the Colony.

I would only mention one more branch of industry in which satisfactory progress is being made, and that is in the dairy industry. We have now reached the stage where we are regularly exporting from this Colony a number of tons of butter and cheese per month, and that no doubt will be reflected in the increased prosperity of the pastoral areas of this Colony.

I would say, Sir, taking a view as a whole, that while I could not say to the hon. Member for the Lake that the progress made in the agricultural industry in Kenya will be sufficient to make up for the very heavy short-fall of revenue on the Railway, due to the loss, for example, of revenue from carrying 50,000 bales of cotton in any particular year, yet I think the position as a whole is satisfactory, and, while we should exercise caution, there is no reason to believe but that agriculture in Kenya will continue to progress, and, in relation to Railway rates and traffic, will continue to provide more traffic on the Railway.

THE HON. THE COLONIAL SECRETARY: I think I should just say a word in reply to the appeal made by the hon. Member for the Lake on the question of the branch line. Kericho-Sotik. Before he raised the point this morning in Council I had, in anticipation of this Council, been in communication with the hon. the General Manager. The position is that the economic surveys, both of this line and the Tanga-Sabukia line, have been received by Government. Certain further inquiries have issued, but I think the matter is so far advanced that, if I could arrange with him a date suitable for hon. Members, it would be possible to hold such a meeting during the present session. (Hear, hear.)

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: Your Excellency, there are very few remarks on which replies are necessary, but I think I can deal very briefly with them.

With regard to the point raised by the hon. Member for the Lake and the extent to which Kenya traffic will make up for the losses which the Railway will suffer from the reduction in the cotton crop, I was very glad to hear the summary of the progress and development given to the House by my hon. friend the Director of Agriculture. I hope that the increases shown by him will help us over these difficulties, and all those questions will be taken into full consideration when this matter comes before the Railway Council shortly. I would, however, just like to say that the losses of revenue, in rough figures, due to carriage of cotton less than the estimate we hoped for, will be something in the neighbourhood of £140,000 and, similarly, the loss due to reduced purchasing powers will be somewhere about the same figure, so that we shall have to face a probable loss in revenue of something in the neighbourhood of £300,000, unless increases in other directions can be made to offset those losses. The whole question is a difficult one, Sir, but it will receive the fullest possible consideration.

I think it wise to warn this House, Sir, that if savings have to be found, as they undoubtedly will, we have come to the point where they will have to be found through reducing the facilities given.

With regard to the point raised by the hon. Member for West Kenya, I am sure that when the mineral activities to which he refers are sufficiently proved we shall have no difficulty in justifying the extension of the Railway. There were some delays in the supply of rails to his particular branch line, but this was due to the fact that we have had to take the rails for the renewals of the main line. I only hope that the effect of that small delay will be much less serious than the delays anticipated in filling our trains once we get them to Nanyuki, and I am afraid that for some time our trains will not be fully loaded on that branch line.

With regard to country produce rates, I am not in a position to give any views on that matter. My personal views have already been given very fully, and the reasons for those views.

With regard to the questions raised by the hon. Member for Plateau North, Sir, I would like to take particular exception to the statement that the work of the Railway Council has proved unsatisfactory. It is not perhaps my particular business to defend the Railway Council, but I would not like to let this opportunity go by without stating that I consider the work of that Council during the past nine years that it has been functioning has been of the greatest use, not only to Kenya, but also to Uganda, and I think the results of working, as illustrated by the figures that I have from time to time

been able to quote, amply reflect justification for their work. It will be realised that working results such as those I have quoted can only be brought about by long-sighted vision in the provision of facilities, wise expenditure on stations, new rolling stock, and matters of that sort. Only by such wise expenditure can such results be brought about, and I think the results I have actually quoted are sufficient testimony to that.

The question of the Uganda branch lines, Sir, has been brought up on previous occasions, and I do not think it will be necessary for me to repeat the arguments in that connexion.

With regard to the hardy annual, branch line rates, all the arguments have already been given on several occasions. I should perhaps make it quite clear as to how branch line accounts are made out, and how it is that certain of these branch lines show such heavy losses. The principle we adopt is that we credit to that branch line everything that the branch itself earns on its branch and also all the earnings of all the commodities of that branch on to the main line down to the lowest point that we handle them, usually the Coast. In offsetting that credit we charge the branch line with the ton-mile cost of hauling these commodities to the branch line. That if there is a profit, it is credited to the branch line. Actual figures worked out on this basis usually show that the more we carry the greater is the loss, as most of the commodities exported on these branch lines are low-rated commodities, and the debit is greater than the revenue that we receive from them. Apparently these branch lines do not benefit by the increased imports and prosperity that occurs to the rest of the country through these rates.

With regard to the question of giving preference where maize graders have been installed, that has been decided during the past few days, and orders have in fact been given to give such preference.

With regard to the point raised by the hon. Member for Nairobi North, Sir, and the question of low rates on cereals, I would like again to make it quite clear that I have made no suggestion this morning that there should be any increase in those low rates. My only object in mentioning it was in order that hon. Members might be familiar with the problem. I believe the policy of low rates on exports to be a sound one, and, with my hon. friend the Director of Agriculture, I believe it has built up those industries, but it does involve us in certain difficulties and problems. It means that rates on imports are high; we are open to competition from motor

transport, and problems of that sort, and it is only in order that we should see the whole side of the picture that I put this case in front of you.

With regard to the point raised by the hon. Member for Rift Valley, Sir, the particular cereal for which he asked re-consideration of the question of rates will be again looked into, and the question will be put before the Railway Council in the normal way. I cannot of course give any undertaking as to what their decision will be in the matter. So far as I am aware, the present rate does not prevent the sale of such cereals overseas.

With regard to the remarks by the hon. Member for Mombasa, Sir, I must apologise to him for correcting him, because I thought he was referring to the final results of the Railways and Harbours Administration. I see now that he was referring to one section only in the last report, and to that extent, Sir, I apologise for correcting him. Hon. Members will remember that in the First Supplementary Estimates it was shown that the loss at the Port that year was very much less than was anticipated.

The hon. Member has quoted one or two examples where we might look for economy and greater efficiency. I am much indebted to him for those examples, but I would like to state that every one of them has already received frequent and full consideration. I can point out one or two of the difficulties in each case. For example, in connexion with the labelling of coaches, it is not always possible to ensure that the same type of coach and the same number of each type are on each train. It is therefore not always possible fully to plan out the seating of your accommodation on these trains beforehand. Also, until the number of people who are going to book is known it is not known what the best arrangements for seating will be. It is a problem full of difficulties and being continually discussed. If the hon. Member would come to my office at any time, we could go into the matter more fully.

THE HON. F. A. BEMISTER: Most pleased.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: He has suggested that the trains are too heavy for the accommodation required. That is a point, too, that has received consideration. The reason for having such heavy trains is that we have in the past attempted to provide through coaches in two or three directions, and that has meant, of course, having more coaches at the Coast than actually are needed at that point. That is one of the economies

that can be effected on the lines already indicated, if we reduce facilities. Another point in connexion with that, Sir, is that we do not always know the number of people that has to be transported from Mombasa, and as coaches cannot be sent down without notice we very frequently have to have more coaches on the train than are actually required.

The shunting question also is one that has received consideration, but the difficulty about dealing with the matter on the lines indicated by the hon. Member is that it would involve turning the train, and, as the hon. Member is aware, our couplings have always to face in one particular direction. It is the type of coupling we have, and unless a train is back-shunted and then gets into the station, it would involve turning the train round.

THE HON. F. A. BEMISTER: I could not have made myself clear. I will talk about it afterwards.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: I shall be glad to explain the position to the hon. Member.

As already stated, I am very glad to hear the optimistic views of my hon. friend the Director of Agriculture, as I feel that production is the vital matter in connexion with the future of this Railway. Production not only in Kenya but in Uganda is essential. We have, as I think I explained at the end of last year, spent some £20,000,000 on our Railway and Harbour developments here, but our traffic density is only one-half of what it is on similar railways in Rhodesia.

I think that answers all the points raised. I beg formally to move the motion.

HIS EXCELLENCY: The question is:—

“That this Council approves the Kenya and Uganda Railways and Harbours Second Supplementary Estimates, 1929, as laid on the table.”

The question was put and carried.

THE ACTING TREASURER.

HIS EXCELLENCY: I understand that the hon. Member for the Luke wishes to say a word before the House adjourns.

THE HON. CONWAY HARVEY: Your Excellency, we understand that the new Treasurer is on the point of arrival, and I therefore crave, with Your Excellency's permission, the indulgence of this House to express on behalf of all Elected

Members our very sincere appreciation of the manner in which the Acting Treasurer has discharged his onerous duties, both in this House and outside. His unflinching courtesy, outstanding ability and exquisite tact have set a standard which cannot easily be surpassed. We deeply regret his departure, and wish him the best of luck. (Applause.)

THE HON. THE ACTING TREASURER: I should like to say how much I appreciate the kind remarks of my hon. friend opposite, and also for the consideration that I have always received from all Members.

*Council adjourned to 10 a.m. on Monday,
the 7th April, 1930.*

MONDAY, 7th APRIL, 1930.

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Monday, 7th April, 1930, His Excellency the Governor (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of 4th April, 1930, were confirmed.

PAPER LAID ON THE TABLE.

The following paper was laid on the table:—

By THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS (MR. W. M. LYDDE):—

Report by Messrs. A. Beeby Thompson and Partners on Kenya Water Problems.

NOTICES OF MOTION.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I beg leave to give notice of the following motion:—

“That in view of the increasing economic and political difficulties in which the Colony is becoming rapidly involved, this hon. Council earnestly trusts that the Secretary of State for the Colonies will, at the earliest possible opportunity, make a comprehensive statement of the intention of the Imperial Government in respect of both reorganisation of the Governments of Eastern Africa in general and of its future policy with regard to this Colony in particular.”

THE HON. T. J. O'SHEA: Your Excellency, I beg to give notice of the following motion:—

“That the actions of Government in connexion with the compulsory acquisition of land and buildings near Turbo Railway Station were not in the best public interests and unnecessarily inflicted considerable hardship on individuals.”

ORAL ANSWERS TO QUESTIONS.

KENYA WATER PROBLEMS.

LT.-COL. THE HON. LORD FRANCOIS SCOTT asked :—

“ Does Government propose to have printed for sale to the public Mr. Beeby Thompson's Report on Kenya Water Problems? And is Government taking steps to have local youths trained as expert drill men, as recommended by Mr. Beeby Thompson? ”

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS :
(1) Mr. Beeby Thompson's Report on Kenya Water Problems has been printed and copies are available, both in this country and in England, for sale to the public. Copies of the Report were laid on the table this morning. (2) The advantages of training local young men to become boring foremen were recognised by Government some time ago, and in consequence provision was made in the Estimates for posts of Assistant Boring Foremen as follows :—

In 1928 : One post.

In 1929 : Four posts.

In 1930 : Six posts.

As a result, fourteen candidates have been appointed locally to fill such posts on probation, of whom eight are still in the Department. Of these, one has been placed on a thirty months' agreement, five are doing well, and two of them will shortly be placed on thirty months' agreements. It is rather misleading to refer to such young men as local youths, as before anyone can begin training as an assistant drill foreman he should have acquired a fair knowledge of blacksmithing, and a good knowledge of mechanical engineering. There are no facilities in the Public Works Department for this necessary preliminary training.

INSURANCE BUSINESS.

THE HON. F. A. BEMISTER asked :—

“ What security is demanded from any company, person or firm conducting insurance business in the Colony? ”

THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR) : No security of any kind is required.

THE HON. F. A. BEMISTER : In view of that reply, Sir, may I ask if it is the Government's intention to introduce legislation, especially in view of the fact that there is half a million pounds, free of interest, available for the Government?

THE HON. THE ATTORNEY GENERAL : I must ask the hon. Member to give me notice of that question.

BREAKDOWN OF WATER RESERVOIR AT CHANGAMWE.

THE HON. F. A. BEMISTER asked :—

“ If the rumours alleging the breakdown of the new 2,000,000 gallon reservoir at Changamwe are true? ”

“ What is the extent of the damage? ”

“ What amount of money will be required to repair the damage? ”

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS : The capacity of the new reservoir at Changamwe is one million, not two million, gallons. One of the reinforced concrete sides has failed and collapsed, but as far as is known at present the damage is limited to one side. A full inquiry is being held by independent engineers, and until this is complete it will not be possible to estimate the cost of repairing the damage.

THE HON. F. A. BEMISTER : I take it, Sir, that any cost of this kind would not be added . . .

HIS EXCELLENCY : Order, order. The hon. gentleman must ask a question.

THE HON. T. J. O'SHEA : Your Excellency, arising out of that answer, may I ask whether the Government of this Colony will be expected to pay for the loss in connexion with the collapse.

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS : It is difficult, Sir, to answer that question until one receives the report of the inquiry which is now being held.

LT.-COL. THE HON. C. G. DURLAM : Arising out of that, was it built by the Public Works Department or by an outside contractor?

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS : Your Excellency, it was built departmentally by the Public Works Department.

DEFERRED LETTER TELEGRAMS.

CAPT. THE HON. H. E. SCHWARTZ asked :—

“ (1) Is it a fact that deferred letter telegram cables received in Kenya from abroad are detained in the Post Office until forty-eight hours have elapsed from the time they are despatched, irrespective of when they are received? ”

" (2) Does the Post Office in England apply the same procedure?

" (3) If the answer to No. 1 is in the affirmative, by what authority is such detention exercised?

" (4) Will steps be taken in future to deliver such cables as soon as they are received?"

THE HON. T. FITZGERALD (POSTMASTER GENERAL): (1) The reply is in the affirmative. (2) The reply is in the affirmative. (3) On the authority of the general conditions on which the service has been established as agreed among the Administrations concerned. These general conditions have been given legal effect locally in Part XX of the Telegraph Rules appearing at page 1482 of the Revised Subsidiary Legislation. (4) In view of the conditions relating to the service, the reply is in the negative.

MOTIONS.

ALIENATION OF CROWN LANDS.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, with reference to the motion standing in my name on the Order Paper in connexion with the alienation of Crown lands and the system of land tenure, I understand that Government are prepared to appoint a Select Committee to consider the whole question, and on that assurance I am going to ask leave to withdraw this motion. I merely ask that the terms of reference to that Select Committee should include the question of revisable rents in connexion with 999 year leases.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. H. T. MARTIN): I am instructed to say that that assurance can be given.

HIS EXCELLENCY: I understand, then, that the Council is agreeable that the motion should be withdrawn. The motion is withdrawn.

OVERSTOCKING IN NATIVE RESERVES.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, representations have been made to me that Government is prepared to analyse this subject further and that we are to have some further information. I will therefore ask, with your permission and the permission of the House, to withdraw the first motion in regard to overstocking in Native Reserves.

THE HON. THE COLONIAL SECRETARY (MR. H. M.-M. MOORE): I should be very much obliged, Sir, if the hon. Member would defer this motion in the manner proposed.

HIS EXCELLENCY: I understand that Council is agreeable to the motion being withdrawn. The motion is withdrawn.

BOVINES IN TOWNSHIPS.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to move:—

"That the keeping of bovines in clean township areas be the subject of an inquiry."

First, I should like to ask, with Your Excellency's permission and the permission of this House, slightly to amend this second motion, "That the keeping of bovines in clean township areas be the subject of an inquiry," to read "the keeping of bovines in township areas"; that is, the excision of the word "clean". I have been asked to do that; it does not make very much difference to the sense, Sir, but it embraces a good deal more in the terms of the inquiry.

HIS EXCELLENCY: I am sure that Council will give leave for that amendment.

CAPT. THE HON. E. M. V. KENEALY: Thank you, Sir. That permission having been granted, I beg to move the amended motion now.

I believe, Sir, that Government is prepared to accept this motion, and so I shall merely mention half a dozen reasons why it is necessary to have it, to make it easier for Government to accept it.

The present conditions under which bovines are kept in townships do require revision, primarily because there is not only the difficulty of control but there is the impossibility of control. Not only is there no control, but the situation is such that if there were control it would be very expensive, and it would be hopelessly inefficient. There is a great danger of disease, Sir, because of this lack of control. There is a great danger. There is a great practice of movement, and uncontrolled movement, of stock both to and from these areas. There is no provision made for dealing with the disabilities that exist amongst this cattle, in spite of the disabilities that exist, there is a slight natural increase. There is no method of dividing the grazing that exists in areas such as these amongst the stock that has some sort of claim upon that grazing. There are very distressing conditions in regard to lack of sanitation because of the lack of control, and if the matter were viewed from the point of view of sadness and lack of laughter and fun, dirt and disease and general distress. I believe that Members on the other side of the House are

capable of viewing this matter not only from the human point of view but also from the bovine one. (Laughter.) I trust, Sir, that that being so, the matter will be rectified by the appointment of such a Committee at an early date.

I beg to move the motion.

THE HON. CONWAY HARVEY: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is:—

“That the keeping of bovines in township areas be the subject of an inquiry.”

THE HON. THE DIRECTOR OF AGRICULTURE (MR. A. HOLM): Your Excellency, I really was not aware that I should reply to the motion of the hon. and gallant Member. As I understand the position, Government is prepared to appoint and conduct this inquiry. I would mention that certain aspects of the matter have already been under examination, and the findings of those who inquired into those aspects of the matter will be of great use and benefit to those engaged in any such further inquiry.

HIS EXCELLENCY: The question is:—

“That the keeping of bovines in township areas be the subject of an inquiry.”

The question was put and carried.

KILELESHWA GRAZING RIGHTS.

THE HON. F. A. BEMISTER: Your Excellency, in view of the fact of the recent return of the hon. the Commissioner for Local Government, Lands and Settlement, I would ask leave to defer this motion until I have had an opportunity of discussing it further with him.

HIS EXCELLENCY: Is Council generally agreeable to that course?

HON. MEMBERS: Yes.

HIS EXCELLENCY: The motion is adjourned.

TRAINING OF NURSES.

THE HON. A. H. MALIK: Your Excellency, as the result of a conversation with my hon. friends the Colonial Secretary and the Director of Medical and Sanitary Services, I beg leave to withdraw this motion.

HIS EXCELLENCY: The motion is by leave withdrawn.

BILLS.

FIRST READINGS.

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL.

On motion of the hon. the Chief Native Commissioner (Mr. G. V. Maxwell), the Interpretation and General Clauses (Amendment) Bill was read a first time.

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

THE DEFENCE FORCE (AMENDMENT) BILL.

On motion of the hon. the Attorney General, the Defence Force (Amendment) Bill was read a first time.

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

THE DETENTION CAMPS (AMENDMENT) BILL.

On motion of the hon. the Attorney General, the Detention Camps (Amendment) Bill was read a first time.

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

THE ELECTRIC POWER (AMENDMENT) BILL.

On motion of the hon. the Attorney General, the Electric Power (Amendment) Bill was read a first time.

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

BILLS.

SECOND READINGS.

FOOD AND DRUGS (ADULTERATION) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of a Bill to make provision for the Prevention of Adulteration of Food and Drugs.

It is, I think, strange, Sir, that in a Colony such as this there exists no legislation of this nature, for it is, I think, practically a universally accepted principle that a purchaser is entitled to get an article of that quality and that nature which he demands from the vendor. For some considerable time past, Sir, there has been a series of strong representations in this regard made by medical officers of health throughout the Colony. Similar representations have been made by various public bodies, and those representations culminated, Sir, in a very strong request from the Central Board of Health that legislation for this purpose should be introduced as early as possible.

A Bill was then drafted, Sir, in 1928, based on the then existing English legislation, the Food and Drugs Acts, of 1875 to 1899, but almost immediately after that Bill had been printed new legislation was introduced, the Food and Drugs Act, 1928, in England, and the opportunity was therefore taken of remodelling the local legislation upon the basis of that Act.

The Bill falls into three parts, as hon. Members will see, and the first, as often happens, constitutes a number of new offences. There are now six offences, Sir—if this legislation becomes effective—which have hitherto been unknown in Kenya; but I do not think any hon. Member will take exception to any of them. It will now be an offence, Sir, under this Bill, to mix deleterious and injurious substances either in food or in drugs so as to render them harmful for human consumption or less efficacious than, in the case of drugs, they otherwise would have been. Food, for the purposes of this Ordinance, includes anything used as drink by man except water, so that the scope of the prohibition is as wide as anyone could wish.

Under clause 4 there is a prohibition against selling to the purchaser a thing he does not want and did not ask for. Similarly, clause 5 deals with the same thing, in the case of compounding drugs and making up prescriptions. There is a protection—a very natural protection, Sir—where compounded articles are sold under a clear and legible label, which sets out exactly what ingredients they in fact contain. It is not sufficient for a purchaser merely to ask for so and so, and say, "I did not read the label." If the label is clear—if there is no other matter on the label, such as you find on the back of a railway ticket—then there is a protection given to the vendor. Lastly, Sir, there is a similar prohibition on the abstracting from an article of food or from a drug any one of its essential ingredients.

Then, Sir, Part 2 deals with the administration of the legislation. The Ordinance, when in force, will be administered primarily by the local authorities, but there is also a provision that the Director of Medical and Sanitary Services, in the case of drugs, and the Director of Agriculture, in the case of essential foodstuffs—which fall within the purview of his Department—have the same powers which local authorities themselves have. These powers, Sir, allow a sampling officer to call upon a seller for samples of anything which he is asked to supply, and in fact supplies. When a sample is demanded and is given, the law provides that that sample must be divided into three portions. Those portions are then sealed up: one is returned to the seller, the other two are taken by

the sampling officer. One of these is retained by him under seal so that it may ultimately, if necessary, be produced in court and subjected to a third analysis, and the third is sent to a public analyst. If the result of that analysis goes to show that there has been adulteration contrary to the law, then a summons may be applied for. Attached to that summons there must be a copy of the analyst's certificate, and the summons is not returnable for at least fourteen days after the date of issue. The reason for that, Sir, is that if the person who supplies the sample relies on a warranty given to him by the person from whom he obtained the article in question, he is then entitled, within the first seven days after the receipt of the summons, to send the warranty to the administrative officer concerned—the local authority, the Director of Medical and Sanitary Services, or the Director of Agriculture, as the case may be—and he is then entitled in any court proceedings to rely on that warranty. That warranty will be a complete defence to him, provided always that he has not tampered with the article when he received it—that the article is still in the original form in which he obtained it.

The last offence I have to mention—I mentioned six—is that, if an optimistic supplier puts up a false warranty, he is liable to penalties under the Ordinance. Hon. Members will see that special provision is made in clause 13 dealing with the subject of milk, and there is a long schedule, Sir—the second schedule to the Bill—containing the milk rules. These are taken from the 1928 English Act, and I sincerely trust, Sir, that they will be found to be not only applicable to the local conditions but suitable to the local problems which may arise here.

Although the Bill is a short one, Sir, it does introduce quite novel provisions so far as the law of Kenya is concerned, and I understand, Sir, that it is proposed that the Bill be referred to a Select Committee, and on that understanding, Sir, I beg to move that the Bill be read a second time.

THE HON. THE DIRECTOR OF MEDICAL AND SANITARY SERVICES (DR. J. L. GILKS): Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Food and Drugs (Adulteration) Bill be read a second time.

THE HON. CONWAY HARVEY: Your Excellency, as this Bill was introduced at the original request of Elected Members, obviously they intend to support its main provisions.

We believe it to be highly essential, Sir, firstly, for the protection of various industries; and, secondly, for the protection of society as a whole. We do feel, Sir, that the provisions should be examined in detail by a Select Committee.

Representations have been made, Sir, that the definitions might require some further investigation. The hon. and learned Mover, Sir, stated that food includes every article used for food or drink by man other than drugs or water. When we come to the definition of drugs, Your Excellency, they include medicine for internal or external use. Some of us feel that that definition should be very carefully examined in order to ensure that the intentions of the measure will not be frustrated by an unduly elastic interpretation of these terms.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, we welcome this Bill, but, Sir, there are one or two factors which do deserve further consideration. The English are bodily and physically wholesome and clean people, but they are not nearly so punctilious about the cleanliness of their food. And, Sir, the regulations to ensure the cleanliness of food should embrace also the carriage of food, until the time the food has reached the table; and the same should apply to drink. There seems to be no method of ensuring that, because there is such an arbitrary distinction between food and drugs.

There is, apparently, no means of ensuring that a man shall be punished for introducing a harmless element into foodstuffs. I do not think there is, and if that is so, I think there should be some means of punishing a man who reduces the nutritive value without introducing a harmful factor into food; he should be punished for introducing an article of less nutritive value.

But my main criticism is that articles of food can be exposed to dirt, and that is a form of adulteration which is inevitable if it is tolerated. There is another factor which cannot be insisted upon, and that is that the description of the quality shall be in English. We have a certain number of foreign firms in this country, and they are unable to describe the quality of their goods in a foreign language.

There appears to be no means of dealing with guarantors outside the country—in foreign countries—who provide goods of a quality which is less than that of their guarantee; and there seems to be a method of exonerating the individual supplier and thrusting the responsibility on the original producer. I trust these disabilities and defects will be dealt with, Sir.

HIS EXCELLENCY: If no other hon. Member wishes to address Council, I will call upon the Attorney General to reply.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I doubt very much if there is anything upon which I can very well reply at the moment, except to remind the hon. Member who has just spoken that there is a statute called the Public Health Ordinance, and my opinion—and I think that opinion is shared by many others—is that the question of exposure of foodstuffs to excessive dirt is a matter which can much more easily and much more appropriately be regulated under that Ordinance than under this one, which deals only with the deliberate addition to or subtraction from essential foodstuffs and drugs. The other points which have been raised are interesting ones, of which I have made a note, and I can assure hon. Members that they will be examined in Select Committee.

HIS EXCELLENCY: The question is that the Food and Drugs (Adulteration) Bill be read a second time.

The question was put and carried.

HIS EXCELLENCY: I understand that the following Select Committee has been agreed to to consider this Bill:—

- The Hon. the Attorney General (Chairman);
- The Hon. the Director of Medical and Sanitary Services;
- The Hon. the Director of Agriculture;
- The Hon. Member for Nairobi North;
- The Hon. Member for Plateau North;
- The Hon. the Indian Member.

The Bill is referred to that Select Committee.

THE NATIVE LIQUOR BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that a Bill to Consolidate and Amend the Law relating to Native Liquor be read a second time.

As the title indicates, Sir, this is very largely indeed a consolidating measure, and therefore I do not think it is necessary for me to go into all the details of the measure. Most of them simply repeat the law as at this moment it stands. Those few changes which have been introduced are the only matters which I deem it necessary for me to touch upon at this moment.

We amended the Native Liquor Ordinance in 1928, and the result of that amendment was to produce a complete impasse, because the amending measure made it permissible for persons to have stocks of native liquor on their own premises. The result was obvious, Sir. The liquor was on their own premises perfectly lawfully and it was quite impossible to prove anything of the nature of a sale except in a very, very few and exceptional circumstances. It was therefore necessary, Sir, to amend that, and it was thought that the time had come when, instead of merely another amendment, a consolidating measure, repealing and replacing the existing measures on the subject might well find its way on to the statute book. Opportunity has been taken at the same time, Sir, not only to correct that major omission in the existing legislation, but to make one or two other minor alterations.

The first, Sir, to which I would draw attention is in the definition of "Native intoxicating liquor"; the words "other than tembo tamu" have been inserted in that definition. The reason for that, Sir, is that it is permissible to obtain a tapping permit to tap palm trees for tembo. My knowledge of Swahili is of the flimsiest, Sir, but I understand that tembo is invariably "tembo tamu" in its early youth, and at some later stage becomes "kali." I am told there is nothing intoxicating in tembo tamu. It is permissible to tap for it and to use it not only as a drink but one might almost say as a foodstuff; therefore, there is no reason at all why tembo which is still tamu should be included as a native intoxicating liquor. Tembo kali will still be regarded as an intoxicant.

At the same time, the definition of "Local authority" has been brought up-to-date. The legislation precedes the 1928 Local Government legislation, and an up-to-date definition of "Local authority," in consonance with the provisions of that very large volume of legislation, has been introduced.

The existing law provides that special licences can only be granted by the Licensing Board. As that Board meets only twice a year, Sir, it has in practice been found extremely difficult for persons who desire to get a special licence to get anything of the kind. It is therefore provided, merely for administrative convenience and in the interests of those who legitimately have a claim to a special licence, that such licences should be granted by a District Commissioner.

Clauses 22 and 24 introduce a new matter also, inasmuch as the powers of arrest and the powers of search of licensed premises, that is to say, premises licensed under the Native

Liquor Ordinance, are extended to members of the Tribal Police Force in areas in which they are replacing the Colony Police Force.

Clause 27 also, Sir, introduces a change which is not one of any importance, except to the District Commissioner. At the present moment, whenever anyone applies for a licence, the obligation rests upon the District Commissioner to explain to him all the provisions of the Ordinance, even if his application is forthwith and promptly turned down. That seems quite unnecessary, and the new Bill provides only that the District Commissioner should have that obligation imposed upon him in cases in which he has decided to grant the licence.

Clauses 29, 30 and 31, Sir, are merely an expansion of the present law, setting out in greater detail matters which have hitherto been left to the rule-making section.

Those are the changes which are made, Sir. It may well be, Sir, that in the light of experience gained since Chapter 133 of the Revised Edition first found its way on to the statute book, there may be other matters, whether of principle or detail, which hon. Members would like to see embodied in the legislation. In view of that, Sir, I suggest that this also is a matter which might properly be referred to a Select Committee.

I beg, Sir, to move that the Bill be read a second time.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, there is just one point which I think does deserve consideration in regard to principle, and that is it is suggested by the terms of this Bill that there will not be a brewery catering for the requirements of the native population, because if such a brewery does so cater for the requirements of the native population its profits will be taken away from it and will be devoted to native welfare. As I read the Bill—I may be wrong; I hope I am—but if, Sir, that is the general impression we are to gather from the Bill, I think it is wrong that it should be so, because, after all, at present the manufacture of native drink is done under the most absurdly disgusting conditions, and the sooner we can introduce an element of greater control and a higher degree of cleanliness over the manufacture of native beers, the better it will be. I do think it essential we should not exclude from our view the possibility of breweries

being established under efficient sanitary conditions which will make beer for the native. I do, Sir, also think that there is not nearly enough control, nor do I think the penalties are sufficiently high to give effect to the control in regard to the sale of native drink. I think, Sir, that the alcohol content is unnecessarily high, or the maximum is certainly unnecessarily high—I should like to see that reduced too.

THE HON. F. A. BEMISTER: Your Excellency, I will apologise for entering into this, because I am a distinct fanatic. The Bill, in my opinion, does not go one-tenth far enough. Here the Government have had a chance of tackling one of the most serious questions that can possibly be brought before the minds of the governing classes, and yet they have seen fit only to consolidate and amend a few paltry Ordinances which do not touch the question in the slightest degree. I would remind you, Sir, that I have a very large experience of natives. Practically all types, tribes and tints live in a village which I administer, and the great trouble—in fact, Sir, the only trouble that we have in that village—is this drink question. In this Bill there is no chance for the Police really to stop the consumption of this filthy liquor. I am not a teetotaler, Sir, but I do see the effects on the natives. We are trying every day to better their conditions, but because of the lax laws of this country they are dragged down by their own inclinations. It must be remembered, Sir, that the lower intelligence does not drink for drink, he drinks for drink, and in that there is a great difference as between the ordinary man who enjoys his glass of whisky or his glass of beer. In my native town—it can be called that, for there are 7,000 people in it—there are no shops to sell the tembo, because I will not allow them. If a man sells tembo there he gets turned out of his house; the Police have been distinctly helpful in telling me where this tembo is, but, Sir, I would suggest an examination of the English law. A few years ago, when a man was found drunk in the street, he was taken charge of, and it was then inquired where he got his last drink. The Police then had the power to proceed against the house where he got it. It is true it was ridiculed in England; I know that thoroughly well, and I know thoroughly well it was unworkable, but, Sir, it is not unworkable here. Only three or four weeks ago, I saw a poor fellow suffering from elephantiasis drunk in the bazaar. That man was being arrested for being drunk. He was taken to the police station; it was a Saturday afternoon, so presumably he was kept there till Monday morning and then brought before the magistrate. It was not that man's fault that he was drunk. The Police should have had the power to investigate the whole question, and ask the man where he got his drink. It is five million to

a china orange that he did not buy it, but that it was given to him in one of those places where they gather round and have a club. Now, Sir, here is a chance; it may be called spying, but I do not care what it is; in these things the end justifies the means. Information could have been got by the Police; they could have found that house where the drink was being consumed, and I am practically sure that had they gone to that house they would have found about twenty or thirty people still drinking. In this Bill, give power to the Police to make every investigation possible through the people they arrest. Make it illegal for this stuff to be on these places (as you have done, as a matter of fact), but the great thing is to use those people; do not arrest them as being drunk, use them as your representatives to find out where they got the drink. I would have the heaviest penalty that it is possible to inflict put on anyone who entices these natives to drink. You will find it, Sir, in the villages and houses in the closer inhabited areas like Mombasa. They have these little places: one is invited in, another is invited, and the drinking goes on, and in the end the whole tribe, the whole gang, is demoralised from A to Z. Then I get troubles—I am only speaking of my own troubles—I get complaints from wives, men's houses being burned down, and so on. I had two only a couple of months ago. All this could be prevented by giving the Police further powers.

I would plead for total prohibition for the natives, and plead seriously; but I know it is not possible now. I do hope that the Government will consider this question in the light of endeavouring to uplift the native and not encouraging him to follow the vices of the white man.

REV. CANON THE HON. H. LEMKEY: Your Excellency, I had no idea whatever until a moment or two ago, when my hon. friend got up to speak, that he was going to take this line and propose such a thing as the prohibition of drink to the native. I wish to say that if he is a fanatic about this question, then he is not the only one. I wish to endorse entirely all that he has said in regard to the absolute curse that drink of every kind is in Africa to the Africans. We are here, Sir, and we consider we have a trust to these natives to do all we can for them. I myself, Sir, think that, though it might be a hardship to a few people, it would be for the good of the whole, in spite of the fact that it might be said that it would not be fair to do to the one community what you do not do to another. We are told over and over again, and we know it is true, that they are like children. We have to train them up, and yet we do not allow our own children to play with dangerous things which are harmful to them; we

prevent their having sharp knives and playing with fire. I consider if anything can be done, for some years at least, to prevent the natives from being allowed to damn themselves absolutely by this drink, it should be done. Ninety per cent of the troubles which come before the District Administration are due to drink. If anything can be done in any way for prohibition to be brought in for the African while he is in his minority, in his childhood, and while we have to help him, I would back it up for all I am worth. I might be sorry for the few who did not suffer—if there are any who can take intoxicants without their harming them; I do not think it would be a hardship to the few if they were prohibited from drinking altogether for the sake of their thousands and thousands of brothers who were being dragged down and kept from rising, as we want to see them rise, by this drink question.

THE HON. E. POWYS COBB: I desire to congratulate Government, Your Excellency, on having introduced this legislation, on a subject which is, I believe, of the very greatest importance to all sections of the community. Certainly, so far as farmers are concerned, the question of the proper regulation of native liquor is a matter of very great importance. Since I understand that, from the words used by the hon. the Attorney General, it is the intention of Government to appoint a Select Committee, I do not propose to enter into any detailed criticism of the Bill, but in view of what has been said by the last two speakers on this side of the House, I must make this one statement: While I entirely agree with them as to the very serious evil which the improper use of intoxicating liquor has on the native, an evil whose ramifications stretch in many directions, I cannot believe that the right policy to follow in this matter is prohibition. I believe that there is a liberal and very broad-minded manner in which it can be dealt with, and in that connexion I very much hope that the Select Committee will, among other things, give consideration to the legislation on this subject which is at present in force in Southern Rhodesia, and which, I believe, is satisfactory.

THE HON. T. J. O'SHEA: Your Excellency, there are some natures that react by instinct against fanaticism. I feel Sir, that it would be a grave error of judgment indeed on the part of the Government of this Colony to base its legislation dealing with such an important problem as this upon fanaticism.

THE HON. CONWAY HARVEY: Hear, hear.

THE HON. T. J. O'SHEA: I prefer to support the attitude which has been taken up by the Government of this country, ever since I have been connected with it, towards this problem of dealing with it on rational lines, taking into consideration all the factors in the case. It is easy to some to envisage the improvement that might take place in the spiritual and material conditions of the native if the consumption of alcoholic liquors were abolished entirely, but to others it is easier to envisage the possible consequences of attempting a solution of the problem in any such manner. I think, Sir, that so far as those who only come in contact with the native in the more settled European centres are concerned, there is very little evidence indeed that the native is a slave to the abuse of alcoholic liquor. I must confess that I have seen very little evidence indeed that there is any lack of control in the township areas with which I am familiar.

I feel confident, Sir, that Government is tackling this problem in the right manner, carefully, yet firmly, and I should be very sorry indeed to see any sudden tightening up of the machinery by which it is being dealt with. Nobody can question that the abuse of alcohol carries great evils in its train, but that has been one of the problems of civilised and uncivilised man from the beginning, and I do not think it is fair to the native, looking at it from the point of view of his best interests, suddenly to embark upon a policy the fruits of which would be very doubtful indeed.

THE HON. A. H. MALIK: Your Excellency, you may recollect, Sir, that when amending legislation was brought before this House a few years ago, I felt the same thing which is felt to-day by the hon. Member for Mombasa and the hon. Member representing native interests.

I quite agree, Sir, that total prohibition, suddenly brought in, is perhaps a danger and impracticable, but I have no doubt in my own mind, Sir, that steps should be taken by the Government and the society of the Colony to suppress drinking among the natives, particularly as it has been pointed out by the two hon. Members on my right that all sorts of vices have generated from drink.

As regards the hardship, there are thousands of teetotallers in the world, Sir, and I see no reason why everybody cannot be, and particularly the natives.

I strongly associate myself, Sir, with the remarks made by the hon. Member for Mombasa and the hon. Member representing native interests, and I do trust, Sir, that the

conditions on which liquor is made available should be made as stringent as possible, and that full control should be given to the Police.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I am very grateful to my hon. friends the Members for Rift Valley and Plateau South for the very moderate and fair-minded remarks which they have made on this Bill.

To those who plead for complete prohibition, I would say: Before you make that plea, will you consider two things? Is it reasonable or necessary to have complete prohibition? Secondly, is it practicable?

Native liquor, Sir, enters a great deal into the social life of natives, as does another form of liquor possibly into ours. Liquor taken in excess by any man will naturally have harmful results, physically and otherwise. There undoubtedly are cases of great excess of consumption of native intoxicating liquor. Similarly, excess is not entirely unknown among our own people. Certain things enter into our social system, such as champagne and wedding cake at a wedding. I think an excessive consumption of champagne might be bad for anybody; and I certainly say that an excessive consumption of wedding cake will impair anybody's digestion.

It is not reasonable, Sir, nor even possible, to consider the question of total prohibition of native liquor. One simply could not do it. We have here a native population of 2½ to 2¾ millions. They have been accustomed for generations to having their native liquor, and they have at their command, in their own reserves, the materials for making it. Any law which aimed at total prohibition in the circumstances would become a dead letter at once; it would be impossible to enforce it.

If the Bill is going into Select Committee, Sir, I do not propose to take up the time of the House very much with points of detail, but I would like very briefly to refer to one or two points which have been raised. As regards conditions under which native liquor is made, I should think it is quite likely that when it is made by the natives themselves in their own homes it is not very clean; but as regards townships, or similar areas, provision does exist under clause 28 of the Bill whereby the monopoly of making native liquor can be given by the Governor in Council to a Municipality, and of course, in those cases, the conditions under which it is made come under rigid inspection by the medical officer of health and his

staff. That class of monopoly does at present exist in Nairobi, at Pumwani beer shop, where beer of a fairly harmless nature is made under proper conditions, and the whole of the net proceeds are paid into a special fund for the benefit of natives living in the Municipality.

As regards control, one might say there are three forms of control: Within townships and trading centres, under this measure which is now before the House, the control is very extensive; in fact, without a licence it is an offence for any person to be in possession of any intoxicating liquor. As regards farms, they are dealt with under clause 17, and the bringing of native intoxicating liquor on to farms comes within the control of the occupier of the farm, subject to control by the district officer. In the native reserves the restriction in the use of native liquor comes under the jurisdiction of the native headmen and district officers in the terms of the Native Authority Ordinance.

My hon. friend the Member for Mombasa pleaded very strongly for more police control. Now, Sir, it is rather difficult in a Bill of this nature to make specialised provision for the ordinary activities of the police. We are told that when a man is found drunk the police should take steps to find out where he got the liquor from. I know of nothing to prevent them from doing so. If a man is very unpleasantly drunk in the street and the police are led to believe that native intoxicating liquor is in the possession of someone without a licence, or that it is improperly being sold, the course of action is obvious. I trust, Sir, that those hon. friends of mine on the other side of the House who have made this strong plea for prohibition will reconsider their attitude—and possibly some of them may be on this Select Committee—and in view of the fact that the Bill will be considered in detail by the Select Committee I do not wish to enter into detail at present.

THE HON. H. R. MONTGOMERY (SENIOR COMMISSIONER, COAST): I do hope, Sir, that the hon. Member for Mombasa and the hon. Canon Leakey will not press their plea for prohibition, because it will be impossible to carry it out. In native reserves, it is a social custom that intoxicating drink is necessary at certain times; you cannot be born without it; you cannot marry without it; you cannot die without it. The whole object of this Bill is to regulate the manufacture and sale of it, and that is, we think, being done very well. In townships you cannot at the present moment manufacture or sell without a licence, and that is the effect of control which

I think, the hon. Member for Mombasa has not quite realised. The police have full control. If you cannot manufacture in a town legally, obviously you are going to do it illegally. I suggest to him that if he had licensed premises in the part of Mombasa to which he referred there would be less illicit drinking.

THE HON. C. M. DOBBS (SENIOR COMMISSIONER, NYANZA) : Your Excellency, I do not think the question of native liquor is so serious in Nyanza as it is in several of the other Provinces, but a considerable amount of drinking does go on. There are two different kinds : One is drinking in the reserves, and one is drinking in the townships. I think—as the Senior Commissioner, Coast, has mentioned—drinking in the reserves is largely connected with the social life and customs of the natives, and I do not think you can possibly stop it. In addition to this Ordinance, you have the Native Authority Ordinance, under which drinking can be controlled in the reserves, and I think the older men can be trusted to see that the youngsters do not drink to excess, and, if they are encouraged, they can prevent a lot of it in the reserves, because it is considered the prerogative of the old men, and in the old days young men were not allowed to drink at all. The worst kind of drinking is the kind that goes on in the clubs in the townships, and that does require strict attention.

I think the total prohibition of drinking is impossible. I think America is a standing warning to anyone not to attempt anything of that kind.

CERTAIN HON. MEMBERS : Question.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Your Excellency, I have only one remark to make. I regret very much that the Chief Native Commissioner should have brought in the false analogy of drinking amongst a civilised community and these savage natives. To begin with, it takes a very civilised man to be able to drink wine at all. There are certain parts of the world who think themselves very civilised, but who have not yet learned to do that. But I may not refer to other countries. It is these false analogies which do so much harm to the true and clear discussion of native problems, and I do very much regret that the Chief Native Commissioner should have introduced that note.

HIS EXCELLENCY : The question is that the Native Liquor Bill be read a second time.

The question was put and carried.

HIS EXCELLENCY : I understand the following Committee has been agreed to :—

The Hon. the Attorney General (Chairman) ;
The Hon. the Chief Native Commissioner ;
The Hon. the Senior Commissioner, Coast ;
The Hon. the Senior Commissioner, Kikuyu ;
The Hon. the Member for Mombasa ;
The Hon. the Member for Rift Valley ;
The Hon. the Member for the Coast ;
The Rev. Canon the Hon. H. Leakey.

Council adjourned for the usual interval.

THE KING'S AFRICAN RIFLES BILL.

COL. THE HON. R. WILKINSON (OFFICER COMMANDING TROOPS) : Your Excellency, I beg to move the second reading of a Bill to Provide for the Establishment and Government of a Force styled the King's African Rifles and for matters incidental thereto.

The Ordinance which at the moment governs the King's African Rifles is that of 1912. That Ordinance is now very much out of date. The present Bill before the House has been the subject of much correspondence and discussion, but it still requires considerable amendment. Most of the amendments are of a technical nature, but there is one in particular that I should like to refer to.

As hon. Members are aware, in the British Army the terms of enlistment are such that they provide that a man serves for a certain term with the colours and for a certain term with the reserve. Under that method, it means that on mobilisation the Forces can be expanded very rapidly. The situation in this Colony and Protectorate, Sir, at the moment is that a man enlists only for service with the colours. In order to build up the reserve there is a special Ordinance and a man is specially enlisted after his colour service into the reserve. Now when a man has finished his service with the colours he is in a state that he is tired of soldiering for the moment, and the greatest difficulty is experienced in getting men to enlist into the reserve. It is proposed to follow the method of the British Army and to make the terms of enlistment so that a man enlists for so many years with the colours and so many years with the reserve ; that is to say, that when

a man has finished his time with the colours he automatically passes into the reserve when he is fully trained and is a useful reservist.

There is one other point in the present Bill that I should like to draw the attention of hon. Members to, and that is the question of corporal punishment. In the Bill before the House corporal punishment is provided for, but only allowed to be put into operation either on active service or on the line of march for offences in relation to the inhabitants of the country. In the West African Frontier Force that is the procedure which has been going on for some years, and has been found satisfactory.

Your Excellency, as there are a considerable number of amendments to this Bill, I suggest that it should be placed before a Select Committee.

Your Excellency, I beg to move the second reading of this Bill.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

THE HON. CONWAY HARVEY: Your Excellency, I am quite sure that we shall all support this Bill which, as the hon. and gallant mover has said, is very essential in order to bring the whole control of the King's African Rifles up to date.

There is, however, one point of principle that I think should be rather more fully investigated. On page 34, Sir, sub-section (8), it will be noticed that discharged members of the King's African Rifles, having served the necessary period of time, are exempt from the payment of Hut and Poll Tax. I do not consider, Sir, they should be so exempt, but I consider that the amount of money involved should be added to any gratuity or pension that they may be awarded.

I understand, Sir, that this Bill provides for the payment of gratuities. That, Sir, I suggest is not sound in principle. We have been given to understand by no less an authority than the Commissioner of Police that the award of continuous pensions instead of a lump sum in the form of a gratuity tends to encourage long and continuous service, which is one of the primary objects in the terms of enlistment. It is very important indeed, Your Excellency, as everyone knows, to keep these

men a long time, and I sincerely trust, Your Excellency, whatever may be the nature of the complications with adjacent territories, who may not see quite eye to eye with us in this matter, that an effort at least should be made to bring the King's African Rifles serving in Kenya under conditions which we believe will make for efficiency and economy and satisfaction.

So far as the question of corporal punishment is concerned, Sir, I, speaking with a fairly long experience of African troops in Africa, extending nearly into half a century, am very strongly of the opinion that the power of corporal punishment should be vested in the officers commanding native regiments. There is no doubt whatever, Your Excellency, in spite of the drawbacks in more closely populated and more highly civilised communities, that in the case of small detachments, hundreds of miles from anywhere, it is almost impossible to think of any other form of punishment which will act as a deterrent.

LT.-COL. THE HON. C. G. DURHAM: Your Excellency, I speak on a point of error on the part of the last speaker, who referred to a gratuity. The King's African Rifles do not get a gratuity under nine years. After twelve years they receive a gratuity or a pension, and the Hut Tax simply takes the form of a small gratuity at the end of nine years' continuous service, Sir.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, although it is absolutely essential to have a Bill of this nature, it is essential also to recognise the purpose for which such a Bill exists. If we have an emotional basis for the formulation of legislation governing the control of our armed forces, those armed forces will cease to function in any effective manner. It is essential that there should be no diminution in the powers and the disciplinary control over native regiments in Africa, and, Sir, in this Bill I see a diminution in the degree of discipline which will become operative when this Bill is passed. I feel, Sir, that it is absolutely essential that we should utilise and maintain the present right of an officer commanding to impose corporal punishment in certain eventualities, and this Bill does not provide that right. I intend strongly opposing that clause, Sir, which deals with the reduction of these powers. For an officer commanding to inflict corporal punishment is a practical and essential necessity in maintaining discipline in native regiments.

There has been quite recently a decision—and what I consider an entirely wrong decision—at home to abolish the death penalty in certain eventualities in regard to the armed

forces of the Crown, and I trust, Sir, that we in this country will not accept that decision. Conditions are not quite the same. We are dealing with a different class of person and a different degree of development in the soldiers that we are employing in this country, and because they are different, because conditions are different, and personalities and temperaments are different, we must provide for a different method of treatment of those persons.

In this Bill, Sir, we have no means of punishing a man who imperils the use of a gun. I do not mean his own personal arms. In the second part of the Bill, dealing with discipline, Sir, there is a recognition of the crime of "shamefully casting away arms, ammunition or tools in the presence of the enemy," but there is no means of punishing a man promptly for imperilling the use of guns of larger calibre than those in his personal use and possession.

Then, Sir, in clause 6 we have the use of the words "unnecessary alarm or despondency." On active service I suggest that the word "unnecessary" is unnecessary because surely in the British forces the recognition of any degree of alarm or despondency is a ludicrous and untenable hypothesis.

I feel, Sir, that the description of the enactor should not be the Governor of Kenya but the Commander-in-Chief of Kenya, because he does not deal with military matters in his capacity as Governor; at least, he is wrong if he does. He should deal with them in his capacity as Commander-in-Chief. I think there are a great many alterations on that basis which are necessary.

In regard to desertion, Sir, if a man takes any steps to prevent desertion apparently he is exonerated. I feel, Sir, that that is not what is intended, but that he should be required to take every step, because, after all, a man's duties come to an end with what he considers merely the provision of a sufficiency of excuse for failing to do more than he could do to prevent desertion.

The main objection I have to this Bill is that it reduces the disciplinary factor where the disciplinary factor is the dominant one in the forces of the Crown.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, there are two questions I should like to ask. I understand this Bill applies, not only to this Colony, but also to the Uganda Protectorate, the Nyanaland Protectorate, the British Somaliland Protectorate, and the Tanganyika Territory. Is that correct, Sir?

HIS EXCELLENCY: Yes.

LT.-COL. THE HON. LORD FRANCIS SCOTT: If that is so, Sir, supposing we make any amendments in this Council, what happens to them afterwards?

HIS EXCELLENCY: Perhaps I might reply to that. The Noble Lord has fixed on one of the great difficulties presenting itself to this Government in dealing with specific measures of Closer Union in the absence of any authority, or any pronounced authority, to deal with them. If this Council moves amendments in regard to this Bill, they will, of course, have to be discussed with the other Governments concerned afterwards—I suggest, after the Select Committee and before the Bill is finally passed.

LT.-COL. THE HON. LORD FRANCIS SCOTT: The next thing is on page 3, under Discipline—Crimes and Punishments. It says that every person who commits any of the following offences is liable to suffer death; and on page 42, Application of Military Law, it says the Army Act, or any rules made in pursuance of such Act, and for the time being in force, shall, as to the provisions therein contained respecting discipline, apply, under section (b), to native officers non-commissioned officers, privates, enlisted followers and followers when on active service. I do not know how much this recent alteration which we have heard about—the House of Commons at home doing away with the death penalty for various offences—will affect this clause 5. I daresay the Officer Commanding Troops in his reply will be able to explain that point.

With regard to what my hon. friend on the right (the hon. Member for Kenya) said about unnecessary alarm and despondency, I think the expression always used to be "alarm or despondency." "Unnecessary" is a new word to me, and I agree with him on that point. I also agree, from practical experience, not dealing with native soldiers but with any soldiers, that the greater powers the commanding officer has for dealing with minor crimes summarily rather than sending soldiers to be tried by court-martial and undergoing long terms of imprisonment—the greater powers the commanding officer has, within reason, the better it is for the discipline and welfare of the regiment concerned.

There is so much in this Bill, Sir, but as it is going to Select Committee it is much better to deal with there. We ought to go very carefully into the duties of the Inspector General. I do think that is a very important point, Sir, which we have to go into. With these remarks, Sir, that is all I have to say.

HIS EXCELLENCY: If no other hon. Member wishes to address Council . . .

THE HON. THE ATTORNEY GENERAL: Perhaps, Your Excellency, I might be permitted to say just a word in answer to the specific questions raised by the Noble Lord who has just spoken. He has asked two questions on which I think I can throw a little enlightenment. The first was what will be the effect of what we understand will result very shortly in the amendment of the Army Act and King's Regulations with regard to the death sentence—the death penalty for certain offences. If the Noble Lord will look at clause 5 first, he will see that the death sentence is there imposed by local statute and that the reference to it in clause 104 is that "the Army Act and any Articles of War or rules made in pursuance of such Act, and for the time being in force, shall, as to the provisions therein contained respecting discipline, apply—

- (a) At all times to officers and British warrant or non-commissioned officers appointed to or attached to the regiment;
- (b) To native officers, non-commissioned officers, privates, enlisted followers, and followers when on active service";

with a proviso, and the proviso is there :

" Provided that any native officer, non-commissioned officer, private, or enlisted follower or follower who is guilty of any offence named in Part II of this Ordinance or in the Army Act when on active service within the meaning of that Act, may be punished as provided by this Ordinance."

The effect of that, Sir, is that, inasmuch as the death sentence is a proper sentence to pass under clause 5 of this Bill, any alterations which may ensue in King's Regulations and the Articles of War will not apply to offences here.

There was a further point, Sir, about the word " unnecessary " in the last line of paragraph 5 of clause 6. I am very grateful to hon. Members for pointing it out to me. I can only say it is not necessary. I shall see that that point is raised in Select Committee, Sir, and I personally see no reason why it should not be omitted.

COL. THE HON. R. WILKINSON: Your Excellency, I should like, first of all, to say, in answer to certain questions, that the offences part of this Bill is taken from the Army Act. The method of drafting this Bill was to follow as far as possible the Army Act in the formation of the Bill. This naturally is approved by officers of the British Army, and it is

of great assistance to them if this Ordinance follows the lines of the Army Act. The actual offences, as laid down in Part II, are taken word for word (except for clerical errors) from the Army Act. In the King's African Rifles the native troops come under this Ordinance, but the personnel—that is to say, officers and non-commissioned officers who are loaned from the British Army—are still serving under the Army Act.

As regards the question, Sir, of Hut Tax, pensions and gratuities, which was raised by the hon. Member for the Lake, this, as a matter of fact, is receiving attention, and no doubt, in time, some decision will be come to. Personally, speaking from a soldier's point of view, I do not like the gratuity. It means giving a lump sum at the end of a man's service to the man, and he spends it at once unless somebody collars it from him. The idea of a pension is much more preferable, because he then gets his pension or gratuity in a form in which he cannot throw it away.

As regards the question of corporal punishment, it is a highly contentious subject, and it is a very difficult matter to speak upon. I quite agree with what has been said by hon. Members opposite, but there is no doubt that it is a fact that the West African Frontier Force have been able to carry on without the powers which we have on this side of Africa. With the reorganisation of the King's African Rifles I think it is abundantly clear that it is essential that there should be one Ordinance, or the same Ordinances in all the different colonies. Otherwise you come to the difficulty of a soldier in Uganda going into the reserve and being wanted in Kenya. If you have two different Ordinances, all sorts of local difficulties arise, and the aim is that as soon as possible there shall be the same Ordinances in each Colony; and this Ordinance which is now before the House will probably be the basis of all the other Ordinances.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

HIS EXCELLENCY: The following Select Committee has, I understand, been agreed to in regard to the King's African Rifles Bill:—

The Hon. the Officer Commanding Troops (Chairman);

The Hon. the Attorney General;

The Hon. the Acting Solicitor General;

The Hon. Member for Ukamba;

The Hon. Member for Kenya.

The Bill is referred to that Select Committee.

THIRD READINGS.

THE PENAL CODE.

THE CRIMINAL PROCEDURE CODE.

HIS EXCELLENCY: I understand that it will meet the convenience of Members if Council deals with the amendments on recommittal made to the Penal Code and the Criminal Procedure Code. I think it will save the moving of two motions if the Attorney General, when he puts the motion for recommittal, refers to all the amendments on the Order Paper, and if the hon. and gallant Member for West Kenya seconds the motion; they can then both move their amendments in the usual way.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill to establish a Code of Criminal Law be read a third time.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to second the motion.

THE HON. THE ATTORNEY GENERAL: Your Excellency, in accordance with notice given, I beg to move, under No. 83 of Standing Rules and Orders, that this Bill be recommitted for the consideration, firstly, of an amendment of which notice was duly given on Friday of last week in my name, and secondly, for the consideration of certain amendments of which notice was given this morning in the name of the hon. and gallant Member for West Kenya.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be referred to a Committee of the whole Council for the purpose of considering the amendments on the Order Paper.

To the hon. Member for Nairobi South: Do you agree with that course?

CAPT. THE HON. H. E. SCHWARTZ: Yes, Your Excellency, as my amendment seems to have been left out.

THE HON. THE ATTORNEY GENERAL: On a point of personal explanation, if I may say so, the hon. and gallant Member's amendment is to the Criminal Procedure Code.

CAPT. THE HON. H. E. SCHWARTZ: I beg your pardon—yes.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: I beg to move, Sir, that a Bill to make provision for the Procedure to be followed in Criminal Cases be read a third time.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a third time.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that this Bill also be recommitted for the consideration, firstly, of amendments, notice of which has been given in my name, secondly, amendments sent in in the name of the hon. and learned Member for Nairobi South, and, thirdly, amendments sent in in the name of the hon. and gallant Member for West Kenya.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to second the motion.

The question was put and carried.

Council went into Committee.

In Committee:

THE PENAL CODE.

Clause 211.—Assaults punishable with two years imprisonment.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that clause 211 of the Bill be amended by the deletion of the word "such" in the first line of paragraph (d), the second last word in the line, Sir.

The question was put and carried.

Clause 91.—Advertisements for stolen property.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to move an amendment to clause 91—that clause 91 be amended in this manner: that the words "within a year of such loss" be added, after the words "any person who" at the beginning of the clause.

The object of that, Sir, is to prevent an unfortunate individual who has lost an article of great sentimental value to himself but not of much intrinsic value, after the police and the civil authorities have had an opportunity of attempting to recover it and failed—that after the expiration of a year, or such period as this House may consider desirable, he should have an opportunity of regaining this object, which is not of any great value to anyone else but himself. I feel, Sir, there should be some provision to enable a man to get back what means a great deal to him, even if it means agreeing not to proceed against the individual who may have been responsible for its loss. It means that the State has had an opportunity of carrying out the object of this Bill and has failed to do so. I beg to move that amendment.

THE HON. THE ATTORNEY GENERAL: I am very sorry, Your Excellency, that so early in my hon. and gallant friend's course I should have to oppose the amendment he suggests, but I do so for the very clear reason that what we are doing is ostensibly to adopt English law, and the English law on the subject is, and has been for two centuries, as printed in the clause. So far back, Sir, as 1714, as a result—if I remember rightly—of the activities of the

great commercial genius, Jonathan Wilde—who was the greatest thief and the greatest thief catcher of London—Parliament found it necessary to introduce legislation of this nature and there has never been any attempt to revoke or modify that legislation from that day to this. Nor do I see why we should be unique in the direction my friend suggests. The effect will be that it will be sufficient for him to get out of the Territory or Colony for twelve months and then return and get into negotiation with the person who has the property. No prosecution will be undertaken—the hands of the police will be tied if at a subsequent stage a prosecution were undertaken, because the owner of the property, by agreeing not to prosecute, would render himself as a witness quite valueless. On these grounds I must oppose this amendment.

CAPT. THE HON. H. E. SCHWARTZ: I am going to support this amendment, Your Excellency. I would have preferred to see it go much further and delete the clause altogether. I think the arguments of the Attorney General are rather contrary to retaining the clause in the Bill. It was necessary in 1734, because of the activities of Jonathan and his gang, but there are no longer any Jonathans, of Jonathan and his gang, because Government are not prepared to and, at all events, as I presume Government are not prepared to accept this amendment now, might I ask the Attorney General whether he will consider the possibility of dealing with the matter in any amending ordinance which may be brought in to this Bill?

CAPT. THE HON. E. M. V. KENEALY: May I, Sir, reply to what the hon. the Attorney General has said? After all, his statement did not meet the case which was postulated in this amendment at all. First of all, it deals with advertisement and no mention was made of advertisement for stolen property. His explanation did not do that. He suggested that the thief would enter into negotiations with the owner, but after all, the owner is not bound to take part in these negotiations. This amendment does not exonerate the thief, but it does enable the person who has suffered loss of a sentimental character to recover his loss without injuring anybody else. The suggestion, Sir, that it is unnecessary is an intolerable suggestion, because it merely means that people do not report that things have been stolen from them; they report that things have been lost, and thereby tie the hands of the police. I think it is a necessary amendment in a practical world and it is essential to have an amendment of this character. If Government cannot do so now, perhaps it will later on, as my hon. friend suggests.

THE HON. THE ATTORNEY GENERAL: I am very sorry—I would like the hon. Member to read the clause carefully. There is no offence created in the clause by a person who advertises for stolen property. The offence is that any person who publicly offers a reward and the offer makes use of any words purporting that no questions will not be asked or that the person producing such property will not be seized or molested. That is the essence of the offence. It is quite lawful and always will be lawful to advertise for property which has been stolen.

The question was put and lost.

Clause 151.—Wearing of uniform without authority prohibited.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to move that clause 151 (4) be amended by the deletion of the word "Governor" and the substitution thereof of the word "Court" in the last line but one.

I feel, Sir, that this is a responsibility which should not be thrust upon the Governor of the country, and in the past it has been a responsibility of the Court. That responsibility, I think should still lie there. I do not think there is anything more to be said in a matter of this kind. If the responsibility is to lie with the Governor, we should not let it lie with him in his capacity as Governor but in his capacity as Commander in Chief. But I think the matter should be dealt with by the Court.

THE HON. THE ATTORNEY GENERAL: I do not wish to be obstructive, Sir, but if this amendment is accepted the clause becomes meaningless. You might just as well say "forfeited to the Crown." In matters of this kind it is very important indeed that such articles should be forfeited, and equally, Sir, I submit, it is very important indeed that you, Sir, should have the power not to declare a forfeiture in a specific case. If, for instance, there is reason to believe that equipment and accoutrements—articles of uniform, buttons, and so forth—are being manufactured on an extensive scale, say, in Zanzibar, it is very important that these particular articles should be made available to the Zanzibar Government.

The question was put and lost.

Clause 153.—Adulteration of food or drink intended for sale.

CAPT. THE HON. E. M. V. KENEALY: I beg to move, Sir, that clause 153 be amended by the deletion of the words from "Any person noxious as food or drink" at the beginning of the clause and the substitution thereof of the following words:—

"Any person who subjects any article of food or drink to such treatment to make such article noxious as food or drink or of less nutritive value."

Now, Sir, the word "noxious" is relatively a technical term, and after all, it is essential to prevent adulteration, and I take it that is the object of this particular clause. I merely wish to extend the scope of the application of this clause a little more widely, and allow a little more discretion in its application.

THE HON. THE ATTORNEY GENERAL: No objections, Sir.

The question was put and carried.

Clause 154.—Sale of noxious food or drink.

CAPT. THE HON. E. M. V. KENEALY: I beg to move, Sir, that clause 154 be amended by inserting after the word "noxious" where it occurs in lines 2 and 4 of the clause, the words "or of less nutritive value." This is merely an elaboration of the same thing and I trust it will be accepted too, Sir.

CAPT. THE HON. H. E. SCHWARTZ: Before this is put, Your Excellency, I would point out to the hon. the Attorney General that it is not quite the same thing as the amendment to the clause before, because this is a case of a man selling an article which is of less nutritive value than it was before. If an article becomes noxious you can tell it becomes noxious, but you cannot always tell when it becomes of less nutritive value. It might raise very serious questions.

THE HON. THE ATTORNEY GENERAL: I entirely agree with my hon. and learned friend who has just spoken. I am afraid he caught your eye before I did.

HIS EXCELLENCY: Does the hon. Member wish to press the amendment?

The amendment is by leave withdrawn.

Clause 158.—Fouling air.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to move that clause 158 be amended by inserting after the word "vitiates" the words "or pollutes."

Breathing in a room vitiates the atmosphere, but it should be possible to punish a man who willfully pollutes the atmosphere and makes it less pleasant, whether by words or smells. I suggest it is an essential amendment and I hope the Government will accept it.

THE HON. THE ATTORNEY GENERAL: I have no objection, Sir. The words have the same interpretation in law.

HIS EXCELLENCY: I understand the Attorney General explains that the addition is really redundant—that the word "vitiates" means all that the hon. and gallant Member requires.

CAPT. THE HON. E. M. V. KENEALY: I shall be happy to withdraw it then, Sir, with the permission of the House.

The amendment was withdrawn.

Clause 150.—Offensive trades.

CAPT. THE HON. E. M. V. KENEALY: I beg to move that clause 150 be amended by the deletion of the words "any considerable number of persons" in line 3 of the clause, and the substitution of the word "person"; and by the deletion of the word "their" and the substitution therefor of the word "his."

I do not see, Sir, why an individual who, in the exercise of his trade, jeopardises the comfort of one person, should be allowed to do so. After all each individual is undoubtedly entitled to the protection of the law as well as a considerable number. This seems to be pandering to popular clamour and that is a most dangerous thing to pander to. I think this is an essential amendment, Sir.

HIS EXCELLENCY: Does the hon. and gallant Member wish to delete "any considerable number of persons" and substitute the singular for the plural?

CAPT. THE HON. E. M. V. KENEALY: "Any person," I should say.

THE HON. THE ATTORNEY GENERAL: Again, Sir, I regret I must oppose this amendment. The grounds on which I do so may perhaps appear to be somewhat technical, but I am sure the hon. and learned Member for Nairobi South will agree that they are a correct statement of the position under English law. An individual in such circumstances is protected by the civil courts under the civil law of nuisance. But there is a difference in law between a "nuisance" and a "public nuisance." The chief distinction, Sir, is that in the case of a public nuisance, civilly the Attorney General, on the relation of individuals, sets the law in motion. An individual cannot do so, and the criminal law of England extends only to public nuisance. The essence of the criminal offence is that more than one person must be affected by the nuisance. It also extends very much further than private nuisances do, because, for instance, statutory power cannot be pleaded in an action for public nuisance on the relation of the Attorney General. This clause is in exact accord with the English law on the subject.

HIS EXCELLENCY: In view of that explanation, does the hon. and gallant Member wish to press the amendment?

CAPT. THE HON. E. M. V. KENEALY: I find the explanation distressing, Sir, but I am forced to accept it.

The amendment was by leave withdrawn.

Clause 177.—When child deemed to be a person.

CAPT. THE HON. E. M. V. KENEALY: I beg to move, Sir, that clause 177 be amended by deleting the word "proceeded" and substituting therefor the word "emerged." I do not know if there is any technical justification for the retention of the word "proceeded."

THE HON. THE ATTORNEY GENERAL: I have no great objection, Sir. The word "proceeded" is inserted there because the clause is taken from a well known judgment of one of the leading K.C.'s on the subject. The learned judge in the case thought fit to use the word "proceeded" and we have followed him. There is no difference, so far as I know.

HIS EXCELLENCY: Does the hon. Member wish to press the amendment?

CAPT. THE HON. E. M. V. KENEALY: No Sir.

HIS EXCELLENCY: The amendment is by leave withdrawn.

Clause 192.—Disabling in order to commit felony or misdemeanour.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to move that clause 192 be amended by the addition, after the word "strangle," of the words "or in any other way."

I feel, Sir, we should consider the possibility of a method other than strangulation being utilised in giving effect to the desire of the person doing it, and it should be recognised as essential to make it an offence to commit this particular felony—or whatever it is—in any other way. It is an all embracing term, Sir, which I think is desirable in the circumstances.

THE HON. THE ATTORNEY GENERAL: I think, if I may say so, Sir—perhaps I have not read it sufficiently carefully—but it does not seem to me to make very much sense. "Any person who, by any means calculated to choke, suffocate or strangle"

CAPT. THE HON. E. M. V. KENEALY: "Or in any other way."

THE HON. THE ATTORNEY GENERAL: In any case, Sir, other ways are dealt with a little later on: "We begin with strangulation and we go on in the following clause to stupefaction. I can assure the hon. and gallant Member that the law is not quite as leaky as not to be able to deal quite adequately with any forcible means taken by persons to avoid arrest.

CAPT. THE HON. E. M. V. KENEALY: If it is provided for, I shall be happy to withdraw. I did not think it was.

The amendment was by leave withdrawn.

Clause 194.—Acts intended to cause grievous harm or prevent arrest.

CAPT. THE HON. E. M. V. KENEALY: I beg to move, Sir, that in clause 194, sub-clause 2, line 2, the words "or object" be inserted after the word "projectile." This too is an elaboration which may possibly be made.

THE HON. THE ATTORNEY GENERAL: I am not quite clear, Sir, that I understand what the hon. Member is getting at. The essence of the thing is that the object has to be projected, and if it is projected, the object becomes a projectile. If, on the other hand, the person projects himself, it becomes a dangerous or offensive weapon. The point seems to be adequately covered.

CAPT. THE HON. E. M. V. KENEALY: If it has some technical meaning, I shall be forced to accept it.

The motion was by leave withdrawn.

Clause 199.—Maliciously administering poison with intent to harm.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to move that the clause be amended by the deletion of the word "same" where it appears in the third line of the clause.

The question was put and carried.

Clause 202.—Reckless and negligent acts.

CAPT. THE HON. E. M. V. KENEALY: I beg to move that clause 202 (b) be amended by the deletion of the words "or omits to take proper precautions against any probable danger from."

I think it is essential that we should excise those words otherwise it imposes a liability which appears to come under the Workmen's Compensation Act, an Act which is not yet in application in this country. I do hope that Government will agree to excise these objectionable words from this clause because until we have legislation of a tionable words from this clause because until we have legislation of a kind similar to that of the Workmen's Compensation Act, I think it is highly undesirable we should have a clause of this nature incorporated in our legislation.

THE HON. THE ATTORNEY GENERAL: I am afraid, Sir, I hold views diametrically opposed to those that have just been expressed. I should put it just in the converse way. If we had a Workmen's Compensation Act and there was an adequate measure of protection

given to persons working in connection with dangerous machinery, then there might be some reason for omitting the words. Until then, Sir, I think that persons who possess and control dangerous machinery should have this burden put upon them.

CAPT. THE HON. E. M. V. KENEALY: In reply to that, Sir, as no support seems to be forthcoming from this side of the House it does seem, Sir, that Elected Members are acquiescing in the application of a Workmen's Compensation Act, by this indirect means. I hope, Sir, that it will be resisted by members on this side of the House.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I must certainly not be taken as being in favour of a Workmen's Compensation Act in this Colony, but I do not think that two things have any bearing on each other at all. I think if a man is in charge of dangerous machinery it should be made an offence if he does not take proper precautions to protect the public from that dangerous machinery. That is the reason I cannot support this amendment.

The question was put and lost.

Clause 207.—Danger or obstruction in public way or line of navigation.

CAPT. THE HON. E. M. V. KENEALY: As this comes in the end of the Act I beg leave to withdraw, with your permission and the permission of the House.

The motion was withdrawn.

Clause 223.—Unlawful compulsory labour.

CAPT. THE HON. E. M. V. KENEALY: I beg to move that clause 223 be deleted.

This deals with unlawful compulsory labour. I think it is entirely unnecessary to provide in general legislation for a particular thing of this kind. We have been told that there is a possibility of an individual who, by the smell of his neighbour, feels aggrieved, gaining redress through civil action, and the State will not recognise a nuisance unless it is a public nuisance excepting on a civil plea. I do not know if that is the correct terminology, Sir, but that is what I mean. Here we have a stupid as to permit himself unlawfully has a right, if he is such a stupid as to appeal to the State for protection civilly, to be compelled to work to appeal to the State for protection civilly. I think that this is wandering again to clamour. I think that as a dangerous factor this House should resist such a clause. I propose its deletion.

CAPT. THE HON. H. E. SCHWARTZ: May I ask the hon. the Attorney General where it comes from?

THE HON. THE ATTORNEY GENERAL: It is taken in this form, Sir, from the Nigerian Code.

CAPT. THE HON. H. E. SCHWARTZ: I think, Sir, I support this amendment, and I ask Government to accept it. I do not think it is necessary here.

THE HON. THE ATTORNEY GENERAL: The Indian Penal Code, I am sorry, Sir—section 374—it is now in force in the country, Sir.

CAPT. THE HON. H. E. SCHWARTZ: I do not think there has ever been a single case. If that is so, perhaps it would be better to keep it in, though.

THE HON. THE ATTORNEY GENERAL: I am afraid I must support its retention on grounds which I do not think I need labour.

CAPT. THE HON. E. M. V. KENEALY: I must call a division on this because it does deal with an important matter.

The question was put and lost by 3 votes to 18.

Ayes: Capt. Kenealy, Capt. Schwartz, Lt.-Col. Lord Francis Scott.

Nos. MEMBERS: Brassey-Edwards, Campbell, Dobbs, Doran, Fitzgerald, Dr. Gilks, Mr. Horn, Lt.-Col. Kirkwood, Messrs. Lynde, MacGregor, Martin, Maxwell, Montgomery Moore, Major Robertson-Eustace, Mr. Scott, Sir Ali bin Salim, Col. Wilkinson.

Clause 224.—Things capable of being stolen.

CAPT. THE HON. E. M. V. KENEALY: I beg to move that clause 224 be amended by the insertion of the word "thereafter" after the word "will by nature and" in the sixth line of the clause.

THE HON. THE ATTORNEY GENERAL: I have no comments, though I think the word "subsequently" would be perhaps more apt than "thereafter."

CAPT. THE HON. E. M. V. KENEALY: I am happy to accept that.

HIS EXCELLENCY: The question is that clause 224 be amended by the insertion of the word "subsequently" after the words "will by nature and" in the sixth line of the clause.

The question was put and carried.

Clause 277.—Directors and officers of corporations or companies fraudulently appropriating property, or keeping fraudulent accounts or falsifying books or accounts.

CAPT. THE HON. E. M. V. KENEALY: I beg to move that clause 277 (2) (a) be amended by the addition of the words "or fails satisfactorily to account for a book in his charge" after the words "to any such act."

There is not a satisfactory and complete provision for a failure to account satisfactorily for these books or a book in the Bill, as far as I can see, and it was not made clear that that provision existed in Select Committee, Sir. I therefore move this to make it a little more all-embracing.

THE HON. THE ATTORNEY GENERAL: So far as I am aware, the hon. and gallant Member is correct—there is no such provision in the Code anywhere. As far as I am aware there is no provision in the whole body of English law, and furthermore I do not know whether the hon. and gallant Member appreciates that this clause is very limited indeed in its application. It applies only to "a director, or member of the schedule of amendments with sufficient care as yet to see whether he is moving a similar amendment in the case of the ordinary employer or not. It seems important that, if it is required in one place, it should be inserted in the other. So far as I am aware it is not an offence in English law.

CAPT. THE HON. E. M. V. KENEALY: In reply to that, Sir, I do not wish it to apply to other persons. I do think that the senior persons employed in a company should be responsible, for their activities, and if they fail satisfactorily to account for a book the presumption should be that they have wilfully secreted it or failed to account for its presence. I think this provision is absolutely essential.

CAPT. THE HON. H. E. SCHWARTZ: If this amendment is carried in its present form the position of a company will be a very peculiar one. I cannot imagine a person who commits a fraud deliberately failing to account for a book.

HIS EXCELLENCY: Does the hon. Member wish to press the amendment.

CAPT. THE HON. E. M. V. KENEALY: No, Sir.

The amendment was withdrawn.

Clause 281.—Arson.

CAPT. THE HON. E. M. V. KENEALY: I beg to move that clause 281 (c) be amended by the deletion of the word "cultivated."

If we could have a definite assurance, Sir, that all vegetable produce after once being stacked came into this category I should be happy to withdraw, but I do feel, Sir, that in this country, where often a hay crop is taken without any cultivation, that word "cultivated" might under legal technicality exclude the unfortunate farmer from the application of this clause.

THE HON. THE ATTORNEY GENERAL: I think, Sir, that I can give the hon. and gallant Member the assurance he wishes. A hay crop is a cultivated crop even though no expressed attention has been given to it. But I do not think Council would go the length of saying that a heap of vegetable rubbish which had been stacked up by the shamba boy was a matter of such importance that its destruction would be worthy of imprisonment for life. (Laughter).

The motion was withdrawn.

Clause 302.—Imprisonment for seven years.

CAPT. THE HON. E. M. V. KENEALY: This apparently is provided for. I made a mistake there. May I have your permission and the permission of the House to withdraw it, Sir?

The motion was withdrawn.

Clause 326.—Counterfeiting trade marks misdemeanour.

CAPT. THE HON. E. M. V. KENEALY: I beg to move that clause 326 be amended by the addition of a new sub-clause:—

"(h) Any person exposing for sale any such articles is guilty of a misdemeanour and the articles shall be liable to forfeiture to the Crown."

In the previous clause, Sir, we find that if a man wilfully applies a trade mark to which he is not entitled to an article which is not of the substantive status of what it purports to be, the article can then be forfeited to the Crown. I feel, Sir, that the man who exposes such an article for sale should suffer the same disability of forfeiture, otherwise the degree of protection is more apparent than real.

THE HON. THE ATTORNEY GENERAL: I cannot agree, I am afraid, Sir. The effect of this amendment, if it is accepted, will be to expose every innocent shopkeeper who quite *bona fide* exhibits goods happening to bear a trade mark which has been counterfeited by somebody else to two years' imprisonment. The offence, in my submission, should apply to any person deliberately counterfeiting a trade mark. The poor innocent person who passes it off quite *bona fide* should not be made liable.

CAPT. THE HON. E. M. V. KENEALY: In reply, Sir, I feel that the poor innocent shopkeeper has a duty towards the public who have confidence in his selection and his recognition of the articles which he sells. He has a responsibility to verify the trade mark and not to accept anything. If he wishes to avoid—and the letter of his judgment will enable him to avoid—prudent care in the exercise of his judgment as to whether a trade mark is a proper and correct one or not, he will be able to do so. I do not agree that there is such a thing as a poor innocent shopkeeper in this eventuality. I feel that if a man accepts his obligation as tradesman he should, in his acceptance of this obligation, exercise his discretion and analyse the correctness of the guarantee and the justification for the application of trade mark. I do hope that this will be accepted because it is a measure of protection for the public, and they need it.

THE HON. THE ATTORNEY GENERAL: That is my personal view; I am emphatically of that opinion.

The question was put and lost.

THE CRIMINAL PROCEDURE CODE.

Clause 60.—Power to dispense with personal attendance of accused.

THE HON. THE ATTORNEY GENERAL: I beg to move that clause 60 be amended by adding thereto the sub-clauses which are numbered 3, 4 and 5 in the Supplementary Order Paper issued on Friday of last week.

"(3) If a magistrate imposes a fine on an accused person whose personal attendance has been dispensed with under this section, and such fine is not paid within the time prescribed for such payment the magistrate may forthwith issue a summons calling upon such accused person to show cause why he should not be committed to prison for such term as the magistrate may then prescribe. If such accused person does not attend upon the return of such summons the magistrate may forthwith issue a warrant and commit such person to prison for such term as the magistrate may then fix.

"(4) If in any case in which under this section the attendance of an accused person is dispensed with previous convictions are alleged against such persons and are not admitted in writing or through such person's advocate the magistrate may adjourn the proceedings and direct the personal attendance in manner hereinafter provided.

"(5) Whenever the attendance of an accused has been so dispensed with and his attendance is subsequently required, the cost of any adjournment for such purpose shall be borne in any event by the accused."

I should, perhaps, explain, Sir, that only a few days ago His Honour the Chief Justice drew attention to an omission in the existing law on this subject, which is commonly known as pleading guilty by letter, and a Bill will, I hope, be introduced under suspension of Standing Rules and Orders before the close of this Session to give immediate effect to the amendments required. These three clauses here, Sir, will introduce similar provisions into the new Code, the effect being, Sir, to provide that if a person on whom a fine is imposed in his absence, in his legitimate absence, under the provisions of the existing law, flouts the court and refuses to pay the fine, he can be called upon to appear before the court and the court may then pass a term of imprisonment in default. Also, if previous convictions are alleged against a person in his absence, in such circumstances the court shall have the right to get him to plead guilty by letter and to ensure his attendance before the court so that it may be proved.

The question was put and carried.

Clause 180.—Interpretation of evidence to accused or his advocate.

THE HON. THE ATTORNEY GENERAL: I beg to move that clause 180, which is the new clause recommended by the Report of the Select Committee which was adopted last week, dealing with the language of the court, be further amended by the addition to the clause as amended of the words "or a vernacular language." The position will then be that the language of the Supreme Court will be English and the language of the subordinate Court will be "English or Swahili or a vernacular language."

The question was put and carried.

Clause 257.—Exemptions.

THE HON. THE ATTORNEY GENERAL: I beg to move that clause 257, which deals with exemptions from jury service be further amended by inserting as paragraph (c):—

"(c) The Clerk of the Legislative Council and the persons appointed to act as official reporters to that Council" and relettering (c) to (i) as (d) to (f).

The question was put and carried.

Clause 258.—Publication of list.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that clause 258 (1) be amended by deleting the words "on the first day of March" and substituting therefor the words "in the first issue thereof in March."

You cannot, as hon. Members will see, be sure that there will be a Gazette on the first of March, which may fall on a Sunday.

The question was put and carried.

Clause 294.—Depositions may be read as evidence in certain cases.

THE HON. THE ATTORNEY GENERAL: I beg to move that clause 291 be further amended by inserting at the beginning of the clause the words "Where any person has been committed for trial for any offence," and by substituting the word "section" for the word "sub-section" in the first line of the proviso to the clause.

The question was put and carried.

Clause 310.—Retrial of accused after discharge of jury.

THE HON. THE ATTORNEY GENERAL: I beg to move that clause 310 be amended by inserting the word "released" between the words "or" and "on" in the second line of the clause.

The question was put and carried.

Clause 375.

THE HON. THE ATTORNEY GENERAL: I beg to move the insertion of a new clause as clause 375 of the Bill:—

"375. Shorthand notes may be taken of the proceedings at the trial of any person before the Supreme Court, and a transcript of such notes shall be made if the Court so directs, and such transcript shall for all purposes be deemed to be the official record of the proceedings at such trial."

The object of this, as hon. Members will see, will be to enable the notes of shorthand writers, the appointment of whom was recently approved, to be taken as the authentic and official record of a criminal trial in the Supreme Court.

The question was put and carried.

Clauses 375 to 384.

THE HON. THE ATTORNEY GENERAL: I beg to move that the subsequent clauses be renumbered accordingly.

The question was put and carried.

Clause 278.—Peremptory challenges.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I beg leave to move that clause 278 be amended by the deletion of the word "three" in lines 3, 7 and 9, and the substitution therefor of the word "six"; and the deletion of the word "six" in line 8, and the substitution therefor of the word "twelve." I have already given my reasons for this amendment on second reading.

CAPT. THE HON. E. M. V. KENEALY: I trust that Government will not accept this. In a country such as this, where distances are great and the legal obligations put upon jurymen are large, I think it is entirely wrong that the possibility of objecting to so large a number should exist. I feel that justice can be attained by the provision of a smaller number. But I do agree that there is some commendation required in that, and that is that after the words "every accused person" should be interpolated the words "either personally or by advocate."

THE HON. THE ATTORNEY GENERAL: I would only remind the hon. Member that the number of peremptory challenges at the moment is eight per accused person, so the amendment will alleviate the situation that at the present exists and that has existed for some years without any complaint from the body of jurors.

The amendment suggested by the hon. and gallant Member for Kenya is, I can assure him, quite unnecessary. The practice of the Courts is well understood.

CAPT. THE HON. H. E. SCHWARTZ: With regard to the last remark of the hon. the Attorney General, that is not always the case. I have had a case myself in the Supreme Court where I was informed by the Judge trying the case that the objection must come from the mouth of the prisoner. I know it ought to be so—it is a universal practice—and I would ask him to accept that amendment in addition to the other in order to make it clear.

THE HON. THE ATTORNEY GENERAL: I think it would be desirable if that amendment is discussed.

HIS EXCELLENCY: The question is that clause 278 be amended by the deletion of the word "three" in lines 3, 7 and 9 and the substitution of the word "six" in line 8 and the substitution therefor of the word "twelve."

The question was put and carried.

CAPT. THE HON. H. E. SCHWARTZ: With Your Excellency's permission and that of the House, I would ask leave to move the further amendment to clause 278 that after the word "person" in line 2 the words "either personally or by his advocate" be inserted.

HIS EXCELLENCY: I think I ought to say, on a point of order, that it is very undesirable in measures so complicated as that that amendments should be introduced without notice, because they may have consequential effects which are very difficult to study without notice. I am very doubtful whether I ought to accept that amendment for that reason.

THE HON. THE ATTORNEY GENERAL: This can have no repercussions, Sir, on any other part of the Code.

CAPT. THE HON. H. E. SCHWARTZ: I quite understand Your Excellency's difficulty; it is also most appallingly difficult in a Bill of this sort to find out small things like this even after going through it many times.

HIS EXCELLENCY: I wish it to be made perfectly clear that this is not to be considered as a precedent in discussing amendments under notice of recommitment.

CAPT. THE HON. H. E. SCHWARTZ: I formally move the amendment, Sir.

THE HON. THE ATTORNEY GENERAL: I have no objection to that, Sir.

The question was put and carried.

CAPT. THE HON. H. E. SCHWARTZ: Would Your Excellency allow me to make suggestion with regard to the other amendments proposed by the hon. Member for Kenya, which perhaps the hon. Member will accept? In going through them I find that most of them are alterations in verbiage; I believe that the hon. the Attorney were given him and myself, and possibly the hon. the Attorney General, we could satisfy him with regard to three-quarters of those amendments without taking up the time of the House.

HIS EXCELLENCY: Is the hon. and gallant Member prepared to accept that suggestion?

CAPT. THE HON. E. M. V. KENEALY: Yes, Sir.

HIS EXCELLENCY: Then you will report progress.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Bill to establish a Code of Criminal Law be reported to Council with amendments.

The question was put and carried.

On resuming :

HIS EXCELLENCY : Order, order. I have to report that the Bill to establish a Code of Criminal Law has been considered on recommendal in Committee of the whole Council and reported to Council with amendments.

THIRD READING.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I beg to move that the Bill be now read a third time and passed.

THE HON. THE CHIEF NATIVE COMMISSIONER : Your Excellency, I beg to second.

HIS EXCELLENCY : The question is that the Bill be read a third time and passed.

The question was put and carried.

The Bill was read a third time and passed.

CAPT. THE HON. H. E. SCHWARTZ : Your Excellency, would you allow me to ask you, with regard to these Bills, which I understand are coming into force on the 1st July, that instructions be given to the printer to make every effort to get these Bills issued to those persons whom they concern at the earliest possible moment, because there will be none too much time for the general body of legal practitioners, judges and magistrates to assimilate the law by the 1st July.

THE HON. THE ATTORNEY GENERAL : I very heartily endorse that suggestion, and should be very grateful if effect could be given to it. I will do my utmost in that direction.

THE HON. THE COLONIAL SECRETARY : I shall be happy to follow that suggestion.

Council adjourned until 10 a.m. on Thursday,
the 10th April, 1930.

THURSDAY, 10th APRIL, 1930.

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Thursday, 10th April, 1930, His Excellency the Governor (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer.

ADMINISTRATION OF THE OATH.

The Oath of Allegiance was administered to—

Ex Officio Member :

Herbert Harvey Rushton, Treasurer.

MINUTES.

The minutes of the meeting of 7th April, 1930, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table :—

BY THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR, K.C.) :

Report of the Select Committee of the Legislative Council appointed to consider and report on the provisions of a Bill to make provision for the Prevention of Adulteration of Food and Drugs.

Rules of Court (Court Fees) No. 2 of 1930.

Rules of Court—Civil Debts (Summary Recovery) Rules, 1930.

BY THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. H. T. MARTIN) :

Statement of Anti-malaria work carried out by the Medical Department during the quarter ended 31st December, 1929.

NOTICE OF MOTION.

CAPT. THE HON. E. M. V. KENEALY : Your Excellency, I beg to give notice of the following motion :—

"That overstocking in Native Reserves should be the subject of immediate action by Government and that a policy be adopted."

This motion was withdrawn with Your Excellency's consent and that of the House pending an explanation by Government; the explanation I do not find satisfactory, and I ask leave to reintroduce it.

SUSPENSION OF STANDING RULES AND ORDERS.

THE HON. THE ATTORNEY GENERAL: Your Excellency, with your leave, Sir, I beg to move that Standing Rules and Orders of Council be suspended in order to enable the Bill to amend the Wireless Telegraphy Ordinance to be introduced and passed through all its stages without due notice.

THE HON. T. FITZGERALD (POSTMASTER GENERAL): Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that Standing Rules and Orders of Council be suspended in order to enable the Bill to amend the Wireless Telegraphy Ordinance to be introduced and passed through all its stages without due notice.

The question was put and carried.

BILL.

FIRST READING.

THE WIRELESS TELEGRAPHY (AMENDMENT) BILL.
On motion of the hon. the Attorney General, the Wireless Telegraphy (Amendment) Bill was read a first time.

SECOND READING.

THE WIRELESS TELEGRAPHY (AMENDMENT) BILL.
THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of this Bill.

The Bill is a short one, Sir, and my explanation will be equally short. The legislation of the Colony on the subject of wireless telegraphy dates back to 1915, a time at which broadcasting, in the ordinary sense in which it is currently used now, was practically non-existent. For some years past licences for broadcast receiving sets have been required, and a fee has been prescribed. Just recently attention has been drawn to the fact that there is a considerable amount of piracy going on in the Colony and doubts have been expressed as to whether the Ordinance is so phrased as to include within its purview wireless receiving sets. It is manifestly only right, as a broadcasting service is maintained, that a licence should be chargeable. The object of this Bill is to put it beyond any doubt that its provisions do in fact apply to

receiving sets. The amendment consists merely of defining the words "apparatus for wireless telegraphy" as including such sets.

I beg to move, Sir, that the Bill be read a second time.

THE HON. T. FITZGERALD: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: I beg, Sir, to move that Council go into Committee of the whole Council for the consideration of the Bill clause by clause.

THE HON. T. FITZGERALD: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that Council go into Committee of the whole Council for the consideration of the Bill clause by clause.

The question was put and carried.

Council went into Committee.

In Committee:

THE WIRELESS TELEGRAPHY (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill to amend the Wireless Telegraph Ordinance be reported to Council without amendment.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY: Order, order. I have to report that the Bill to amend the Wireless Telegraphy Ordinance has been considered in Committee of the whole Council and reported to Council without amendment.

THIRD READING.

THE WIRELESS TELEGRAPHY (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill to amend the Wireless Telegraphy Ordinance be read a third time and passed.

THE HON. T. FITZGERALD: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a third time and passed.

The question was put and carried.

The Bill was read a third time and passed.

MOTION.

REORGANISATION OF GOVERNMENTS OF EAST AFRICA.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, before dealing in detail with the motion which stands in my name, I would wish to refer to two speeches made by Your Excellency—one on the 16th October last and one only last week. In the first of these speeches, Your Excellency stated:

"There appears to be a tendency in certain quarters in England to suggest that a further period of investigation is necessary before decisions are taken on Sir Samuel Wilson's Report. With regard to that suggestion, I venture to urge, in common with the Governor of Uganda and the Chief Justice of this Colony, who acted for me in my absence, that the practical limits of investigation have already been reached, and that a decision should now be made."

While in the second of these speeches, last week, Your Excellency's words were:

"These controversies are doing active harm to the interests of all races in East Africa, and are gravely prejudicing its development. I earnestly hope that a fair settlement of our political and constitutional problems will not be much longer delayed."

In addition to this, Your Excellency, Sir Samuel Wilson himself, in his Report, stressed the necessity for an immediate decision, but, despite the expression of these opinions by high officials, nothing in fact has yet been done.

The result of this inaction has necessarily been enormously to increase the economic and political difficulties with which this country is faced, and I think quite a few examples will sufficiently prove this point.

Before dealing with the economic difficulties, I should like to make it quite clear that I make no suggestion whatever that the economic position of this Colony is in the least unsound or that its position, despite the crisis which it is going through at present owing to the drop in world prices, is one which should cause a feeling of pessimism or any real anxiety. I have always held an unshaken belief in the future of this

Colony, and I believe and hope that that belief will be justified, but it would, I think, be idle to deny that the present uncertainty is acting as a very considerable brake on the Colony's normal development.

Now, Sir, this Colony still depends to a very large extent on the importation of capital from overseas, and I think there can be no doubt that the present position is materially affecting, at least temporarily, the normal flow of that capital. Many private individuals who are anxious to invest money in this Colony are hesitating to do so until the present feeling of uncertainty disappears, while big companies and big combines are calling a halt until they can find out exactly where they are, and until they can be satisfied that some definite policy with regard to the future is going to be brought into force. I think that an example of this can easily be found in the recent land sales in Nairobi, where there were practically no outside bidders.

Again, this delay is having the most injurious effect on that most important subject, organised research. Organised research—whether medical, veterinary, industrial or ethnological—is, in my submission, of vital importance to this Colony. Organised research demands a very wide field; while Kenya is not a wide enough field, Eastern Africa is certainly not too wide a field.

Let us also take the present position with regard to Railways. Is it not a somewhat anomalous state of affairs when we have the Railways of territories which are eventually to be merged in some kind of federation competing one against the other? In this respect I would draw Your Excellency's attention to a unanimous resolution passed as long ago as 1926 by the Association of East African Chambers of Commerce, who asked that steps should be taken, by means of federation, to relieve the existing position whereby produce was sent down unnatural channels and the Railways of the territories continued to compete against each other.

Before I leave the question of Railways, I would like to refer to the position with regard to our own Railway, the Kenya and Uganda Railway. The position is that the High Commissioner for Transport who, as Governor of Kenya, is vitally interested in Kenya's point of view and Kenya's problems, is asked, as High Commissioner, to take a decision from a completely impartial standpoint. That is a position which throws a burden on the High Commissioner which, I suggest, it is not fair to ask any man to shoulder, more especially when questions arise showing a complete divergence of opinion such as has recently been the case of country produce rates.

Another example, though perhaps not strictly economic, is one that was instanced only last week when the hon. the Officer Commanding Troops introduced the King's African Rifles Bill, where it is essential in the best interests of the military service as a whole, that the legislation affecting them should be identical in all Colonies, and yet the position may arise under the present constitution whereby amendments may be made by the different legislatures so that legislation in the various Colonies and Dependencies may be quite different. One Colony, for instance, might have a pension scheme for retired members of the King's African Rifles, another might have a gratuity scheme, and it is obvious that any such divergence in legislation is most undesirable.

Now, Your Excellency, turning for a moment to the political difficulties which arise, I think history has shown that, however widely divergent the views of the various East African territories may have been, a very great number of difficulties and differences have been dissipated by a full and frank discussion amongst the people concerned. In proof of this I would refer to the three unofficial conferences held at Kikuyu, Livingstone and Nairobi, the recent unofficial tariff conference and, still more, the discussions and conferences that took place during Sir Samuel Wilson's visit to this Colony, at which a greater measure of agreement was reached than has ever been the case before. I would say that these examples prove conclusively how much the local communities desire to settle political differences and to get down to their job. If so much can be done by completely unofficial conferences and unofficial meetings, how much more could be done if there was a proper Central Authority where such discussions could take place and have an official instead of an unofficial status?

Perhaps the most important point from the political standpoint would be that the advice of a very great statesman "to trust the man on the spot" might at last be adopted, and that decisions taken by the Governor of this Colony, supported and advised by his Legislative Council, might meet with less interference than is the case at present; for those people—whether it be the Governor, whether it be Government Departments or Heads of Departments, or whether it be members on this side of the House—from their knowledge of this Colony and from their long residence in this Colony are, I submit, not unfitted to judge what is in the Colony's best interests. I cannot help feeling that the position in this respect is worse to-day, Sir, than it was ten years ago, when this Colony was first granted elective representation, and I should like, if I may, to quote three statements by responsible Ministers, the first of which dates back as far as 1923.

On the 27th January in that year, Mr. Churchill made the following announcement:—

"We do not contemplate any settlement or system which will prevent British East Africa, Kenya Colony as it is now known, becoming a characteristically and distinctively British Colony looking forward in the full fruition of time to responsible self-government."

While in July, 1923, the Duke of Devonshire, in White Paper No. 1922, stated as follows:—

"Meanwhile the administration of the Colony will follow the British traditions and principles which have been successful in other Colonies, and progress towards self-government must be left to take the lines which the passage of time and the growth of experience may indicate as being best for the country."

Whilst so short a time ago as the 13th May last year, Mr. Amery, in his speech at the African Society's dinner, stated:

"The declaration that Mr. Churchill made in 1922 still, he thought held good, namely, that we did not contemplate any settlement or system which would prevent British East Africa looking forward, in the full fruition of time, to complete self-government on the Rhodes principle of equal rights of all civilised men."

Now, Sir, I do not suggest that this Colony is at the moment ripe for complete self-government; I do not think that we can fairly demand, at this moment, to be granted complete self-government; but I am equally certain in my own mind that we are ready for our next step, namely, an unofficial majority, which, though theoretically a political anomaly, is nevertheless a necessary intermediate step to our final goal. Can it be doubted that when those announcements were made, which I have just read, by Mr. Churchill, the Duke of Devonshire, and Mr. Amery, they had in their minds that if the people of this Colony, as the phrase went, showed by their actions that they could be trusted, that more confidence and more responsibility would be given to them? But I fear that instead of more confidence being reposed in the people of this Colony to-day, there is considerably less. This, I think, has been instanced by what I can only call this increasing interference from Whitehall.

I do not intend to go into details, but I must refer to the Appropriation Bill, which is before this House and which is coming up for debate some time before the recess. An opportunity will be given, when that Bill is debated, for Members on this side of the House to discuss the details of

the alterations that have been made at home, but I would refer to the fact that the Bill as placed before this House differs in several respects from the Budget as passed by this Council at the end of last year.

First of all, the Secretary of State has deleted a sum of approximately £8,000 from the Defence Force. There is deleted from the Appropriation Bill a sum of £20,000 which had been allocated for the Roads Vote; and there has further been deleted a sum of £25,000 of revenue, which was to come from direct native taxation.

I do not suggest, Your Excellency, that the Secretary of State is acting in any unconstitutional manner, but I do suggest that he is stretching his constitutional powers a little far, and is certainly departing from the established practice, which is that only on the most rare occasions does he interfere with the Budget as passed by this House; and I would suggest, if he considered that the expenditure as reflected in the Budget which was passed was too great, if he wished to interfere at all, he should have instructed this Government to reduce the expenditure by whatever sum he considered reasonable, and leave it to this country, in consultation with Members on this side of the House, to make such reallocation as they, with their knowledge of the facts, should have thought best.

I do not propose to go into details either, Sir, in connexion with the Native Lands Trust Bill. Later in the day that will be debated fully, but I would say that, though the Secretary of State's amendments have been insisted upon in the most disarming language, nevertheless the velvet glove cannot hide the iron hand, and it seems almost impossible that, with the history of that Bill before him, they should have been insisted upon, against the settled conviction of every Member on this side of the House, and—as appears from that part of his despatch which deals with the despatch sent by Your Excellency, to which it is in answer—against the definite wishes and advice and desire of the Government itself.

All schemes of State-aided settlement are held up, and it would appear that the position is rapidly arising when the officer administering this Territory, instead of being looked upon as a chief lieutenant of the Imperial Government, is rapidly being considered by those at home as a kind of glorified clerk, whose duty it is to affix rubber stamps at the behest of the Colonial Office.

Having seen that the present trend is to repose less, instead of more, confidence in the people of this Colony, are we not entitled to ask ourselves whether such action is justified? Have we in the past shown ourselves so wanting

in ordinary political wisdom and sagacity that we are entitled to less confidence than we have had in the past? I would answer, without hesitation: "No, Sir, it is not justified."

For many years past we have shown a very keen desire to settle difficulties and meet problems in a fair and reasonable manner, and I would, if I may, once again refer to the Wilson Report, where we went a great deal further than many of us might have been expected to go in order to reach a final and lasting settlement. I would also ask whether we have not shown the greatest possible restraint, in the teeth of provocation by people at home—who, whether from ignorance or spite, seem determined to belittle our efforts and condemn our efforts—and in face of persistent and poisonous rumour. I would also ask whether we have not done everything in our power for the welfare of the native races. Have we not supported—and on many occasions has not the suggestion come from this side of the House, that more facilities for education, more facilities for medical services, should be granted to the natives; have we not shown ourselves on every occasion determined to support the mental and educational advancement of the African? Sir, I say without fear of contradiction, that the native has no better friend in this Colony than the European settler. Those words I quote from the Hilton Young Commission's Report, and I would merely add this: that not only has he no better friend, but he has no more effective friend.

It has been clear, during the past years, that co-operation between the European and native races of this Colony has been increasing, but if we are to be accused on every occasion of pursuing a policy disadvantageous to the native, must not the effect necessarily be that there will be some kind of rebound and that that co-operation, instead of continuing to increase, will commence to decrease, with the worst possible results to all concerned?

I think, Sir, I have sufficiently indicated the necessity for an immediate decision in connexion with federation, but before I close I would refer quite briefly to another decision, which is also long overdue, namely, the decision with regard to our own constitution; and in referring to that, I would merely, with your permission, Sir, quote once again the announcements of three responsible statesmen, which may perhaps have been forgotten, if not by us, at all events by others.

On the 7th August, 1924, Mr. Thomas, then Secretary of State for the Colonies, said:

"I have given careful consideration to representations in favour of a Common Roll, but I am not prepared to resist the conclusions arrived at in Command Paper

No. 1022 of July, 1923, that in the special circumstances of Kenya, with four diverse communities, each of which will ultimately require electoral representation, the communal system is the best way to secure fair representation of each and all of these communities."

While on the 13th March, 1929, Lord Plymouth, the Parliamentary Under Secretary of State for Dominion Affairs in the House of Lords, stated:

"The Government has always maintained that those East African communities have a right to a voice as to whether the recommendations in this Report should be applied at all, and, if they are to be applied, exactly in what way that application should be made."

Whilst finally, Mr. Amery, so short a time ago as the 29th April, 1929, stated, in answer to a question, that it was obvious that no change in the system of franchise in Kenya from that laid down in the Duke of Devonshire's White Paper of 1923 could be contemplated except by agreement, whatever Government happened to be in power in England.

I do not suggest that these words and those pledges have been forgotten, but sometimes there is no harm in reminding the world at large that such pledges do exist.

We have, Sir, in England, I am glad to say, a large number of sincere friends, not only outside the Colonial Office, but inside the Colonial Office, and to them I would appeal not to lessen their efforts on our behalf. While this Colony has done its utmost to meet the difficulties which have arisen with moderation and goodwill, if a decision is much longer delayed, it may end in everything being thrown back into the melting-pot, and all the hard work and goodwill of the past years become of no avail.

THE HON. CONWAY HARVEY: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is:—

"That in view of the increasing economic and political difficulties in which the Colony is becoming rapidly involved, this hon. Council earnestly trusts that the Secretary of State for the Colonies will, at the earliest possible opportunity, make a comprehensive statement of the intention of the Imperial Government in respect of both reorganisation of the Governments of Eastern Africa in general and of its future policy with regard to this Colony in particular."

THE HON. T. J. O'SHEA: Your Excellency, I have the greatest possible pleasure in supporting this motion. The difficulties involved in coming to a decision in the matter that it covers are so great that those who have to make those decisions can very well say that full time must be given in which to study those problems in all their bearings. I should not like to be a party to any undue hastening of those decisions, but I suggest, Sir, that the time which has already elapsed since the study of those problems was initiated is already too great, and more than sufficient to enable people to make up their minds. They date back to 1924, when the Ormsby-Gore Commission visited this country. Up to that time, practically no thought whatever had been given in this country, and, as far as we can judge, overseas either, to anything other than a very gradual development economically and politically in those territories as separate units. But on the visit of that Commission our minds were set working in other directions. That Report did, it is true, state that anything in the nature of a federation of these three territories could hardly be contemplated within a reasonable period of time. Nevertheless, Sir, in less than two years from the issue of that statement, people on the other side of the water did begin actively to contemplate the federation of these three territories, and we were invited to set our minds working on the same lines. We then had the visit of the Hilton Young Commission, and since that date the political minds of these Colonies have been working entirely upon the issues raised by that Commission. They have monopolised our attention; they have made it impossible for us to come to decisions on many matters which demand our decisions, and I strongly support the view, so ably expressed by the hon. Member for Nairobi South, when he says that the time has now arrived when a decision cannot be any longer delayed without inflicting grave economic harm to these territories.

In recent sessions of this House we have passed various measures of legislation, all based upon the assumption that these three territories are to come together. We know our efforts in dealing with these Bills have been beset with numerous difficulties, because, although they are based on the assumption that they are to be on common lines in all three territories, no machinery whatever exists to enable the people of the three territories so affected to have any common understanding about them.

Several years have now passed since the Government of this country definitely committed itself to what we refer to as the dual policy. Nevertheless, Sir, because of the uncertainty as to the political future of these territories the carrying out of that policy, on one side or the other, has been so seriously

jeopardised that to-day it cannot be said that the Government has any policy. The development of land settlement in European areas has been deliberately held up over the past three years because of the inability to come to a decision in regard to the constitution. The development of the native areas has not gone forward as rapidly as it might because of the divided control and of the uncertainty as to what is to be the definite policy in regard to those areas. It has become increasingly obvious during the last year or two that there is no longer any definite fixed authority over these territories. It is so divided that to-day we do not know who is the authority that is directing policy in this country. The hon. Member for Nairobi South has suggested that the actions of the Colonial Office have practically reduced the chief executive of this country to a most undignified status, and I do say, Sir, that if the present state of affairs is allowed to carry on much longer all respect will be lost for the government of this country because of its inability to carry out its work as it should.

It has been suggested, Sir, that we on this side of the House are pressing for a decision because we are uneasy as to what the terms of that decision will be. I for my part most certainly am not. I believe the statesmen at present controlling the destinies of this Empire have sufficient sense of realism to appreciate that they cannot possibly introduce a settlement that is not based upon our consent. It may be popular in certain quarters to refer to political opinion in this country as just voicing the views of a few planters and settlers, but, Sir, those with a better appreciation of the facts realise that we have for many years passed the stage when we can be regarded as a handful of discontented planters and settlers. Already the immigrant races of this country count for much in its economic and political activity, and it would be vain to overlook the fact that in the very near future they are going to count for very much more. It is being increasingly recognised overseas that there is a big future in store for this portion of Central Africa. It is, I think, being increasingly recognised that from an Imperial point of view these territories cannot be developed without the energy and ability of the European race. It is being recognised, I think, that we are playing our part, and we shall play an ever greater part, in the development of these territories. It seems to me impossible that any settlement can be proposed that does not base itself upon that essential factor. It is not the number of individuals sitting on this side who count in the matter in the least; it is the greater number that they represent, and the yet greater forces at work that they represent. Within a very short period of time the representatives on this side of the

House will no longer be an immigrant population. They will be people to whom Kenya is the country of their birth, people to whom the economic and political future of this part of the world means everything. That stage is near at hand. I cannot imagine any settlement of these issues being offered that overlooks them.

Now, Sir, this is probably the last occasion upon which we shall have an opportunity of expressing an opinion before a decision of some sort is arrived at. May I make one last appeal to those with whom that decision for the moment rests to exercise a little imagination, and, above all things, broadness of view? I would cite for their guidance what I regard as probably the shining achievement of British statesmanship in modern years—the Anglo-Irish Treaty. I put it to them that had not that been based upon imagination, and broadness of view, and a trusting spirit, it would have failed even before it was signed; because it was actuated by a spirit of trust it has been the most complete success which any achievement in British statesmanship could be. I put it to them, Sir, that it is only in the same spirit that any permanent settlement can be effected in this country. We have, I submit, over a period of years, shown that our motives in voicing the opinion of this country are actuated by a sincere desire to co-operate with them in making the most of these territories for the benefit of all its peoples. If they accept that and are prepared to base a settlement upon it, then I say they will do a work for these territories, and for the Empire as a whole, that will make their names live in history; if, on the other hand, Sir, they are so shortsighted and so mean in spirit as to offer a settlement that is not based upon trust of the people of this country, then, Sir, their poor work will inflict great hardship on our peoples and history will condemn them.

THE HON. THE COLONIAL SECRETARY (MR. H. M.-M. MOORE): Your Excellency, I feel sure that I shall be voicing the feeling of all hon. Members of this Council in making my tribute to the earnestness and sincere feeling which was the main undercurrent of both the two speeches to which we have all listened. We all realise that they are inspired by a desire for the real benefit and all that will make for the real benefit of this Colony.

In turning, Sir, to the speech of the hon. and gallant Member for Nairobi South, I do not think it is necessary for me to say more as regards the attitude of this Government in the matter than to refer hon. Members of this Council to the appendix to Sir Samuel Wilson's Report in which the views

of this Government were then stated by the Officer Administering the Government, Sir Jacob Barth. He stated there that:—

"The limited federation now proposed of common services under a High Commissioner should, in my opinion, be put into operation without delay. There can, I think, be nothing controversial in such a federation, and no useful purpose would be attained by appointing committees, commissions or individuals further to discuss it."

That view has subsequently been endorsed by you, Sir, on more than one occasion since your return to this Colony, and therefore, on behalf of the Government, I can say without reserve that we associate ourselves with the terms of the motion that further delay as regard our political future is to be deprecated.

I do not think, Sir, it is necessary for me to enter into political side of some of the arguments used, the question of the difficulties of the Secretary of State, or such details as were raised in connexion with the Appropriation Bill which will come before this House on a later date.

HIS EXCELLENCY: The question is:—

"That in view of the increasing economic and political difficulties in which the Colony is becoming rapidly involved, this hon. Council earnestly trusts that the Secretary of State for the Colonies will, at the earliest possible opportunity, make a comprehensive statement of the intention of the Imperial Government in respect of both reorganisation of the Governments of Eastern Africa in general and of its future policy with regard to this Colony in particular."

The question was put and carried.

BILLS.

FIRST READING.

THE LOCAL GOVERNMENT (RATING) (AMENDMENT) BILL.

On motion of the hon. the Commissioner for Local Government, Lands and Settlement the Local Government (Rating) (Amendment) Bill was read a first time.

Notice was given to move the second reading at a later stage of the Session.

THE LOCAL GOVERNMENT (DISTRICT COUNCILS) (AMENDMENT) BILL.

On motion of the hon. the Commissioner for Local Government, Lands and Settlement the Local Government (District Councils) (Amendment) Bill was read a first time.

Notice was given to move the second reading at a later stage of the Session.

Council adjourned for ten minutes.

THIRD READING.

THE NATIVE LANDS TRUST BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER (MR. G. V. MAXWELL): Your Excellency, I beg to move that the debate be resumed on my motion—which I moved on the 20th December last—to the effect that under Standing Order No. 83 the Native Lands Trust Bill be recommitted for consideration of the amendments shown in the paper laid on the Table.

Since that date, Your Excellency, the despatch from the Secretary of State, arising out of the discussions which took place on the 20th December, has been laid on the Table. I therefore now formally move that the debate be resumed.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the debate on the motion for recommitment of the Native Lands Trust Bill be resumed.

THE HON. CONWAY HARVEY: Your Excellency, I rise, Sir, to oppose the motion, because I consider it highly improper that the discussion should be resumed or that the Bill should be recommitted.

Now, Sir, during the few years precedent to the introduction of this measure, in an atmosphere of the utmost goodwill, Elected Members co-operated to the maximum extent with the Government in deciding the principles which should govern the introduction of a Native Lands Trust Bill in order to secure to native tribes complete possession of their tribal lands. The approval of the Secretary of State, we were given to understand, had been given to this Bill in the form in which it first appeared. The draft Bill, Sir, was eventually published in April, 1928. It passed its second reading two months later, and on the 14th May it was referred to a very representative Select Committee. In due course, the Report of that Select Committee was tabled and unanimously adopted by this

House. I believe, Sir, that you stated in one of your addresses that every clause of this Bill had received the prior approval of the Secretary of State for the Colonies, and it was understood by everybody that this applied equally to the minor alterations made by the Select Committee. In addition to this, Your Excellency, we understood that you yourself, Sir, took advantage of the opportunity presented during your visit to England last year to discuss this measure in very considerable detail with the Secretary of State, and we very clearly understood that complete agreement had been reached between the Government of this Colony and the Colonial Office in connection with this matter.

Now, Sir, we all admit that constitutionally the Secretary of State for the Colonies has every right to modify or veto legislation passed in a Crown Colony, but, Sir, we do take the very gravest exception to interference in our domestic affairs by members of the Hilton Young Commission, who were singularly unqualified to criticise the conclusions of the Government of Kenya and this Legislative Council in regard to the Bill under discussion. It really is remarkable, Sir, that those estimable gentlemen should have taken so little trouble when they were out here to consult representative opinion, and I believe that only one short question was put to you, Sir, on this subject.

From a constitutional point of view we most bitterly resent the local affairs of Kenya being referred to a body of gentlemen who are asked to perform work of a totally different character.

I need hardly emphasize that the European community has never shown the slightest desire to exploit the natives of Kenya in any way, and, as a proof of our sincerity in this connexion, may I remind Your Excellency that Elected Members suggested to Sir Samuel Wilson that when the High Commissioner was appointed he should be the final arbiter in matters affecting native interests.

We have always endeavoured to keep the question of native lands well outside the arena of political controversy, but we consider the latest proposed amendments to be so utterly unreasonable and impracticable that we are compelled to oppose them.

At this stage, Sir, I should like to express my appreciation of the Secretary of State's courtesy in circulating the statement which has recently been placed before hon. Members, which certainly placed a very elastic interpretation on several clauses of the Bill. My chief objection in detail, Sir, is to clause 16, which introduces a complete change of principle in a Bill which has been agreed to by everyone

concerned; and we shall continue, Sir, to oppose the proposal that natives shall be placed in a separate category from other communities in respect of liability to relinquish land which may be required for public purposes. The present suggestion that they should be given an area equivalent in extent, and, so far as possible, equal in value, is thoroughly unsound in principle and wholly impracticable. It would therefore be foolish to support a measure which we are all convinced will in the very near future prove to be entirely unworkable.

Other contemplated changes to which I object are those contained in clause 10, which reduces the period for which leases may be granted from 99 years to 33; and clause 18, which gives natives special treatment in connexion with forests and water, whereas their interests are amply safeguarded, in common with the interests of all other communities, by distinct forest and water legislation.

In conclusion, Sir, may I reiterate that we all object very strongly indeed to the establishment of this undesirable precedent—that a Bill which has been approved by the Secretary of State, by the Government of Kenya, and by this Council, should be mutilated by outsiders. Such interference is intolerable and will always be resisted.

THE HON. T. J. O'SHEA: Your Excellency, it is with the very deepest regret that I rise to oppose this motion. I had hoped, Sir, to be actively associated with Government in the passing of the Native Lands Trust Bill, and I do indeed very sincerely regret that circumstances—or rather, shall I say persons—beyond our control should have made it impossible for me to be associated with the passing of this Bill.

Now, Sir, as we on this side of the House not infrequently question the right of the Secretary of State for the Colonies to interfere in matters that come before this House, and on occasions we are prone to speak of the abuse of those rights, I should like to make it perfectly clear that, so far as I am concerned, I do not in any way question his right to take the action he has taken in this connexion. I recognise that in matters relating to the native races of this Colony he is in a special position, and that he has been—with our active support—entrusted with the last word in such matters. But, Sir, what I do very strongly object to indeed is that his actions in this matter should be so ill-advised. I object very strongly to his having absolutely ignored the advice of the Government of this country, and I would emphasize that in such a matter as this the Government of this country are his proper advisers.

THE HON. CONWAY HARVEY: Hear, hear.

THE HON. T. J. O'SHRA: I resent—though to a much less extent—his action in absolutely flouting the advice of this House, and I very deeply resent indeed that he should have sought his advice on such an all-important matter as this from people who are so ill-equipped to advise him. I very largely base my opposition to the introduction of the new principles in these amendments to the fact that they are so ill-advised, and I consider that is a perfectly proper stand for a Member of this House to take.

I also, Sir, resent very much that our co-operation in this very important matter should have been flung in our face. It is on just such a matter as this—the settlement of one of the really grave problems of this Territory—that our co-operation should have been sought, and I think a very grave error of judgment has been committed indeed in deliberately refusing that co-operation. It is necessary, I think, to remind, if not this House, then the people outside it, that that co-operation was freely sought at an early stage in the passage of this Bill and that it was as freely given; and it was given in a spirit that drew forth from Your Excellency the thanks of the Government of this country. And now our co-operation has been flung in the mud. I recognise, Sir, that the Secretary of State can justify his action on the ground that he has a special responsibility in regard to native interests, but, Sir, I think it only right that consideration should also be given to the fact that we too have a responsibility in that respect. It is the popular thing to concentrate on the fact that we represent in this country other interests than those of the natives, that our primary responsibility is to our own people, by whom we are directly elected. But, Sir, I contend, and any actions in this House of recent years have been based on this contention, that we all have a responsibility to the natives of this country and we would be unfaithful to those responsibilities did we acquiesce in the passing of a Bill that we know to be wrong in principle and impossible in practice. The Secretary of State for the Colonies is one man to-day and another to-morrow. He plays his part in the passing of a Bill, but it is we, and those who will succeed us, who have the responsibility of seeing that the promises made in any such Bill are carried out, and it is in the light of that greater responsibility upon us that I am compelled to oppose this measure, because we would be untrue to ourselves, untrue to our own people and committing a breach of faith with the natives of this country if we agreed to the passing of a Bill which we know to be impossible to carry out. Realising, Sir, that we shall be maligned by our enemies because of any action we may take in opposing the passage of this measure, we on this side of the House have very very carefully examined our consciences and very very carefully considered what should

be our action in relation to this Bill. I for one have spent anxious days and anxious nights in asking myself whether I am justified in opposing the passage of this Bill to the last, and, Sir, I have come to the conclusion that I cannot do otherwise than oppose it by every means at my command according to the rules of this House. My justification for so doing, Sir, is, first of all, that it is our duty, as far as lies in our power, to safeguard the future development of this country. I consider that if this Bill were passed in its present form it would give rise to problems in the future greater than those that it attempts to solve to-day. That being the case, I cannot support its passage. We do owe a debt to posterity in these matters and it is our plain duty to oppose the passage of this Bill. I oppose it also, Sir, because it embodies entirely different principles from those upon which we agreed at an earlier stage in its passage. It is not merely in detailed amendments that this Bill differs from the previous measure. If that were so, there would be little justification for our taking the stand we do, but, Sir, any reasonable person must admit that, as now amended, it does embody principles that were not in the previous Bill, and, believing as we do that those principles are pernicious and the attempt to carry them out would be impracticable and would in fact nullify the very first undertaking of the Bill that it shall be a permanent measure—those things, I say, justify our action in opposing it. It embodies the principle that certain vested interests are above the interests of the State; to that principle I cannot give my adherence. It involves the principle of putting the natives of this country in a specially privileged position for all time; that is a principle that I cannot support. It embodies undertakings to the natives of this country that cannot possibly be carried out; therefore, I cannot support it.

I would emphasise, Sir, more especially for the benefit of those who will criticise our action on the ground that it is a selfish one, that the dangers that I see in this Bill are not likely to arise in the immediate future. It is inconceivable that after the passing of any such measure as this any effort would be made by the Government or any section of the people in this country to violate its principles. That is inconceivable, and so my objections to it are not in the least the result of any desires on our part to violate the Native Reserves after they have been secured to the natives for all time. I foresee dangers arising, Sir, at a date when we have passed from the scene, and it is because of that that I feel those who wish to understand will not misunderstand our motives in opposing the passage of this Bill.

I repeat, Sir, that it is a matter of the deepest regret to me that it has been rendered impossible for me to be associated with the passing of a Bill to secure to the natives

their lands for all time. I repeat the pledge I gave on behalf of myself and those whom I represent when the Bill was last before the House, that I should regard it as one of my first responsibilities as a public representative in Kenya to safeguard the economic future of the native peoples. I repeat that I regard myself, whatever my legal status may be in the matter, as one of the trustees for the natives just as much as any other person concerned with the government of the country, and it would have been a source of pride to me to have been associated with the passing of a Bill that satisfied them as regards their lands—to them an all-important matter. I feel a certain amount of bitterness that it should have been rendered impossible for me to be on the side of Government in the passing of this measure, but, Sir, I regard it as a debt of honour to posterity that I should not commit the people whom I represent or those who will follow us in the passing of this Bill. I feel certain that history will justify the action we are taking to-day.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I too intend opposing this to its ultimate conclusion. The principles to which we agreed have been interfered with, and the Bill as presented does not embrace those principles which were commonly agreed to on both sides of this House, and also between the Government of this country and the Government at home; it embraces entirely new principles and antagonistic principles.

An honest man is always indifferent as to how his actions appear in the eyes of other people because that does not really concern him, and if we are going to allow the translation of our actions in other peoples' minds to sway our activities in this country then we had better entirely divorce ourselves from any participation in public life.

I feel, Sir, that all Elected Members have a definite duty. Unhappily, Sir, Government Members will not be able to express their opinions, will not be able to record permanently their opposition to this measure in its present form. They have already recorded their opposition in the terms of communications from this Government to the Government at home, but they will not to-day, unhappily, publicly be allowed to record their opposition to this measure, but we know that they have that opposition and we know that they are justified in possessing it. We ourselves deeply regret that, by our constitutional procedure in this country, they should sincerely believe that this Bill in its present form is a rotten Bill and a silly Bill—I may talk of it in these terms, Sir, because it is not yet law . . .

HIS EXCELLENCY: I must warn the hon. and gallant Member that he may not repeat those terms.

CAPT. THE HON. E. M. V. KENEALY: I shall not repeat them, Sir. . . . are entitled to their opinions and justified in their opinions.

The compromise that was agreed to was not a compromise of principle. The compromise that was agreed to was a compromise in regard to practicability in the application of the law as it was when suggested. But, Sir, if we pretend to acquiesce in the theory that this Bill in its present form is a practicable and a workable one, then, Sir, we are being hypocritical and we are being untruthful. We sincerely believe, Sir, that the Bill will be, when it is passed, an unworkable Bill, and for that reason alone we should be justified in rejecting it, but it embraces principles which are worthy of further consideration.

I do not feel, Sir, that it is necessary for me to traverse any analysis of our refutation, although that refutation could easily be attained by the logic in the despatch from the Secretary of State. We feel that he has been courteous to us in submitting an analysis of the despatch by Government, which, unhappily, we have not seen, but I do think, Sir, that we have a duty, and that is to resist the utterly illogical and irreconcilable facts in this despatch. In one portion of the despatch, Sir, the native is, by the action of the Secretary of State, permanently thrust into a position of inferiority and subordination—that cannot be gainsaid. When any individual or any tribe is permanently excused from its obligations as a factor or as a unit of the general public, it demonstrates beyond peradventure that it is considered an inferior unit and not a part of the general public. Surely that is obvious. The suggestion, or rather the instruction, from the Secretary of State that the native shall be excused from his obligations as a British citizen, his public obligations, automatically rules him out of the category of ordinary citizenship. Yet that anomaly, or rather that absurdity, is underlined and accentuated by an order from the Secretary of State that when any African native has become fitted to exercise any direct control over this trust that he will personally represent the natives on the Board. How can a man who is excused the privileges and also responsibilities of citizenship be expected to exercise what is a very high trust on behalf of his own subordinate people.

There is little more to say, Sir. I feel that we have a duty not only to ourselves but also the Secretary of State in this matter. We must endeavour to prevent ridicule nullifying what commonsense can stop, and I suggest that it is now the time to apply commonsense.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, my first reason for opposing this resolution is that it should be entirely unnecessary for any such legislation to have to be moved in this House. Nearly two years ago this Bill should have been law in the form which was originally agreed to by Your Excellency, by Your Excellency's Government, by the missionaries of this country, by the unofficial representatives of this side, and by the Secretary of State in England. Our quarrel to-day, Sir, is with the present Secretary of State, but that quarrel would not have arisen if the late Secretary of State had not allowed this Bill, when it had reached that stage of agreement, to be put back for discussion by an outside body known as the Hilton Young Commission. But, Sir, we do know that the Hilton Young Commission—let us bear in mind that the Chairman of that Commission, Sir Hilton Young himself, entirely agreed with us—said that it was no business of theirs to go into the details of this Bill and therefore refrained from making any comments on it for those reasons. I think, therefore, Sir, that we are well justified in objecting to that line of action.

Now, Sir, the result of referring this Bill to that unofficial body, not only resulted in criticism of the Bill by those persons, but by every other irresponsible enemy of this country in Great Britain. As a friend of mine, who is in the Colonial Office, told me, the passage to the Secretary of State's room is being worn out by streams of deputations of people trying to work to the detriment of the interests of this country. Many of these people—I am not now referring to the members of the Hilton Young Commission—many of these other people who pose as working in the interests of the native are, in fact, merely using the native as a point to work against the interests of their fellow countrymen in different parts of the Empire, and it is the principle of allowing bills, which have met with agreement by every responsible person concerned, to be put aside for discussion by unrepresentative people that I object to very strongly.

When we come to the amendments themselves, to set the natives apart from the ordinary responsibilities of citizenship—as has been already stated by other hon. Members quite clearly, Sir—for anyone who claims to be responsible for representing and looking after native interests, that is one of the unkindest things they can do. We agreed that the natives should be given their land; we agreed that a Bill should be brought in to safeguard them in it; but surely, Sir, when they have got their land, what they should do is to make use of it and develop it to the utmost capacity, and realise that it is their duty to share in the duties and even the necessary sacrifices of the ordinary citizenship of the country.

LT.-COL. THE HON. C. G. DURHAM: Your Excellency, but little remains to be said on the motion but I beg to add my quota to the opposition. For a long period, Sir, we have been subjected to constant irritation, which has now become a festering sore. We have at all times been loyal, but the more we submit to the unreasonable dictation from the powers that be the more we are put upon. It is largely, no doubt, at the instigation of our one time friends, but now our present enemies at home.

It would seem, Sir, that because our mother country to-day can no longer chastise the great dominions, Kenya, as the youngster, has to bear the brunt of the flogging. Your Excellency, if we accept this that has now been thrust upon us, I hope posterity will write us down as a pusillanimous set of jellybag monstrosities.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I regret that circumstances which have been outside my control have forced me into opposition. On previous occasions I have voted for the Native Lands Trust Bill, because I believe the principle is fair and just that their tribal lands should be demarcated for the future. But material alterations have been insisted upon by the Secretary of State which have altered the principle of the Bill, especially clause 16, which, in its application, will mean that under certain conditions land in exchange for land in the Native Reserves has got to be found outside the Native Reserves. That, to my mind, will prove impracticable, if not impossible. It is a principle to be adopted by the natives and not to be adopted by other races. We have on the statute book of this Colony a Land Acquisition Act, which entitles Government, under that Ordinance, to take land for public purposes in the occupation and ownership of Europeans, and I cannot understand why the Secretary of State has not asked for that Ordinance to be repealed, unless one comes to the conclusion—which one must—that he believes in one law for the native and one for the Europeans.

There are other amendments which he proposes that have not been agreed upon, which materially alter the aspect of the Bill but which it is not necessary for me to discuss at this moment. I very much regret that I have been driven into opposition, and I have no doubt that is the general feeling on this side of the House. We would have liked to see a Bill, acceptable to all concerned, pass through this House. I agree with every word that was said by my hon. colleague the Member for the Lake.

I do not think it necessary, Your Excellency, to delay the House more than a moment to say again, to reiterate my regrets that I will have to oppose the motion before the House.

THE HON. E. POWYS COBB: Your Excellency, I intend to vote against this motion, and I do so because, in common I think with everybody in this Colony, I desire to see the natives treated fairly, and in my humble opinion, for the reasons which have already been very clearly put by hon. Members on this side of the House, I think the Bill as amended is not in accord with that principle.

COL. THE HON. W. K. TUCKER: Your Excellency, I merely rise owing to the temporary absence of the hon. Member for Nairobi South; I think it should be made clear that, as far as I know, Nairobi entirely associates itself with the views of other members in the precedent created by the present situation. I entirely endorse all that has been said on this side of the House, and I intend to vote against the motion.

THE HON. F. ARTHUR BEMSTER: Your Excellency, I will not take a minute, but I want to register a most emphatic protest against the recantation of all those great principles which put the present Government into power. I happen to be a supporter of the Radical element of the Liberal Party, and I remember, in the early stages of this century, that party got into power by a great cry: "Give the land to the people."

This principle, here, Sir, brought in by clause 16, absolutely recreates that position. The natives now are the protected owners of the land, of which not one single acre may be reduced except by very special procedure in the Legislature. It is a principle, Sir, that no one—no Englishman—to-day can possibly subscribe to, and one against which I protest, because in every case, if a public benefit is required, the natives can easily—as has been recently mentioned in the Nairobi Municipal Council—prevent, delay and handicap every possible improvement which the resources and natural development of this Colony requires.

REV. CANON THE HON. H. LEAKEY: Your Excellency, I beg to state that I cannot agree with the view that has been expressed both inside and outside of this House that, because it is a recognised rule in all countries of the world that a monetary compensation is an adequate one for land which is taken under pressure for public purposes, therefore it is an equitable thing to give money for land in this Colony when native reserves are being dealt with. We were reminded on

Monday by the Noble Lord the hon. Member for Ukamba that we must not draw comparisons between civilised and uncivilised peoples. That was when we were discussing the question of intoxicants.

Exceptions, Sir, prove the rule. And if the reserves of this Colony had to be the only exceptions in the whole world, I would still consider that it should not be the rule, I emphasise the rule, here.

My reasons are that it is absolutely essential that the native tribes, be they pastoralists or agriculturalists, have a sufficiency of land for their needs; and it is because we know this that we take every precaution that, having had lands reserved for them, they shall not part with them by selling them outside the tribe.

We know that it would be fatal to the Colony if Europeans, Indians or other non-natives could, by offering tempting prices, buy them out, and leave the natives of the soil without land. This, to my mind, establishes the fact that this is the principle we all approve of, that the area of the reserves should on no account be curtailed. If that is not so, why do we so carefully forbid sales to outside people?

As a principle therefore, I agree with the Secretary of State that, when dealing with natives, land must be given for land. It goes without saying that, to be just, the land given in exchange must be unquestionably at least as good and as suitable to the needs of the people who are being deprived, and, if possible, I should like to see them accept it with pleasure.

But, Sir, in spite of this, I feel there might arise an occasion when it would prove absolutely impossible to find exactly what was needed in the way of land for compensation, and in such a contingency, the next best thing, the very best next best thing, would have to be done for the native peoples, and in accordance with that high sense of justice and equity which does, and I hope always will, prevail in the British Empire.

I take it that one of those "loop-holes" mentioned by the hon. Member for the Lake is to be found in paragraph 6 of the Secretary of State's memorandum, and it would cover such a case as I have quoted.

I consider it high time that this Bill, the report of the Select Committee on which I signed long ago, should become law, and it is because I think it is detrimental to the country as a whole that it should be held up any longer that I intend to vote for it.

THE HON. A. H. MALIK: Your Excellency, in controversial matter like this I know that my voice has always been in this House a voice in the wilderness, but nevertheless I consider it my duty to raise my voice as loud as possible.

THE HON. CONWAY HARVEY: Speak up.

THE HON. A. H. MALIK: Your Excellency, when this Bill was first introduced for second reading in this House, I believe I was the only person who opposed it in its original form, and it appears to me that probably I am going to be the only one who is going to support this Bill in its present form on this side of the House, with the possible exception of the hon. Member representing native interests.

Why I opposed that Bill, Sir, I think I very fully described in this House two years ago, and I do not propose to traverse the same ground that was then covered, but I will say that the amendments proposed by the Secretary of State have the heartiest sympathy, I think, of the whole of my community, and represent the views of the natives. I am also glad to know, Sir, that that most hypocritical amendment that was suggested to the Secretary of State by the Government has not been taken into consideration and has been turned down. This amendment, Sir, was only clothed in different words, and meant nothing, and I do congratulate the Secretary of State and his advisers that they have been able to find out what exactly was needed in this Bill to protect the native interests. Your Excellency, the motion has my support.

THE HON. THE COLONIAL SECRETARY: Your Excellency, after listening to the speeches of hon. Members opposite, I think everyone will be impressed by the fact that, in adopting the attitude they have done, they have only done so after mature consideration and in the real and honest belief that by so doing they would be championing the interests of the natives, in connexion with whom this Bill refers.

I do feel, however, Sir, and I feel that I shall be voicing your own feelings in this matter, knowing as we all do how close this Bill has been to your heart, that I do regret hon. Members opposite should have adopted the course they have done this morning. I do submit, Sir, that they might well have supported the Bill in its main form, but urged the objections which they have put forward—as I know and believe, in all sincerity—to clause 16, around which the present controversy focusses. The point taken, and which I think is behind the attitude which they have adopted this morning, is that the insistence of the Secretary of State on this clause has materially undermined the principles of the

whole Bill, to which they formerly gave their adherence. I do suggest, Sir, that it is possible to view that amendment in a different light. More than one speaker has taken the point that this clause is going to put the natives in a different position from the other communities in this Colony. My reply to this would be, Sir, that the mere existence of this Bill alone, to which hon. Members previously agreed, shows that it is necessary in dealing with native land to have special enactments to safeguard it for them. That should be, as I understand was agreed by hon. Members in the earlier passage of this Bill; and to take the stand now that this clause is putting the natives in a different position from other members of this Colony is, I suggest, illogical, in view of the attitude they have adopted in the past. Further, I should like to point out that in part at least they have themselves previously acquiesced in that principle for, if you will turn to clause 16 (3), on the right-hand side of the page, it will be seen that provision was made and agreed to by the Select Committee that it shall be lawful in certain circumstances to add to such Native Reserves from suitable unalienated and unreserved Crown land an area equivalent to the area excluded. The only difference that has been made now by the Secretary of State is that that provision, which formerly was permissive, is now mandatory, and that it has been extended to all excisions from the Reserves, and not limited to one of 200 acres. That, it seems to me, is not a differentiation in principle, but is a matter of practical politics. I feel that there is very much to be said in the arguments that have been adduced by hon. Members opposite that there may be difficulty in every case in applying that principle, and the Secretary of State, in the despatch which has been laid before you, has made it clear that, in his opinion, those difficulties may have been magnified. I do suggest, Sir, however, that there has been no real departure in principle from the Bill in the form in which it was about to emerge from the Select Committee, and I therefore repeat, Sir, that it is to me personally a disappointment that, whatever action hon. Members may feel proper to take on individual clauses of the Bill, they should have signified in so universal a fashion their disapproval of the measure as a whole.

HIS EXCELLENCY: If no other hon. Member wishes to address Council, I will call upon the Chief Native Commissioner to reply.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, at this stage of the debate, before the Bill goes into Committee, I do not propose to take up the time of the House very much, but I should like to say that, as indicated

by the hon. the Colonial Secretary, I do regret the attitude that has been taken up by my hon. friends opposite. I realise, as everybody realises, that every Member on that side of the House has spoken from a deep sense of conviction, but I do think they are speaking under a misapprehension. I would only at this stage, Sir, record my great thanks to the hon. Members opposite, who for several days sat with me on the Select Committee which dealt with the provisions of this Bill, for the very helpful and sympathetic attitude which they displayed towards the Bill, for the patience with which they heard all the witnesses, both European and native, and their attitude on that occasion still leaves me with the belief that when the Bill goes into Committee they will realise that some of the points they have raised, with which I hope to deal as the clauses come up one by one, are raised to a great extent under a misapprehension.

HIS EXCELLENCY: The question is that the debate to recommit the Native Lands Trust Bill for the consideration of certain amendments in Committee of the whole Council be resumed.

The question was put and carried by 21 votes to 11.

Ayes: Major Brassey-Edwards, Messrs. Campbell, Dobbs, Doran, Fitzgerald, Dr. Gilks, Messrs. Holm, Horne, Canon Leakey, Messrs. Lynde, MacGregor, Malik, Martin, Maxwell, Montgomery, Moore, Brig.-General Rhodes, Messrs. Rushton, Scott, Walsh, and Colonel Wilkinson.

Noes: Messrs. Bemister, Cobb, Lt.-Colonel Durham, Mr. Conway Harvey, Captain Kenealy, Lt.-Colonel Kirkwood, Mr. O'Shea, Major Robertson-Eustace, Captain Schwartz, Lord Francis Scott, Colonel Tucker.

HIS EXCELLENCY: Before the Council goes into Committee, I should like to say that I have received notice from the hon. Member for Plateau South of two amendments which he wishes to move in Committee.

When another Bill was recommitted two or three days ago, I laid it down especially that the fact that I allowed an amendment to be moved then without notice should not be taken as a precedent. It was done for the convenience of Council, and I particularly gave that ruling then. I think it is very undesirable that amendments should be moved on recommitment without notice, because the object of the recommitment is to deal with certain specific amendments, and that would mean reopening the whole Committee stage. It would not really be recommitment at all; and I hope that the hon. Member will agree that it is in the interests of Council that

these amendments should not be moved without notice, especially as there was every opportunity of giving notice since Monday last, when Thursday was fixed for this debate.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, on a point of order, are not the proposed amendments amendments to amendments already proposed, and therefore they come within the category to make it permissible for them to be discussed?

HIS EXCELLENCY: An amendment to an amendment is still an amendment, and notice should be given of it.

Council went into Committee.

In Committee:

THE NATIVE LANDS TRUST BILL.

Clause 1.—Short title.

THE HON. THE CHIEF NATIVE COMMISSIONER: I move that in clause 1 of the Bill the figures "1928" be deleted and the figures "1930" substituted therefor.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I wish to raise this point of order that the amendment as printed reads "1929" and not "1930" in my copy, and notice, therefore, of this amendment has not been given.

HIS EXCELLENCY: I pointed out to the hon. and gallant Member when I gave the ruling I have just given, and I also pointed it out when I gave the ruling before, that I would only accept amendments without notice in small matters which are obviously for the convenience of the Council. That was the ground on which I now accept the amendment before and that is the ground on which I now accept this alteration in a Government amendment now. It does not apply to amendments of a different character.

The question was put and carried.

Clause 3.—Establishment of Native Lands Trust Board.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I move that in clause 3 of the Bill, sub-clause (1) (a), after (c), the following words be inserted:—

"Provided that in the event of the creation of the appointment of High Commissioner in, or of East Africa, the said High Commissioner shall be President of the Central Board in the place of the Governor, the Chief Secretary to the High Commissioner shall be Vice-President of the Central Board in the place of the Colonial Secretary, and the Colonial Secretary shall have a seat on the Board in the place of the Attorney General, who shall, in such case, be no longer a member of the Board."

This provision is inserted to meet the case of the appointment of a Central Authority for Eastern Africa, in which case it is felt that that Central Authority should be the President of the Board, and as a place should be retained for the Colonial Secretary it is considered that in such a case the Attorney General might cease to be a Member of the Board.

THE HON. THE COLONIAL SECRETARY: Hon. Members will recall that this amendment is really in accordance with the recommendations put forward in Sir Samuel Wilson's Report which were, I believe, agreed to by the unofficial Members of this Council.

The question was put and carried.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency with regard to the clause which is still before the House, I move that sub-section (f), which will now be renumbered (g), should read as follows:—

“Four unofficial members to be nominated by the Governor, or, if the Governor is not President, by the President, after considering any suggestions of the Governor or of the Central Board itself.”

That, Sir, is a consequential amendment following on the amendment which has just been accepted by the House.

The question was put and carried.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, in the same clause I move that the following words be added as a proviso to clause 3 (2):—

“Provided that when, in the opinion of the Governor, there shall be an African or Africans who is or are sufficiently capable of representing and speaking for the native community generally, then and in such case the Governor shall, as soon as may be possible, appoint at least one such African to be a full member of the Central Board:

“Provided further that in the event of the creation of the appointment of High Commissioner in, for, or of East Africa, the said High Commissioner shall, in the events mentioned above as soon as may be possible, on the recommendation of the Governor, appoint at least one such African to be a full member of the Central Board.”

Your Excellency, when the Bill was being discussed in Select Committee, various proposals were made to us for the representation of Africans on the Central Board. My hon. colleagues opposite, as well as myself, felt that it was not possible to make such a provision mandatory at the present time because of the difficulty of finding Africans of sufficient educational attainments really to understand and even follow the proceedings of such a Board. The intention of the present clause is merely to enable such a provision to be made if and when there are Africans capable and competent of fulfilling those obligations.

THE HON. T. J. O'SHEA: Your Excellency, seeing that it has been made mandatory in the Bill, when we arrive at the stage when it is possible to find an African capable of representing the African peoples of this country, that he shall go on that Board. I have suggested that it is necessary to include a proviso to the effect that not only shall such person or persons be capable but that they shall be suitable. Now, Sir, I respectfully submit that it is not merely sufficient to have a person who is capable, but he should also be suitable.

Are we to understand that you decline to accept my amendment to that effect?

HIS EXCELLENCY: The hon. Member will understand that I am not discussing the amendment as an amendment; I am discussing it purely from the point of view of order. He has had plenty of time, I think, to put down an amendment of this kind if he wished to do so, because the agreement that this Bill should be taken on Thursday was arrived at on Monday before the Council adjourned.

CAPT. THE HON. H. E. SCHWARTZ: Would you allow me, Your Excellency, on a point of order, to raise this question, not on any ground of *ad misericordiam*, but on the ground that, in my respectful submission, Your Excellency's ruling is wrong. There is a distinction in Standing Orders between a motion and an amendment. It is distinctly laid down, so far as motions are concerned, that all motions, with this exception of certain motions enumerated in section 29, shall have to have notice. No such rule is laid down with regard to amendments. Moreover, section 37 of the Standing Orders visualises amendments without notice for it says:—

“All amendments moved and seconded in Council or moved in Committee shall, if so required by the President or Chairman, be put into writing by the mover and delivered to the Clerk.”

That can only mean one thing, in my submission, Your Excellency, that if anyone jumps up in Committee or in Council, and moves an amendment, the Governor or President can require that Member to put his motion or amendment in writing and hand it to the Clerk. But if it was to be that notice of all amendments had to be given before debate to the Clerk then, Sir, section 37 would be meaningless. I would ask Your Excellency to reconsider your ruling and give a considered ruling, and meanwhile, without prejudice to that ruling, allow this amendment to be put.

HIS EXCELLENCY: I am much obliged to the hon. Member for the reasonable way in which he has urged his case, but I am afraid I cannot accept it. It is quite clear to my mind in the wording of Standing Order No. 83 that a Bill is recommitted for the motion for dealing with amendments which are mentioned in the motion for the recommitment, and it is obvious, if that reading is not preserved, the recommitment of a Bill may mean reopening the whole Committee stage. I agree it is a matter of interpretation, but I have given that interpretation before, and hon. Members were aware that that was the interpretation I put upon that ruling. They have had plenty of time to give notice of amendments which they wished to move on recommitment, and I am afraid therefore I must abide by the ruling which I have given.

CAPT. THE HON. H. E. SCHWARTZ: May I ask whether you were referring to recommitments only?

HIS EXCELLENCY: Yes, to recommitments only.

THE HON. T. J. O'SHEA: Your Excellency, may I ask—so as to be perfectly clear about it—whether that ruling also covers objection to accepting amendments to amendments for which the Bill has been recommitted?

HIS EXCELLENCY: Notice should be given of any amendment which is going to be moved on recommitment. That is my ruling, unless the thing is purely formal, in which case I think Councils have been agreed that rules may be overridden for such a purpose, but notice must be given of any amendment to be moved on recommitment—that is my ruling.

THE HON. T. J. O'SHEA: With all respect, Your Excellency, may I submit that it is not possible to give notice of amendments because we have got to wait until a decision is given with regard to the amendments that are about to be moved by Government. I cannot help feeling that it is an attack upon our privileges in this House.

HIS EXCELLENCY: The hon. Member is suggesting that a ruling which is given purely for the convenience of Council in order to enable business to be done is an attack upon his privileges. I am afraid I cannot accept that. The Government amendments have been on the Order Paper for weeks, not to say months; there has been ample opportunity of considering them in detail, every comma in them, and there has been ample opportunity to put down amendments to those amendments on the Order Paper.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I wish to oppose this amendment as the amendment ought to be amended. I shall ask Government to be converted to opposing this amendment in *lofo*, for these reasons, Sir, that it postulates an African's attainment of competence in dealing with a matter of this kind and then it obliges the Central Authority to put such an African upon that Central Board. Now, Sir, let us view the thing in this competence and rational manner. How can an African attain to this competence in one way only, and that is by jettisoning his prejudices and his tribal interests. That is the only way in which he can attain to competence and become unbiased, and

that is the only way in which he ceases to exercise his function about the preservation of his land forever as an individual of the tribe. I appeal, Sir, to the logical intelligence of this House to reject this amendment.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I must say I am very sorry that the Government do not see their way to accept Mr. O'Shea's amendment, as I do think that it would strengthen their hands and the hands of future Governors of this Colony in cases which may arise. Natives who are "capable" can be interpreted in many ways and it would only be a safeguard if the word "suitable" were added. I think that Governors in the future would be safeguarded against putting in a native who might be capable but who in every other way was unsuitable.

HIS EXCELLENCY: Perhaps it will relieve the minds of hon. Members if I say that I cannot conceive any Governor of this Colony not understanding by the word "capable" also the word "suitable."

THE HON. T. J. O'SHEA: Your Excellency, it is rather unfortunate that I should rise to challenge that statement just after you have made it, but it is a mere coincidence, Sir. I was about to do so when the statement was made; I was about to submit criticism from that point of view. I can quite understand future Governors taking that point of view. The word "capable" connoted also suitability, the point of view that from the point of view of the other side, those but, Sir, I think, from the point of view of the native future, those may feel themselves to be capable who are held by Government not to be suitable. One must think of it from that point of view, Sir, because I believe that without a closer definition of the intention there is a possibility of a very grave conflict of opinion between future Governors of this Colony and representatives of the native peoples. I suggest that it is surely desirable, when passing important legislation of this nature, to remove as far as ever possible the possibility of conflict between the Government and its native citizens, and I regard this amendment as a fresh illustration of the danger of people over-zealous insisting upon passing legislation that is not advised by their proper advisers.

I must confess, Sir, that I view with very great alarm indeed the passing of legislation in which it is made mandatory upon future Governors of this country to appoint African members to this Board irrespective of their suitability. Is it not a fact, Sir, that there are at the present time a limited number of natives in Kenya who regard themselves as capable of representing native interests on statutory bodies, and possibly in this House, but who are held by Government to be most unsuitable, and is it not a strong grievance on the part of those people that, holding themselves to be capable, they are regarded by Government as unsuitable?

REV. CANON THE HON. H. LEAKE: Your Excellency, I do not think we should consider the word "capable" alone. I think we should take the whole sentence:—

"... capable of representing and speaking for the native community generally."

If the man is really able to do that and speak for the whole native community, not just for himself or just for the few, if he can really do that properly, and the Governor has appointed him for that purpose, then I think undoubtedly he would be suitable.

HIS EXCELLENCY: As the hon. Member for Plateau South has questioned the interpretation which I gave of the word "capable" and he said there might be a difference of opinion between the opinion of the Governor and that of the native community concerned, I should like to call his attention to the fact the whole of the clause is governed by the words, "in the opinion of the Governor." His is the only opinion that matters.

The question was put and carried.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I move that the following words be added as a proviso to sub-clause (4) of clause 3:—

"Provided that no lease or licence shall be granted under this Ordinance, and no land shall be excluded from a Native Reserve for public purposes under this Ordinance unless there shall be at least five votes in favour of the granting of such lease or licence, or in favour of the exclusion of such land from a Native Reserve for public purposes."

I am confident that my hon. friends opposite will appreciate the reasons for this amendment. It is considered that the exclusion of land from the Reserves, or even the grant of a lease or licence, is a matter which should only go through, not on a bare majority vote, but on a fairly wide margin of votes in favour, and where there is any considerable body of opinion on the Central Lands Trust Board itself that really feels that the lease or licence should not be granted or the proposed action should not be taken, that it should not go through.

THE HON. T. J. O'SHEA: Your Excellency, I think it only right to point out in the passing of this amendment that throughout Elected Members in this House have been most careful that the Bill should be passed in such a form as to render it impossible for any lands to be taken away from the Native Reserves without the support of people other than the non-native races. I would emphasise that in the composition of the Central Board every possible precaution has been taken against that Board being subject in the influence of only the European community, and in principle I give the warmest possible support to the inclusion of this amendment.

The question was put and carried.

Clause 4.—Native Reserves to be under the control and management of the Central Board.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, in this clause I move that the word "thereto" be deleted and the words "to such lands" be substituted therefor.

This amendment is really a verbal one. As the clause stands it reads:—

"... all lands in Native Reserves and all matters relating thereto are hereby declared to be under the management and control of the Central Board."

It might possibly be interpreted that the "matters relating thereto" related not only to land but to all matters in the Native Reserves of any nature. It is to make this point clear that this amendment is moved.

The question was put and carried.

Clause 5.—Establishment of Advisory Boards.

THE HON. THE CHIEF NATIVE COMMISSIONER: With Your Excellency's permission I think I ought to withdraw the first amendment of which notice has been given, because on the Order of the Day—when we reach that stage—I see I am, down to more the second reading of the Interpretation and General Clauses (Amendment) Ordinance, and in that Ordinance the term "Provincial Commissioner" is maintained; and if both Bills are carried this session it would seem unnecessary to move this amendment when in the same day we are going to propose an amendment to another Ordinance having the contrary effect.

HIS EXCELLENCY: Do I understand that nobody has any objection to the amendment being withdrawn?

CAPT. THE HON. E. M. V. KENNELLY: On principle, yes, Sir.

HIS EXCELLENCY: The question is that in clause 5 (1) (a) the word "Provincial" be deleted and the word "Senior" substituted therefor.

The question was put and lost.

THE HON. THE CHIEF NATIVE COMMISSIONER: In clause 5, Sir, I beg to move that in sub-clause (1) (c), line 19, the words "land in" be inserted after the word "to"—that is, "the consideration of any matter relating to land in," etc. The reason for that is exactly the same as for the amendment which I moved before in clause 4.

The question was put and carried.

THE HON. THE CHIEF NATIVE COMMISSIONER: I propose to move, Sir, that in the same clause, in line 30, after the word "district" the words "after reference to such Council" be inserted. That is to provide that where an African member is to be nominated there should be a reference to the Local Native Council.

The question was put and carried.

Clause 6.—Functions of Local Boards.

THE HON. THE CHIEF NATIVE COMMISSIONER: In this clause, Sir, I move that sub-clause (b) be deleted and the following words substituted therefor: "Matters relating to and arising out of the exercise of the powers of the Governor under sections 15, 16 and 17 of this Ordinance." That is, apparently, a merely consequential amendment because, as a result of the adoption of the Report of the Select Committee, clause 6 was deleted.

The question was put and carried.

Clause 8.—Alienation or other disposal of land in Native Reserves.

THE HON. THE CHIEF NATIVE COMMISSIONER: In this clause I move that in (1) (a) the word "a" be substituted for the word "the." It will then read: "(a) To lease any land in a Native Reserve."

I move further, Sir, that in that same sub-clause the following words be added at the end of (a): "The rent payable in respect of any such lease shall be fixed by the Central Board, who shall also have power to revise such rent in accordance with the provisions of section 10 of this Ordinance at such periods or intervals as may be prescribed by Rules made under this Ordinance." and I move, Sir, that sub-clause (d) be renumbered (b). The last part is merely consequential because the provisions that have been made in (c) have been slightly revised and merged into (a). In the proviso they have been brought into accord with clause 10.

HIS EXCELLENCY: Is the same point concerned in all these amendments—is there only one point?

THE HON. THE CHIEF NATIVE COMMISSIONER: The point relates to the revising of rents: to make them consonant with the provisions of section 10.

THE HON. CONWAY HARVEY: Your Excellency, I am going to oppose this motion because it seems to me to be a most improper proceeding, that when a person has entered into a lease, under certain terms and conditions, that some authority has the right arbitrarily to vary the conditions of that lease. I suggest that is most improper and inequitable and unjust in every way.

THE HON. THE CHIEF NATIVE COMMISSIONER: The principle was accepted by the Select Committee and was embodied in clause 11, which has now become clause 10.

THE HON. CONWAY HARVEY: I have not found it yet, Sir.

THE HON. THE CHIEF NATIVE COMMISSIONER: 10 (2) (a) "That the lessee binds himself to pay the rent fixed by the Governor under section 8 of this Ordinance and any rent which may be fixed on revision."

The question was put and carried.

Clause 9.—Form of Leases.

THE HON. THE CHIEF NATIVE COMMISSIONER: In this clause, Sir, in the printed copy it appears as 10 but now becomes 9, by reason of the adoption of the Report of the Select Committee, which deleted the whole of clause 9—I move that the old clause 10 (now clause 9) be deleted and the following substituted therefor:—

"9. (1) Leases under section 8 of this Ordinance may be for any period not exceeding thirty-three years and shall be granted for such period, and subject to such terms and conditions as may be prescribed by Rules made under this Ordinance, provided, however, that in exceptional cases with the prior consent of the Secretary of State leases may be granted for a longer period which shall not in any event exceed ninety-nine years.

"(2) Every such lease and every licence under this Ordinance shall contain provisions to the following effect—

"(a) that the lessee or licensee binds himself to pay the rent or fee fixed by the Central Board, and any rent which may be fixed on revision;

"(b) that the lessee or licensee binds himself to pay such compensation as the Central Board may assess for any damage or disturbance whatsoever caused to native individuals or communities in the exercise of the rights granted to him.

"It shall be lawful for the Chief Native Commissioner, subject to any general or special directions from the Governor, to execute for and on behalf of the Governor any lease granted under this Ordinance."

The only material alteration there, Sir, relates to the terms of the lease. It is felt that where a lease is merely given for purposes of a temporary nature that does not involve special expenditure on buildings or improvements of a permanent nature, the lease should not be in the first place for a longer period than 33 years; but, where there are special circumstances, a lease may be granted, with the consent of the Secretary of State, for a period up to 99 years.

THE HON. T. J. O'SHEA: Your Excellency, I intend to oppose this amendment very definitely. It will be seen, Sir, that it completely alters the original intention of Clause 9. Clause 9 allowed for a 99 years lease. That is done away with in the new amendment, as proposed. In addition, Sir, provision is made in the Reserves for any practically impossible to excise land from the Reserves for any purpose. Now, Sir, the effect of this is to change completely the position in regard to doing anything with the native lands other than allowing them to be wasted by the native peoples. If you take into consideration, Sir, that a 33 years lease is practically useless from the point of view of a permanent undertaking, it will be realised that a very material change indeed has been proposed. Having made it practically impossible to excise land for public purposes, you now turn round and ask us to agree to leases under conditions which make it practically impossible for people to take advantage of the clause.

Take the case of an industrial enterprise. A 33 years lease is practically of no value to-day from the point of view of investing a large amount of capital in the land, because further on, in clause 10, you make provision for the charging of a higher rental after the first period of 33 years, and, although the increased value of the land because consideration shall be given to the owner of the lease, you do however leave the capital spent by the owner of the lease, you do however leave it open to charge a very much higher rental because of the enhanced value of the surrounding land which has taken place as a result of that capital having been invested in the first instance.

It is also provided, in this suggested amendment, that no lease of more than 33 years can be agreed to except in exceptional cases, and that all such exceptional cases must be referred to the Secretary of State. I suggest, Sir, that for all practical purposes you have nullified the agreement come to in connexion with the original Bill

that land not required for native use which could be beneficially employed by other interests should be available for such employment. That to regard as a distinct breach of faith, and we on this side of the House, Sir, cannot possibly agree to the passing of this amendment.

THE HON. CONWAY HARVEY: I agree, entirely, Sir, with the last speaker. I think it most improper that matters such as this should be referred to the Secretary of State for the Colonies. With all respect, Sir, I can think of no one whom he could consult in a position to give him better advice than the Governor of this Colony and the Central Board, which is charged with numerous responsibilities in connexion with the administration of this Ordinance; and I consider, Sir, that the best interests of the natives would be completely served by the decision resting, if not with the Governor and the Central Board, then with the High Commissioner when he is appointed.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, on behalf of the native tribes of the Colony I wish to register a protest against this intolerable action of the Secretary of State. It will undoubtedly injure the native tribes of the country because it will undoubtedly prevent the utilisation of the natural resources as they exist to-day in the Native Reserves, for the benefit of such Native Reserves.

That deals with 9 (1). With regard to 9 (2) (b), it appears to impose a permanent liability on the lessee or licensee, in as much as it might be possible for the individuals concerned to prove that they have suffered continuous permanent disability. Because the wording is bad and because the suggestion is rather ridiculous, I am opposing 9 (2) (b) as well.

THE HON. E. POWYS COBB: Your Excellency, I think, Sir, that there is a very important question raised by this issue in this clause, namely, that much of the development of the Native Reserve—which is referred to by some members of the Hilton Young Commission as the "constructive need" in the Native Reserves—surely the most likely thing that is going to happen under the theory of future development in Native Reserves is that these leases will be very largely granted for industrial or semi-industrial purposes, which, for example, will enable Government to assist the natives to make better and more economic use of their produce. Such enterprises entail the spending of large sums of capital, and people are not in the least likely to do that if the lease is limited to 33 years and if the rents payable under those leases are subject to revision. No prudent man would possibly perform work of that kind under those conditions; therefore, I feel that the provisions of this clause as it stands must rule out some of the most useful work which can be done under the leasehold system in the Native Reserves, and must inevitably lead to the retarding of the progress of those Reserves and retard them as estates run on economic lines.

CAPT. THE HON. H. E. SCHWARTZ: My objection to clause 16 is as nothing in comparison with this clause, which undoubtedly defeats the whole object of any leasehold system.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I would point out that the clause provides that in exceptional cases, with the approval and consent of the Secretary of State, leases may be granted for longer periods; and I believe, in the event of capital coming in on a large scale, as was suggested in the Hilton Young Commission's Report, it can just be conceived that that would be the kind of proposal which the Secretary of State would be prepared to regard favourably.

CAPT. THE HON. H. E. SCHWARTZ: If we are asked to presume in this Bill that the Secretary of State is going to be reasonable, I think it is going a little high, Sir.

THE HON. E. POWYS COBB: If it is a question of settling the definite economic value of any proposition in this country, it is a thing which can only be settled in this country and not in London. Take, for example, a proposition to start a dairy. Is the Secretary of State an authority on dairying? It is absurd.

THE HON. T. J. O'SHEA: Surely the purport of this Bill is to render it unnecessary for the Secretary of State for the Colonies in future to be concerned with the details of the working of the native peoples in this country; and surely the whole purpose of the Bill is to render it unnecessary to call for his advice. We have every reason to believe that at times his advice is not of much practical value on these issues. If we are going to fall back on the Secretary of State for these decisions, I suggest for consideration that the time is not far distant when even the native people of this country will have less faith in the Secretary of State than they have to-day.

HIS EXCELLENCY: The question is that clause 9 be deleted and the clause as printed in the Order of the Day substituted therefor:—

"9. (1) Leases under section 8 of this Ordinance may be for any period not exceeding thirty-three years and shall be granted for such period and subject to such terms and conditions as may be prescribed by Rules made under this Ordinance, provided, however, that in exceptional cases with the prior consent of the Secretary of State leases may be granted for a longer period which shall not in any event exceed ninety-nine years.

"(2) Every such lease and every licence under this Ordinance shall contain provisions to the following effect—

"(a) that the lessee or licensee binds himself to pay the rent or fee fixed by the Central Board, and any rent which may be fixed on revision;

"(b) that the lessee or licensee binds himself to pay such compensation as the Central Board may assess for any damage or disturbance whatsoever caused to native individuals or communities in the exercise of the rights granted to him.

"It shall be lawful for the Chief Native Commissioner, subject to any general or special directions from the Governor, to execute for and on behalf of the Governor any lease granted under this Ordinance."

The question was put and carried by 21 votes to 11.

AYES:—Major Brassey-Edwards, Messrs. Campbell, Dobbs, Doran, Fitzgerald, Dr. Gilks, Messrs. Hain, Horne, Canon Leakey, Messrs. Lynde, MacGregor, Malik, Martin, Maxwell, Montgomery, Moore, Brig-General Rhodes Rushton, Scott, Walsh and Col. Wilkinson.

NOES:—Messrs. Bemister, Cobb, Lt.-Col. Durlham, Mr. Conway Harvey, Capt. E. M. V. Kenealy, Lt.-Col. Kirkwood, Mr. T. J. O'Shea, Major Robertson-Eustace, Capt. H. E. Schwartz, Lt.-Col. Lord Francis Scott, Col. W. K. Tucker.

Clause 16.—Power of Governor to exclude from Native Reserve land required for public purposes.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, in line 27, clause 16, I move that the words "the Local Native Council or the" be inserted after the word "and."

THE HON. T. J. O'SHEA: I have lost the trend of things now, I am afraid. "16" has been renumbered "15"—is that right? we are now dealing with new clause 16?

HIS EXCELLENCY: Might I explain that line 27 as printed here is the same as it was printed in the original Bill before the House. This is a reprint. The question is that in clause 16 (now renumbered 15), line 27, the following words be added after the word "and": "the Local Native Council or the."

The question was put and carried.

THE HON. T. J. O'SHEA: Your Excellency, has clause 15 been put to the House?

HIS EXCELLENCY: Clause 15 does not need to be put to the House. I am dealing with the figures in the original Bill.

There is another amendment to clause 16, but before it is taken, as the hour is very late, would hon. Members prefer to consider it tomorrow, or would they prefer to deal with the rest of the amendments now? I am prepared to go on if they wish to do so.

THE HON. CONWAY HARVEY: I think they would prefer to adjourn, Sir.

HIS EXCELLENCY: The hour is very late: Council will adjourn.

*Council adjourned to 10 a.m. on Friday,
11th April, 1930.*

FRIDAY, 11th APRIL, 1930.

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Friday, 11th April, 1930, His Excellency the Governor (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of 10th April, 1930, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table:—

BY THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. H. T. MARTIN):

Progress Report on Anti-malaria Works in Nairobi for the period ending 31st December, 1929.

BY THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR, K.C.):

A Bill to Amend the Criminal Procedure Ordinance.

THE HON. THE ATTORNEY GENERAL: This Bill, Sir, was published in the last Gazette and copies have not been circulated to hon. Members. My reason for laying it this morning is that I wish to notify hon. Members that on Tuesday next, if the state of the Order Paper permits of my doing so, I propose to move the Suspension of Standing Rules and Orders in order to take this Bill through all its stages without due notice.

BILL.

THE NATIVE LANDS TRUST BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER (MR. G. V. MAXWELL): Your Excellency, I beg to move that this Council resolve itself into a Committee of the whole Council in order to resume consideration of the amendments to the Native Lands Trust Bill given in the Order Paper.

THE HON. THE COLONIAL SECRETARY (MR. H. M.-M. MOORE): Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that this Council resolve itself into a Committee of the whole Council in order to resume consideration of the amendments to the Native Lands Trust Bill given in the Order Paper.

THE HON. T. J. O'SHEA: Your Excellency, may I ask whether you adhere to your decision of yesterday in relation to my claim that it was within my privileges to move amendments to the amendments before the House for which the Bill has been recommitted?

HIS EXCELLENCY: I must adhere to my ruling that Standing Order No. 83, which is the Standing Order governing the debate on recommitment, is limited to the amendments of which notice has been given in the recommitment motion.

That point has arisen not only on this Bill but on other Bills, and I have given that ruling because it seems to me to be the right interpretation of Standing Order No. 83. If that were not the interpretation, recommitment would mean the reopening of the whole Committee stage. I am sure that was not the intention when the Standing Order was made, so I must adhere to my ruling on the matter.

THE HON. CONWAY HARVEY: Your Excellency, on a point of order, may I, with very great respect, ask whether Your Excellency has considered the full meaning of Standing Order No. 29 in connexion with this matter.

HIS EXCELLENCY: I have fully considered Standing Order No. 29—that is the Standing Order dealing with amendments to motions.

THE HON. CONWAY HARVEY: Especially sub-section (1), Sir?

HIS EXCELLENCY: Yes, but I have explained that the proceedings in the recommitment stage of any Bill are governed entirely by Standing Order No. 83. I believe that to have been the intention of the Standing Order when it was made, and the only interpretation of that clause. I must point out again that it would mean that recommitment involved the reopening of the whole Committee stage, and I am sure that was not intended.

THE HON. E. POWYS COBB: On a point of order, Your Excellency, may I ask you to extend your ruling a little further for the information of the House? I understand your ruling is that if a Bill is recommitted then the discussion upon

that Bill is limited to the amendments of which notice has been given, and for the purpose of discussing which the Bill is recommitted?

HIS EXCELLENCY: Yes.

THE HON. E. POWYS COBB: Now, does the position remain that an amendment so proposed may only be either accepted or rejected? Does it amount to the complete ruling out of any attempt to improve that amendment in any way? Possibly there might be a point that had been overlooked, and it was desired to amend that amendment. Is that entirely ruled out?

HIS EXCELLENCY: The usual practice in matters of this kind is that when some purely verbal alteration is found to be necessary at any stage anywhere in the proceedings of this Council—for instance, in a motion before Council—the Council will agree to a purely formal alteration in order to save its own time and further its own convenience, even though it is not strictly within the Standing Rules and Orders, but no amendment except an amendment of this kind is, in my opinion, necessary. If it were found that an amendment on the recommitment stage required serious amendment for any particular reason, the proper course would be to report to Council again, suspend Standing Rules and Orders, move the recommitment again in order to consider the revised amendment and go into Committee on the revised amendment. That is the proper procedure.

HIS EXCELLENCY: The question is that Council resolve itself into a Committee of the whole Council in order to resume consideration of the amendments to the Native Lands Trust Bill given in the Order Paper.

The question was put and carried.

The Council went into Committee.

In Committee:

THE NATIVE LANDS TRUST BILL.

Clause 10.—Power of Governor to exclude from Native Reserve land required for public purposes.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, in clause 10 (now new clause 15), I beg to move that the second and third sub-sections be deleted and that there be substituted therefor the words which appear in the Order of the Day; with Your Excellency's leave I beg to take those words as read.

CAPT. THE HON. E. M. V. KENALY: Your Excellency, I cannot hear.

HIS EXCELLENCY: Will the hon. Member speak up.

THE HON. THE CHIEF NATIVE COMMISSIONER: I beg to move that in old clause 10, which is now clause 15, the second and third sub-clauses be deleted, and that there be substituted therefor the words which appear in the Order of the Day; I would ask Your Excellency's permission to take those words as read.

THE HON. CONWAY HARVEY: Your Excellency, we absolutely oppose this amendment. I do not intend to weary Your Excellency by a reiteration of the arguments which have already been discussed in *extenso*, I might say about *ad nauseum*, but, Your Excellency, we do know from our very intimate and long knowledge of African conditions that the application of these proposals is entirely unworkable and quite impossible. We know quite well, Sir, that we shall be blamed for this when amendments become necessary, as we know they will. Whether we vote for it or against it, we shall get the blame, and I should like to say, Sir, in all seriousness, that we really are getting sick and tired of these splenetic doings by traducers in the House of Commons and elsewhere, who are quite unfamiliar with local conditions, and we are very rapidly reaching the limit of our endurance.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, the amendment to No. 3 obviously is unworkable. It refers to any native being able to claim the difference in value. What is connoted by the term "possession" in regard to the native? Does it mean individual ownership? Obviously it does not. Then what on earth does it mean? Everybody knows that the drafting of this amendment is based on an entirely false premise, that is, that fealty as regard ownership of land in Native Reserves. The amendment is nonsensical—I say that in the technical translation of that word—and because it is, Sir, I submit that it should not be approved by this House.

THE HON. T. J. O'SHEA: Your Excellency, I have already based my very strong objections to the inclusion of this amendment on the ground that it places the native in a privileged position.

As has been pointed out, the native is already in a privileged position under other portions of this Bill, Sir. I should like to emphasise that by this clause he is placed in the position that not a square inch of land may be taken from his possession for public purposes. It is not considered sufficient that when it is required for public purposes he should be very amply compensated. A lot has been made, Sir, to lay down for all time that the native shall not be deprived of a single square inch of land, no matter for what purpose for which the land is required by the State. Now, Sir, we have said from the outset that the purpose of this Bill was the safeguarding of the economic future of the native: if it could be shown that this provision was necessary to safeguard his economic future then I would agree that there was something to be said for it, but when one turns to the explanation of this amendment given by the Secretary of State for the Colonies one sees that it is not contemplated in the least that land so added to the Native Reserve should remain in the possession either of the natives dispossessed or any other member of the tribe. It is there frankly acknowledged that difficulties in the way of carrying out this amendment are so great that the Secretary of State already himself contemplates the impossibility of arranging for the area added to the Reserve being made use of by the natives themselves, and so he suggests that it be leased to others. In other words, under this extraordinary amendment, all that the native would get in actual fact is not an additional area of land to the Reserve but a further sum of money by way of rent. That being the case, I have asked myself why should the Secretary of State be so insistent that the theoretical position in regard to the amount of land that is left in the possession of the native be so strongly adhered to? Unquestionably it is not for economic purposes: it is not for the purpose of securing to the natives a certain area of land which will be in his possession—in his effective possession—for all time; and the conclusion I have come to is that it is merely a deliberate provision showing the utmost distrust of one of the parties to this

Bill—of one of the parties that there should be to this Bill—and that is the representatives on this side of the House. When one examines it more closely one finds that this amendment does not carry out the intention of it that appears on the surface, namely, to secure to the natives for all time an undiminished area of land, because it is frankly recognised that that is an impossibility; and so the amendment is accompanied by an expression of opinion on the part of the Secretary of State that it is impracticable, but the principle is one that he holds so strongly that he must insist upon its being accepted by this House.

In dealing with this proposed amendment yesterday the hon. the Colonial Secretary also said that there was really no change in principle involved in it, in as much as the original Bill made it possible, left it open to the Governor, to add land to the Native Reserves in return for any land it was proposed to excise—it was permissible then, now it is mandatory—and he contends that that does not involve any change of principle. I say more decidedly it does not involve any change of principle because in all these transactions the native should not in any way suffer, that if it was necessary to add land to a Native Reserve he should have the right to do so, but the position is entirely altered when he is so bound down that he cannot, for public purposes, excise a square inch of land from the Reserves without finding an equivalent area of equivalent value. So I contend, Sir, that the principle is altogether different. Where it was permissive it was quite all right; to make it mandatory is, I maintain, entirely wrong.

In (b) of sub-clause (3), Sir, it says:—

"the difference in value, if any, between the area which is excluded and the area which is added,"

shall be paid to the native dispossessed by the exclusion of any land from a Native Reserve. I should like the hon. the Chief Native Commissioner to make it plain to the House what is involved in that suggested amendment. Is it the definite recognition of the individual ownership of native land, or is it not? To me it seems that it is, and yet I thought that these Reserves were supposed to be the common property of the tribes who inhabited them.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, my hon. friend who has just spoken has put the case so clearly on the lines of principle that I do not wish to say anything further on that.

On the question of practicability, I should like to say a few words. Yesterday, when discussing the question of the recommissioning of this Bill, the hon. reverend gentleman representing native interests said that he supported this amendment because land should be given wherever it was practicable. Well, Sir, that I think many of us from a practical point of view would agree to, but in this case there is no question of that, Sir. The law, as now drafted, says that land shall be given, whether it is suitable or whether it is not suitable, and in the explanations from the Secretary of State it says that:—

"In other cases, land more remote might be suitable for the residence of members of the tribe."

I think some gentlemen on the other side, who administer these big Native Reserves, would probably not agree that land more remote would be at all suitable, and it is therefore bad law. The Secretary would be at all times it will not be a practicable thing, but of State agrees that at times it does not matter. Surely, he says that the cases will be so few that it does not happen often, Sir, that is not good law. If a law is bad, whether it happens often or only on rare occasions, it still remains bad law, and I do think, Sir, from the purely practical point of view, if the words suggested by my hon. reverend friend "wherever possible land should be given as compensation" were adopted—that would be a reasonable thing, from the question of principle—that would be a reasonable thing. But that is not so as this amendment is drafted.

I would put it to my hon. friends that all that is now proposed is that the addition of land shall be compulsory in all cases where the proceedings for the acquisition of land for public purposes are taken under this Ordinance, but, as is indicated in the despatch which has been laid upon the Table, it is contemplated that, when there is such a very definite case of urgent necessity to acquire land, and it is absolutely impossible to find suitable land instead, then, and in that case, a separate Ordinance for that particular case will be brought before this House; and in that connection, Sir, I would say to my hon. friend, the Member for Plateau South, that I do not think that implies any distrust of Members on the other side, for in one case the whole business would be done by the Central Lands Trust Board, and, in the second case, where it is necessary to acquire land and it is impossible to give land in exchange, a Bill would have been brought before this House and my hon. friends would have an opportunity of debating it.

I have been asked to give some information as to who will be the natives dispossessed and whether this amendment implies specific recognition by Government of the individual rights of natives. It is not intended, Sir, to do that by means of this amendment. It is left open and comprehensive because we do not yet know the different forms of land tenure among the different tribes. We have had some investigation into those of the Kikuyu, but we have not yet had any investigation into those of other tribes; and the term is comprehensive because we do not know them. Although the word "native" is used, I would remind hon. Members that in the Interpretation and General Clauses Ordinance that words, in the singular include the plural, and vice versa, and so the word "natives" is not necessarily confined to single natives—it can be applied to bodies of natives.

I think, Sir, there was no intention on the part of the Secretary of State—in fact, I am certain of it—to excuse the native from his responsibilities of citizenship. He only says, quite clearly, that when it is absolutely necessary in the public interest to deprive natives of land in part of their Reserves, and for any particular reason it is not possible or practicable to add to the land of that Reserve, the whole matter shall there come before this House in the form of an Ordinance to be fully debated—when all the circumstances will be made known, so that hon. Members can discuss it fully.

HIS EXCELLENCY: With the permission of the Committee I will now read out the text of the amendment as it appears in the Order of the Day:—

"(2) Where any land is excluded from a Native Reserve under this section the Governor shall, by notice in the Gazette, add to such Native Reserve from suitable, and, if possible, contiguous unalienated and unreserved Crown land an area equal in extent and, as far as possible, equal in value to the area excluded, and any area so added shall be deemed, for the purposes of this Ordinance, to be part of such Native Reserve, provided that where land is excluded merely for the track of a road or a railway or for the actual site of a building, no such addition of land shall be made.

"(3) Any native dispossessed by the exclusion of any land from a Native Reserve shall be entitled:—

- (i) To the use and occupation of the area which is added to the Native Reserve pursuant to sub-section (2) of this section, so far as the same may be practicable; and
- (ii) To compensation in money in respect of—
 - (a) any buildings or crops destroyed or damaged;
 - (b) the difference in value, if any, between the area which is excluded and the area which is added, and
 - (c) disturbance or other loss or expense caused by such exclusion."

The question was put and carried by 20 votes to 10.

Ayes:—Major Brassy-Edwards, Messrs. Campbell, Dobia, Doran, Fitzgerald, Dr. Gilks, Messrs. Holm, Horne, Canon, Lenkey, Messrs. Lynde, MacGregor, Malik, Martin, Maxwell, Montgomery, Moore, Rushton, Scott, Walsh and Col. Wilkinson.

Nos:—Messrs. Bemister, Cobb, Lt.-Col. Durham, Mr. Conway Harvey, Capt. Kenealy, Lt.-Col. Kirkwood, Mr. O'Shea, Major Robertson-Eustace, Lord Francis Scott, Col. Tucker.

Clause 18.—Natives not to be deprived of use of water.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to move that old clause 18 (now clause 17) be deleted, and that a new clause be substituted therefor in the words which appear in the Order of the Day:—

"17. Notwithstanding anything contained in either of the two last preceding sections, it shall not be lawful for the Governor, in the exercise of any of the powers thereby conferred to deprive the natives concerned or allow them to be deprived of the use of any water without the prior consent of the Central Board."

I might explain, Sir, that in moving this amendment there is no intention of putting natives on a very much different footing, or any different footing from anybody else in the matter of water. The clause is necessary because, if hon. Members will refer to clause 4, it is laid down in the Bill that, subject to the provisions of this Ordinance, all lands in the Native Reserves and all matters relating thereto are hereby declared to be under the management and control of the Central Board.

Now it is practically impossible to divorce the land from the question of water running through that land and water irrigating it. Under the Water Ordinance, which has recently been passed, a Water Board is set up, which, in my main rules, subject to the consent of the Governor in Council, is the whole purpose of the present clause is that there should be liaison between the Governor in Council and the Water Board in this matter and with the Central Lands Trust Board. As hon. Members will realise, the personnel of the Central Lands Trust Board does contain a number of Unofficial Members of the Executive Council. It will merely preserve liaison.

THE HON. CONWAY HARVEY: Your Excellency, we oppose this amendment, on the grounds chiefly, Sir, that we consider the hon. the Chief Native Commissioner to be a far better authority to certify as to the requirements of natives in regard to water.

It is quite easy, Sir, to visualise that very serious loss and suffering may accrue in times of drought and pestilence if the cumbersome procedure of summoning a Board has to be embarked on before relief can be given to sufferers. Who may be in very urgent need of water, of which there is a very big surplus, possibly, flowing through a Native Reserve, which can be immediately obtained. I should also like to remind my hon. friend that there is a very big difference like to remind my hon. friend that there is a very big difference between land and water. Water, Sir, it has always been held, is the property of the Crown; and the Crown absolutely refuses to lease water in any shape or form, whereas, in the case of land, we have very definitely individual and community tenure in many cases. It is very important indeed, Sir, that water should remain a common asset and not be subject to interference by individuals and the Board.

CAPT. THE HON. E. M. V. KENEALY: The greatest objection that I have to this, Sir, is that the adoption of this amendment will prevent the greatest utilisation of a State asset. The passage of the water legislation, Sir, embraces the consideration of water in the Native Reserves. The water legislation of this country is, I think, on a sufficiently embracing basis to allow of questions in regard to rights and utilisation and control in the Native Reserves to be dealt with appropriately by that Board. Because it is suggested that it should be dealt with by another, and a different, and a less competent Board, I oppose this amendment too.

policy. It is hoped, indeed, that by these means that policy will be carried out. All that is provided here is that there shall be a liaison between the Central Lands Trust Board and the Governor in liaison between the Central Lands Trust Board and the Governor in Council, who is the present rule-making authority under the Forest Ordinance. And I would again remind hon. Members as to what is the personnel of the Central Board. It is inconceivable that there can be any great difference of opinion between almost the same people sitting in a different capacity, and as the Bill does put the management and control of forests into the hands of a specific Board, it is clearly undesirable that rules, which very vitally affect those lands and the forests standing on them, should be made without co-operation and liaison with the other body.

HIS EXCELLENCY: The question is that after clause 17 the following new clause be inserted:—

"18. Notwithstanding anything contained in the Forest Ordinance no land in a Native Reserve shall be declared to be a forest area or demarcated forest without the prior consent of the Central Board, and no rules shall be made in respect of any such forest, area or demarcated forest without the prior consent of the said Board."

The question was put and carried.

Clause 22.—Power to make Rules.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I move that this clause be deleted and that the words which appear in the Order of the Day be substituted therefor:—

"22. It shall be lawful for the Governor, with the advice and consent of the Central Board, and subject to the disallowance thereof by His Majesty, to make Rules, which may be of general or special application, for the purpose of carrying this Ordinance into effect and prescribing the fees to be paid for any matter or thing done under this Ordinance."

The purpose of this amendment, Sir, is to bring all the rule-making powers under one authority. As the Bill stands at present, there is a rule-making power with the Central Board and also a rule-making power with the Governor in Council. It is clearly undesirable that there should be two separate authorities making rules for the same purpose, and it is clear there should be merely the one authority. The amendment also deals with the specific purposes for which rule-making powers may be required, and also in general. It does not, of course, take away the powers which were detailed before: it merely makes the rule-making powers comprehensive.

The question was put and carried.

Clause 23.—Saving of existing rights.

THE HON. THE CHIEF NATIVE COMMISSIONER: I move that the word "clause" be deleted and the word "section" substituted therefor. That is purely a matter of verbiage. We speak of "clauses" of a Bill and "sections" of an Ordinance.

The question was put and carried.

Clause 24.—Repeal.

THE HON. THE CHIEF NATIVE COMMISSIONER: I move that in this clause the words "and with the exception of section 63" be deleted. The effect of that amendment is merely in regard to rule-making powers. By keeping in those words one preserves to the Governor in Council the rule-making powers given to him under section 63 of the Crown Lands Ordinance. We have already passed clause 22 of the Bill and this now becomes redundant.

The question was put and carried.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to move that the Bill, as amended, be reported to Council.

HIS EXCELLENCY: The question is that the Native Lands Trust Bill, as amended in Committee of the whole Council, be reported to Council.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY: Order, order. I have to report that the Bill entitled a Bill to Provide for the Reservation of Lands for the Use and Benefit of the Native Tribes of the Colony and for the Management and Control of Lands so Reserved has been considered on recomittal by a Committee of the whole Council, and has been reported to Council with amendments.

THIRD READING.

THE NATIVE LANDS TRUST BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to move that the Bill to Provide for the Reservation of Lands for the Use and Benefit of the Native Tribes of the Colony and for the Management and Control of Lands so Reserved be read a third time and passed.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

The question was put and carried by 20 votes to 3.

Ayes: Major Brassey-Edwards, Messrs. Campbell, Dobbs, Doran, Fitzgerald, Dr. Gilks, Messrs. Holm, Horne, Canon Leahey, Messrs. Lynde, MacGregor, Malik, Martin, Maxwell, Montgomery, Moore, Rushton, Scott, Walsh, and Col. Wilkinson.

Noes: Lt.-Col. Durham, Captain Kenealy, Mr. O'Shea.

Declined to vote: Messrs. Bemister, Cobb, Conway Hurvey, Lt.-Col. Kirkwood, Major Robertson, Eustace, Lt.-Col. Lord Francis Scott, Col. W. K. Tucker.

CAPT. THE HON. E. M. V. KENEALY: On a point of order, Your Excellency, is no record made of the names of those who refuse to vote in a matter of this kind? Because I think there should be a permanent record in the archives of this country of such a fact.

HIS EXCELLENCY: A record is made, I understand. The Bill was read a third time and passed.

Council adjourned for the usual interval.

MOTION.

ACQUISITION OF LAND AT TURBO.

THE HON. T. J. O'SHEA: Your Excellency, I beg to move—

“ That the actions of Government in connexion with the compulsory acquisition of land and buildings near Turbo Station were not in the best interests and unnecessarily inflicted considerable hardship on individuals.”

To enable the House to appreciate the principles involved in this matter, Sir, I must, I am afraid, give a brief review of the facts so far as I have been informed. I shall be as brief as possible. As far back as June, 1923, the owner of the land in question, recognising that the coming of the Railway to Turbo would necessitate the erection of a number of shops and other buildings in the vicinity of the Railway, applied to Government for permission to sub-divide a small portion of his land there for these purposes. Negotiations for permission to do that were continued indefinitely, and never arrived at any finality. In the meantime, the circumstances of the case seemed to justify the owner of the land in entering into arrangements with various people to sell or lease other portions of the land for these purposes, and in the course of time a number of buildings were erected there, some of them on land which he contracted to sell to the parties erecting those buildings, and other portions were just leased on what may be regarded as temporary occupation licences. During the period that the Railway was being constructed from Turbo onwards towards the Uganda border, Turbo was of very considerable importance to the Railway authorities, and it was a real public convenience and a real convenience to the Railway that the premises had been erected there in the meantime and that the businesses that had been opened were carried on. It is important to note that it was with the full knowledge of Government that these transactions were entered into and that these buildings had been put up and that these businesses were being carried on. I believe I am right in saying that licences were actually issued by Government to these parties to enable them to carry on their businesses.

In the meantime, Sir, it became necessary for the original owner of the property to get Government's consent to transfer the areas so sold, and he found it impossible to do so. Then Government finally, in a difficulty, began to think the best way of meeting the situation was to acquire all this land and embark upon a township of its own, and now, in April, 1930, we still find that Government has not yet definitely made up its mind. The original owner of the land has not been allowed to give transfer, and the Government has not placed itself in a

position to enable it to give transfer. Negotiations were carried on by Government with the owner of the land for the purchase of varying areas at varying times. It started off by considering the acquisition of 750 acres, which area is evidence that Government was absolutely unable to appreciate the limits of importance of the place, and eventually it boiled down to a question of acquiring 50 acres. Now, Sir, had 750 acres been acquired at the price suggested by Government at the time, or something in that neighbourhood, I think the transaction would have been concluded on a reasonable basis, but when Government narrowed down the area to be acquired to a small amount of 50 acres and offered approximately the same price, it was not a reasonable proposition, and the owner of the land indignantly turned it down. In consequence, Sir, the following notice appeared in the Official Gazette of the 25th June, 1929:—

“ Government Notice No. 402.

THE LAND ACQUISITION ACT, 1894 (INDIA).

DECLARATION UNDER SECTION VI.

IT is hereby notified and declared that the land specified in the Schedule hereto is required for a public purpose.”

Then it specifies those 50 acres.

My motion is based upon Government's having done things that were not in the best public interest, and I should like to justify that assertion of mine by pointing out that this Land Acquisition Act of 1894 of India enables Government, merely by declaration in the Gazette, to say that land is required for a public purpose, and practically to confiscate a man's title. It is not necessary, apparently, under that Act, to hold any court of inquiry or to prove to the satisfaction of anybody that the land in question is really required for a public purpose. Government has absolutely arbitrary power in the matter. It has merely to declare in the Gazette that any area of land subject to a lease from Government is required for a public purpose, and that notice is sufficient to enable Government compulsorily to reacquire that land. That is a very important matter, because it has given rise to grave uneasiness among people who hold titles of this sort from Government. There is a great feeling of insecurity in the minds of those who are familiar with Government's activities in this matter, and I feel it is very necessary that Government should, at an early date, reconsider the position with a view to acquiring powers under local legislation to apply this Act. The Land Acquisition Act may have been good enough for India in 1894, but it is certainly not good enough for the

conditions of this country to-day, and I would strongly urge that that aspect of the case be given immediate and favourable consideration by Government.

Turning, Sir, to the second part of the motion, which contends that considerable hardship has been inflicted unnecessarily on individuals, I would point out that it was the plain duty of Government, when the Railway was going through Turbo, to recognise that the coming of the Railway there had brought about altered conditions that made it necessary either to allow the individual to make provision for such premises as were considered necessary or for Government itself to do so. For it to carry on negotiations over a period of six or seven years was, I contend, a dereliction of duty, and in the neglect of its duty in that respect Government has certainly inflicted considerable hardship on the owner of the property and on the smaller people who acquired land from him in good faith. He was unable to secure to himself the profit of his enterprise; he was debarred from fulfilling the contracts which he had entered into, and in the long run Government's interference in this matter, without doing anything definite itself, was a very contributory factor in his eventually going insolvent. That, to a man who had striven hard in this country for fifteen years, who was one of the pioneers of development in that area, and who has worn himself out in his efforts to make good there, is, I think, a very great injustice.

Then, Sir, in connexion with one of the purchasers of a portion of this land, they entered into a contract with Mr. Johnson to purchase four acres, and, in the belief that Government, recognising the necessity for an hotel in that place, would allow him to have transfer, they erected premises in excess of a value of £2,000. Government would not give transfer, and eventually, last year, under this notice in the Gazette, they held a court of inquiry, with a view to acquiring the whole area compulsorily. The court of inquiry found that this property was worth in the neighbourhood of £2,800, and it seemed to the public and to everybody concerned in the case outside the inner circles that the court of inquiry, having so decided, Government had to purchase this land. Although that court was held in December last, no steps were taken to take over the property and pay for it. In the meantime it was pointed out to Government that there was no real necessity for Government to acquire the property from the public point of view, and so Government took fright and has now repudiated its obligation. In consequence of that, these people who were unable to transfer, had to go insolvent, and are now saddled with a property which they do not know is their or is not theirs.

The personal factors in the case are more familiar to the hon. Member for Plateau North than to myself, and I shall leave him to elaborate them, but I would urge that the broader aspects of this case merit the very serious consideration of Government. In so far as provisions for compulsorily acquiring the land are concerned, I would strongly urge that Government accept the suggestion that legislation be introduced that will be in keeping with the requirements of the country and that at the earliest possible moment steps be taken to reassure the public that their leases from Government have a value and are not subject to arbitrary confiscation under the pretext that the land is required for public purposes.

Lt.-Col. THE HON. J. G. KIRKWOOD: Your Excellency, I have much pleasure in seconding this motion. I will deal as concisely and precisely as possible with the latter part of the motion. I should like to associate myself generally with the remarks passed by my hon. friend the Member for Plateau South.

The latter part of the motion states, "and unnecessarily inflicts considerable hardship on individuals." Now, Sir, Government gave notice on the 25th June to acquire certain properties to the extent of 50 acres near Turbo Station, and included in that 50 acres was a 4-acre plot, upon which per-manent buildings had been erected. They were owned by Messrs. Davidson and Wright, two old farmers in this Colony, who are very highly respected. They have, since June, 1927, when they purchased the plot, been applying to Government to take the necessary action to acquire title. Up to the present time they have not succeeded in getting title to that 4-acre plot. On the 25th June, 1929, the Government Gazette Notice No. 402 appeared notifying Government's intention to acquire. The same Gazette also constituted the necessary authority under the Land Acquisition Act of 1894; that authority eventually met and the magistrate of Eldoret, Mr. Lane, took evidence, sifting the matter, and eventually came to the conclusion awarding £2,875 to be paid in compensation to Davidson and Wright for their 4-acre plot and the buildings thereon.

Previous to that, Davidson and Wright were in financial difficulties, and refusing to pay their creditors. They put their estate into voluntary liquidation with the view and the hope that their creditors would be paid in full. They were complimented by the applicable authority in Nairobi, when their case came before the court here, on the action they had taken, but in consequence of not being able to secure title in the first place they were debarred from disposing of that

property for the benefit of their creditors. Further, the action of the Government under the Acquisition Act had debarred them from the duty of collecting rents. I do not know whether Government have collected the rents as they became due or not, but I can definitely state that their estate has not been able to collect the rent, and an amount of, I think, £60 for rent was allowed in the award. They are most anxious to settle their affairs, and it will be impossible for them to do so to their satisfaction, or the satisfaction of their creditors, until title has been issued for that property. It is not understandable to me how, under an Ordinance such as the Land Acquisition Ordinance, Government can inflict hardship on individuals by their action and at the eleventh hour withdraw.

On March 24th, 1930, notice to withdraw these proceedings was given by Government to the trustees of this particular estate. I am not aware of the reasons for that notice. I do know, but according to the award that was issued two independent valuers, made a valuation and submitted their valuation to the court. A third official in the Public Works Department also made a valuation, and that valuation was accepted by Mr. Lane, and on that valuation he has made his award; and I suggest it is only fair and just to the people concerned, and their creditors, that that notice of withdrawal should again be withdrawn. If it is the opinion of Government that the award was too high, then I suggest that Government might in justice negotiate and acquire that property by negotiation. The matter, as it stands, is most unsatisfactory; the estate is held up; it cannot be cleaned up; it can get no further until Government definitely withdraws or completes what I consider is a moral obligation on their part to carry out the award made by the authority under the Acquisition Act. I consider that it would only be fair and equitable to everybody concerned if that action was taken.

I do not wish to belabour the matter, but, before sitting down, I should like to express the opinion that this Ordinance, as it stands, is not a fair or equitable Ordinance, because measures should be taken either for its repeal or amendment. I do not consider that an Ordinance that will allow such an injustice as has taken place in this particular case is a fair one and it should not be on the statute book. Neither is it fair or reasonable to suppose that Government has the right to enter into negotiation, to complete those negotiations and then withdraw, and not give the same right and privilege to the other people. Your Excellency, I commend the motion for acceptance.

HIS EXCELLENCY: The question is:—

“That the actions of Government in connexion with the compulsory acquisition of land and buildings near Turbo Railway Station were not in the best public interests and unnecessarily inflicted considerable hardship on individuals.”

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, there are a certain number of issues, some of particular and some of general nature, which have been raised in the last two speeches. There is one issue, however, which I will not attempt to tread on myself, but which I will leave to the hon. the Attorney General; that is, of course, the question which is more closely concerned with matters of law—the legal elucidation of the facts given.

Now, Sir, I think it will probably save time and give Members a better picture of this particular transaction if I very shortly detail—and follow the lead of the hon. mover of the motion—the occurrences in the sequence of time from the beginning to the present day. Now, Sir, it is quite true, as the hon. Member stated, that there were actual negotiations so far back as 1923 in relation to the needs, possible needs, of the township of Turbo, but, Sir, it was not, I think, till the 9th November, 1925, that matters came to a head and a definite application to sub-divide was put in by the owner. Two months later, Sir—and this, I think, is a question of great importance—the owner, in asking Government to purchase and abandoning his application to sub-divide, stated that he did not wish to negotiate in the private township itself, but he wished Government to buy back the land granted to him. That attitude, Sir, had a great influence on all the subsequent history of the case. I will refer to it therefore in another connexion later. I may say also, Sir, that on the 26th September, 1928, that statement of preference to purchase by Government, rather than himself form a township, was repeated.

The next salient point, I think, was early in 1928, when the district committee, who had been considering the matter for some time, definitely recommended to the Government that an area of land should be acquired by Government, and that Government should develop it for township purposes.

Now, Sir, I think, from that point onwards the subsequent history flows on, one might almost say, inevitably. What was the position of Government in the matter in developing a township on land which the owner himself would not develop, which the owner himself had no intention of

developing but wanted Government to purchase and develop on behalf of the community itself? The Government's responsibility in the matter is naturally a great one; the Government's responsibility in the matter surely must very largely depend on the terms on which it can obtain the material it is going to use. It must be remembered that this land was held under an agricultural title and Government therefore had no power to force the owner to develop it as a township. On the other hand, it has been stated quite truly that the owner had taken certain steps in regard to this land by entering into arrangements with other parties, arrangements which could not be regularised except by the consent of Government and by the conversion of Government on the change of user. Government therefore was in the position that, instead of having to repurchase a straightforward agricultural title, they had to take into consideration proceedings which were, in fact, irregular. It was natural therefore that they took the shortest cut and the only cut possible; and that was to go for outright purchase. Well, Sir, the point has been made that first of all they decided to purchase 750 acres, and that subsequently that was reduced. I can only say about that, Sir, that if they found 50 acres would do where 750 acres was thought necessary before, Government would not have been justified in buying a larger area; and that this smaller area was sufficient was endorsed by the suggestion of the district council itself in May, I think, 1928.

Now, Sir, there are certain points of principle—one particular point of principle, which I think should be dealt with, and that is the rights of Government in respect of compulsorily acquiring land for such purposes as townships. I think the challenge almost has come to this: that it is doubted whether the creation of a township is really a public purpose. I would ask hon. Members just to think of the position Government is put in when the necessity for a township is admitted, when the land required does not belong to Government, and when the owner has no wish to develop it as such. There is only one course of action, surely, open to Government, and that is to acquire it; if it cannot acquire it by agreement, to acquire it by using the existing law.

A further point has been made, and that is that the two owners—or I can hardly call them owners—the two occupiers of this land were debarred from the rightful profits of their enterprise. Well, Sir, I do not want to say anything which suggests that enterprise in every reasonable form should not be encouraged, and I am very sorry if the circumstances of this case have, as it seems, hardly rewarded the enterprise of these gentlemen, but, strictly speaking, it must be remembered that these profits, or rather, that that enterprise, strictly

speaking, was hardly legitimate. They took certain risks—the risk of spending money without proper title. The fact that they were not given proper title was not dependent on any attitude of Government. If anybody was in fault over it, well, I should say it was the vendor of the land from whom they wanted title.

Now, Sir, I do not want specifically to answer the doubts which have arisen as to the propriety of taking advantage of the existing Ordinance, the Indian Acquisition Act, because I imagine the hon. the Attorney General will deal with that himself, but I will ask hon. Members to remember that some such law is necessary, that it has been used in this country for some time, if not very often, and that, in point of fact, it is the only law dealing with the matter which enables Government to obtain land when it is required for public purposes, and the vendor is not willing to sell on reasonable terms.

As to the case of hardship on the part of these two owners of four acres, I can only say that their losses and the question of any compensation which may be due to them is a matter which, in connexion with this withdrawal and the objection to the compulsory acquisition proceedings, is a proper one, and I believe it is recognised by Government that it should be examined.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, it gives one a certain amount of pain to support a motion of this kind, because it implies criticism of Government policy and activities, and that always—no matter how delicately it is expressed—does hurt one to a certain extent. But there are principles involved in this motion which must receive the support of this side of the House, even if it is not evidenced in argument—in the acceptance of this motion in the minds of Government. I am sorry that the comments made from the outset on the subject by the hon. the Commissioner for Local Government, Lands and Settlement are still being maintained.

The primary point, Sir, that demands support in this is Government's inconsistency in the application of its policy and practice. While, Sir, we find that Government is exceedingly inconsistent, it is consistent in one thing, in that all its activities are directed to the obstruction of development. There it is consistent, and its consistency is manifest in nearly all of its activities. But, Sir, it is not consistent inasmuch as it will not tolerate a change of user which is beneficial to the development and progress of this country, but will tolerate a change of user inasmuch as it does not insist on the user originally granted being maintained, inasmuch as it will not allow agricultural land to be put to a

more intensive purpose for the benefit of the country at large by a change of user, but it will allow an individual who has a title to land consistently to fail to carry out his agreement as a lessee of the Crown.

One of the excuses made by my hon. friend the Commissioner for Local Government, Lands and Settlement—perhaps it will not be called an excuse; it may be called a reason—was that the owner suggested the use of this land for township purposes. Now, Sir, that is an admission of failure. It is the State's duty to recognise that a township was required there before the owner did. Again, it has been suggested that the owner did not want to develop that land. Why? Because he knew of the obstructive tactics and the procrastination which would follow any attempt to regain the necessary rights to exploit or develop that land. That, as my hon. friend comments, is a plain statement of fact.

We have passed some legislation this morning which makes it impossible for ordinary public purposes to acquire land from the natives, and yet here we have instances of the existence of legislation which may be arbitrarily and harshly imposed, and in this case, Sir, I think that these powers have possibly been harshly imposed upon individuals. I feel, Sir, that we have a reasonable claim for demands for an alteration in the Land Acquisition Act, and there should undoubtedly be an alteration in regard to the definition of "public purpose". Government was in a position to coerce this user and beat him down in regard to what he considered a fair price by refusing to grant a change of user, and I regret to see that Government utilised that coercive power which it held, and I think that was a little undignified for Government to do. There is no doubt, Sir, that it was the delay that caused the loss, and the delay was due to the inactivities of Government and the lack of principle that governed Government's action.

THE HON. THE ATTORNEY GENERAL: Your Excellency, in listening to the speeches from hon. Members on the other side of the House, I could not help feeling that they had strayed rather far from the exact terms of the resolution before the House, which is that the use—if I may paraphrase it—of the Indian Land Acquisition Act in this case was an improper one. It does not seem to me that the merits of the existing land system have very much to do with the issue which is primarily before us, so, Sir, if I may

LT.-COL. THE HON. J. G. KIRKWOOD: On a point of explanation, Your Excellency, I am not questioning the details—I just gave the date of the Acquisition Act. It is the methods that were applied under it.

THE HON. THE ATTORNEY GENERAL: On a point of explanation, I did not attach any fault to the hon. Member who has just explained himself. I spoke of the speeches generally on the other side, Sir.

There is at least one hon. Member on the other side of this House who is at one with me that what we have to deal with is whether or no the Government was justified in using the Act, with the possible further point as to whether the Act is one which ought to be on the Statute Book. Now, Sir, let me remind hon. Members of what my hon. friend the Commissioner for Local Government, Lands and Settlement said a few moments ago. There were very long and protracted negotiations indeed, and every opportunity was given to the owner to develop the area as a township himself. The need for a township at Turbo has been conceded by everybody who has spoken, and that offer was in fact made, Sir, in 1928; the owner's reply is one of the most delightfully laconic communications that I have ever read. It consists of three lines, Sir:

"The minimum of land I am prepared to sell is 750 acres.

The price is £5 per acre.

I do not contemplate starting a private township."

There follows his signature.

THE HON. T. J. O'SHEA: Your Excellency, on a point of information—the date of that letter?

THE HON. THE ATTORNEY GENERAL: The date, Sir, is the 26th September, 1928.

Well, Sir, let me repeat that the necessity for a township was universally conceded. We have been told by one hon. Member that the Government is at fault in not having started a township years ago when the Railway reached Turbo, as the need for a township was daily becoming more acute. Opportunity was given to the owner to make a township of his own, and he emphatically and very tersely declined to do so. What could Government do?

Every Colony, every civilised country, has a measure which enables land to be compulsorily acquired for public purposes. The necessity for a township at Turbo was paramount; the necessity for a township of definite, sanitary, clean lay-out was obvious to everyone. If the owner would not do it, and he would not sell less than 750 acres when our requirements were 50 acres, can it conceivably be argued that that is an impossible use of statutory powers?

The statute, if I may now turn to the more strictly legal aspects of it, has been in force in the East African Protectorate (as it was then) since 1896. Its scope was extended as far back as 1902 to the whole of that Protectorate. This, so far as I am aware, is the first occasion on which it has been alleged that the Act creates any undue hardship. Let me remind hon. Members what the procedure under the Act is. I do that, Sir, because we have had words such as "coercion" and "confiscation" and terms of that sort hurled at our heads. The procedure is, Sir, that a notice is published and a collector is appointed. The collector takes evidence. There is no star chamber procedure about it. He takes evidence publicly—evidence was, in fact, taken in this case. He heard the evidence of expert witnesses on the value of the land. He published his award, and under the Act, Sir, there was a right of appeal against that award if any of the persons affected by it were of opinion that the award was insufficient. That right, Sir, has not been exercised by any of these persons.

Then I come to the second part of the motion—the undue hardship caused to the two gentlemen who took a chance—a quite illegitimate chance—in respect of the four acres on which they risked erecting buildings. The Government is withdrawing from the acquisition of that portion, Sir; the Government is being pilloried for arbitrarily refusing to pay the sum awarded, and further pilloried because grave inconvenience, hardship and loss have been caused to those gentlemen by the Government's so doing. I can only recommend that hon. Members should obtain from some source or other a copy of the Act, and devote a little time to a perusal of it. In that respect the second part of the motion does seem to me as completely premature. When notice of withdrawal is given, Sir, the matter has again to go to the collector. With your leave, Sir, I shall read the second portion of section 48 of the Act which deals with withdrawal:—

"Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under the Act relating to the said land."

From these proceedings also there is a right of appeal. I hardly think that in view of that section words like "coercion" are either justified or dignified.

On the matter of confiscation, Sir, let me conclude by reminding hon. Members that not only the market value of the land has got to be paid under proceedings such as this, a value which is arrived at by a judicial officer after hearing expert evidence (as was done in this case), but on top of that, Sir, the Government, by virtue of invoking the assistance of this Act, has to pay a further 15 per cent. If that is confiscation, Sir, it is a form of confiscation which I wish would come my way occasionally.

HIS EXCELLENCY: If no other Member of Council wishes to address the House I will call on the Member for Plateau South to reply.

THE HON. T. J. O'SHEA: Your Excellency, I would draw the particular attention of the House to the fact that the hon. the Commissioner for Local Government, Lands and Settlement was entirely silent as to what transpired between 1925, when Mr. Johnson offered to sell the land to Government, and September, 1928, when they turned down his offer to sell 750 acres.

In the first place, Sir, in 1925, when he was contemplating doing something to meet the public demand for plot sites in Turbo, he was perfectly willing to go on with a scheme of his own, and for a considerable time later was prepared to go on with a scheme of his own if only he had the consent of Government. It was only because of the way in which he was messaged about by Government between that period, 1925 to 1928, that he decided, very largely on my advice, not to attempt to do anything of the sort but to let Government take the responsibility. I acted as an intermediary in these negotiations more than once or twice, and it was because I saw it was hopeless for him to try and get any reasonable attitude out of Government that I personally advised him not to make the attempt.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: On a point of explanation, Your Excellency, I should like to remind the hon. Member that I mentioned the year 1926, and the particular date in that year on which Mr. Johnson had stated his unwillingness to make a township himself.

THE HON. T. J. O'SHEA: I feel I have been too brief in regard to the facts of this case, and so, in consequence, I have weakened my case. The owner of the land did, in fact, want to divide up certain portions of land near the Turbo Railway Station as were required for public purposes, and it

was only when he had found out the big commitments he would have to enter into and the difficulties. Government was placing in the way that he decided the only thing to do was to compel Government to buy; and the explanation of his refusing to sell less than 750 acres, in the letter quoted by the hon. the Attorney General dated May, 1928—September, 1928, sorry—was that negotiations had been under discussion for some time on the basis of a 750 acre purchase, and when that was suddenly dropped to 50 acres he very naturally resented it. I would emphasize also that no explanation has been given on the other side of the House as to what would have been done by Government to provide the necessary sites for the Railway buildings and private enterprise had the owner of the land not done so. Government itself was a party to the illegal use of that land under the terms of the lease. The Railway authorities and the Railway contractors made considerable use of portions of that land for purposes other than agriculture during that period, and it was during that period that the place had a value as a township site. To-day it has practically none. Mr. Johnson met the needs of the hour and he has now been penalised for his action in doing so. Furthermore, Sir, I would like to draw the attention of the House to the fact that no evidence was forthcoming to show that Mr. Johnson had not rights to sell on reasonable terms. It is true that in the findings of the Court it was pointed out that he was asking a very high price for the land, based on the price at which he had been able to sell some of his plots, but at the time of the negotiations the price he asked for the land was very much more reasonable and more based upon its value as an agricultural holding; and no evidence whatever has been produced to show that Mr. Johnson had refused to sell at the price at which he offered to sell the land.

Frankly, Sir, I am much more concerned with the broader aspects of this case than with the personal. It is a source of pleasure to me to find that these people have not heard the last of this, and that under the law as it exists there is a possibility of their receiving some further consideration in the matter. But the general application of this Act is what has worried me quite a lot, and although it may be true to point out that it has been in operation in this Colony for many years and that this is the first case we have heard of of its harsh application, I would point out that the use of this Act has been very sparing indeed and I cannot recollect any attempt to apply it until comparatively recently. I am very sorry indeed, Sir, that there has been no evidence from the other side that the Government is itself aware that the continued use of this Act is inadvisable when one considers the

circumstances of the Colony to-day. Despite the failure of the other side of the House to give any indication that Government would later reconsider its position in this matter, I would make one last appeal to them to do so.

HIS EXCELLENCY: The question is:—

"That the actions of Government in connection with the compulsory acquisition of land and buildings near Turbo Railway Station were not in the best public interests and unnecessarily inflicted considerable hardship on individuals."

The question was put and lost.

BILLS.

THE CRIMINAL PROCEDURE CODE.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that this House go into Committee of the whole Council for the further consideration of certain amendments to the Criminal Procedure Code which are set out in the Order of the Day of the 10th April.

THE HON. C. F. G. DORAN (Acting Solicitor General): Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that this Council go into Committee of the whole Council for the further consideration of certain amendments to the Criminal Procedure Code which are set out in the Order of the Day of the 10th April.

The question was put and carried.

The Council went into Committee.

In Committee:

THE CRIMINAL PROCEDURE CODE.

Clause 30.—Refusal to give name and residence.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to move that the clause be amended by the deletion of the words "forwarded to" and the substitution thereof of the words "taken before" in sub-clause (3).

This makes the sense better.

The question was put and carried.

Clause 34.—Detention of persons arrested without warrant.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to move that clause 34 be amended by the deletion of the words "shall be," where they appear in the fourth line of the clause, and the substitution thereof of the words "shall have been."

Again, this is a matter of chronological sense.

The question was put and carried.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg further to move that the same clause be amended by the deletion of the words "he was," where they appear in line 7 of the clause, and the substitution thereof of the words "he has been."

The question was put and carried.

Clause 66.—Powers of Supreme Court.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 66 be amended by the deletion of the word "of," where it appears in the first line of the clause, and by the substitution thereof of the word "into."

The question was put and carried.

Clause 75.—Transfer of case where offence committed outside jurisdiction.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 75 (1) be amended by the deletion of the words "out of," where they appear in the second line of the clause, and the substitution thereof of the word "outside."

This is to make it clearer.

The question was put and carried.

Clause 78.—Power of Supreme Court to change venue.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move the clause 78 (2) be amended by the deletion of the word "either," because it does not mean anything.

The question was put and carried.

Clause 161.—Inquiry by court as to lunacy of accused.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 161 (4) be amended by the insertion after the word "Governor" of the words "if satisfied by medical certificate."

I do not feel, Sir, that it is a fair responsibility to be thrust upon the Governor of this country unsupported by such medical certificate which is required to support expert opinion.

The question was put and carried.

Clause 167.—Mode of delivering judgment.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 167 (2) be amended by the deletion of the words "brought up" and the substitution thereof of the words "brought before the Court."

This is better sense.

The question was put and carried.

Clause 249.—Powers of Chief Justice.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 249 be amended by the deletion of the word "Governor" and the substitution thereof of the words "Governor in Council."

This accords with the ordinary procedure in having rules submitted to the considered opinion of persons other than the Governor, the Government of the country being the Governor in Council.

HIS EXCELLENCY: I do not accept that suggestion; it is not the case.

CAPT. THE HON. E. M. V. KENYAL: The Government of the country?

HIS EXCELLENCY: It is not true that the Government of the country is the Governor in Council.

CAPT. THE HON. E. M. V. KENYAL: Is that an opinion or a fact?

HIS EXCELLENCY: It is a fact. Is it right?

THE HON. THE ATTORNEY GENERAL: Yes, Sir. The question was put and carried.

Clause 200.—Summoning of jurors and assessors.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 200 (2) be further amended by the insertion of the word "required" after the word "number."

That is to make it clearer.

The question was put and carried.

Clause 264.—Penalty for non-attendance of juror or assessor.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 264 (2) be amended by the insertion of the words "unless paid" after the words "such fine" where they appear at the beginning of the sub-clause.

It is necessary, Sir, because this provides for the collection of a fine which should only be provided for in the event of the fine not having been paid.

The question was put and carried.

Clause 285.—Illness of accused.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 285 be amended by the insertion of the words "in the opinion of the Court" after the word "person" where it appears in line 1 of the clause.

That is because the accused person might claim to have the right to decide whether he was incapable through illness, and such discretion should only lie with the Court and not with the individual.

THE HON. THE ATTORNEY GENERAL: That is so, Sir.

The question was put and carried.

Clause 313.—Motion in arrest of judgment.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 313 (1) be amended by the deletion of the words "is willing and has" and the substitution thereof of the words "has made and had."

This, Sir, is necessary, otherwise it would not be necessary for the Court to have made this alteration to enable the individual to move in arrest of judgment, which is a technicality, but it is necessary to state that the Court has made the alteration prior to the objection being lodged.

The question was put and carried.

Clause 337.—Requirements from persons subject to police supervision.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 337 (3) be amended by the deletion of the word "Governor" and the substitution thereof of the words "Governor in Council."

For the reason already given in a previous clause.

The question was put and carried.

Clause 383.—Expenses of jurors, assessors, witnesses, etc.

CAPT. THE HON. E. M. V. KENYAL: Your Excellency, I beg to move that clause 383 be amended by the deletion of the word "Governor" and the substitution thereof of the words "Governor in Council."

For the reasons already given.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I only wanted to raise a point: might I suggest that in future, when members of a Select Committee wish to move these small insignificant amendments, they should do so in Select Committee and not waste the time of the House subsequently. (Hear, hear.)

I beg to move, Sir, that the Criminal Procedure Code as amended be reported to Council.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY: Order, order. I have to report that the Bill entitled a Bill to make Provision for the Procedure to be followed in Criminal Cases has been reconsidered in Committee of the whole Council and reported to Council with amendments.

THIRD READING.

CRIMINAL PROCEDURE CODE.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that a Bill to make Provision for the Procedure to be followed in Criminal Cases be now read a third time and passed.

THE HON. C. F. G. DORAN: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that the Bill be read a third time and passed.

The question was put and carried.

The Bill was read a third time and passed.

SECOND READINGS.

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to move the second reading of a Bill to Amend the Interpretation and General Clauses Ordinance.

The Bill is a short one, Sir, and its objects and reasons so clearly stated on the printed paper that it is unnecessary to elaborate them very much. Shortly the position is this: Under an Order in Council the Governor has, subject to the approval of the Secretary of State, divided the Colony into Provinces and Districts. Originally the Colony was divided into Provinces and all districts were included in the Provinces and the Administrative Officer in charge of the Province was then called a Provincial Commissioner. At a subsequent date a rearrangement was made under which certain districts were not included in Provinces, and the designation of the officer in charge of such a district was altered from District Commissioner to Resident Commissioner. It was also necessary, in view of the fact that certain Administrative Officers of senior grade were in charge of areas which were not included in the

Provinces, to introduce the term Senior Commissioner. Under the reorganisation that has recently taken place every District is now included in a Province, and it is considered desirable to revert to the old title of Provincial Commissioner, which has always been thoroughly understood by everybody, and I think even to this day everybody refers colloquially to the Officer in charge of a Province as the Provincial Commissioner. At the same time, it is considered best to have one title for the Officers in charge of Districts and one title for the subordinate Officers. Now the Officers who were previously called Assistant District Commissioners are on one long grade of salary; in view of the fact also that some of them do very responsible work, such as magisterial work, it is inappropriate always to call them Assistants, and therefore the general term District Officer is introduced for that purpose, but with the reservation that the District Officer who is actually in charge of a District will always be known as the District Commissioner.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that a Bill to Amend the Interpretation and General Clauses Ordinance be read a second time.

The question was put and carried.

THE DEFENCE FORCE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of a Bill to Amend the Defence Force Ordinance, 1927.

This Bill, Sir, consists of four clauses, three of which are operative. They have no connection whatever with one another and it is very difficult to make a connected speech on the subject.

If hon. Members will refer to the Bill they will see that clause 2 (the first of the operative clauses) remedies a state of affairs which should not have existed. The Select Committee which sat on the Defence Force Bill recommended definitely that the Officer Commanding Troops who, in the event of any disturbance in the country would be responsible for the conduct of operations by all troops including the Defence Force, should be a member of the Central Defence Committee, but that provision was not made, Sir. Liaison is very important indeed, and this clause therefore provides, Sir, that both of the Central Defence Committee and of the Central Sub-Committee the Officer Commanding Troops should have membership.

Clause 3 provides, Sir, that a person who has been discharged for misconduct from any of His Majesty's armed forces shall not be eligible for membership of the Defence Force. That provision, Sir, is one which is very frequently found in Ordinances relating to military affairs. It occurs, for instance, in the King's African Rifles Ordinance, Cap. 41 of the Revised Edition. I understand, however, Sir, that since the Bill has been published there has been a certain amount of opposition to the inclusion of a provision such as this in this Bill, and I am authorised to state, Sir, that if it is the general wish of Members on the other side of this House that such a clause as that should not find its way on to the Statute Book, Government will not oppose the deletion of that clause.

Clause 4 can be dealt with equally speedily, Sir. There is a provision in the Bill—a very necessary one—that in the event of sudden and imminent danger, when reference to the Governor might entail time that could not properly be spared, the District Commissioner may mobilise the Defence Force within his district. Strangely enough, there is no corresponding provision enabling a Provincial Commissioner to mobilise the Defence Force within the Province. The objections are obvious, Sir. The District Commissioner's proclamation would enable the Defence Force to operate only within the limits of the district; if they went across the arbitrary line which divides two districts they would have to be mobilised in the districts. The Senior Commissioner, as the senior officer, is the proper person to decide a matter of grave importance such as this is, and his proclamation will enable the Defence Force to work on mobilisation throughout the whole of the Province.

I beg to move, Sir, that the Bill be read a second time.

COL. THE HON. R. WILKINSON: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that a Bill to Amend the Defence Force Ordinance, 1927, be read a second time.

THE HON. CONWAY HARVEY: Your Excellency, I intend to support all these amendments. I particularly approve of the inclusion of the Officer Commanding Troops as a member of the Central Defence Committee. We all think, Sir, it is very important indeed that there should be some definite co-ordination of the military organisation, and that connecting link is very highly desirable.

I should like to ask just one question, Your Excellency, and that is whether these proposed amendments have been considered by the Central Defence Committee and whether or not they met with the approval of that body?

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, whilst supporting the amendments in sections 2 and 4, I am very glad to hear from the hon. the Attorney General that Government are prepared to delete section 3. My reason for this, Sir, is not that I can be accused of being an upholder of lax discipline or anything of that sort—I spent twenty years of my life in perhaps one of the most strictly disciplined regiments in the army—but I feel it is unnecessary. It is not a part of the military force in the accepted sense of the term; it is not altogether comparable to the King's African Rifles Reserve, and it might actually inflict hardship which is not necessary. We are a very young country and I do feel that in a young country people who may have slipped up and made a mess of things in their young life should be given a fresh chance, and actually, Sir, to be put in the Defence Force as a humble private is not a post of great honour or privilege; it is merely the ordinary duty of every able bodied man in the Colony, and not only is it an ordinary duty it is a compulsory duty. I do hope, Sir, that the Government will delete this section.

We know, Sir, that there are cases; and I could give instances of men who have been discharged from His Majesty's service for misconduct who have subsequently proved themselves very fine people. There was a very famous case in the early days of the war when two colonels, in retreating in early August, 1914, came to the conclusion that their regiment could go no further and the only thing to do was to surrender to the enemy. A major of a cavalry regiment came along, saw the position, took charge of the whole force, put the two colonels under arrest, collected a few tin whistles, and marched the whole of their force away and they were all preserved to the army. Those two colonels, Sir, were subsequently tried by court martial and cashiered. What happened to one I do not know, but the other one determined to retrieve his name. He joined the Foreign Legion, distinguished himself in every possible way, and won the highest awards for valour and gallantry possible in that organisation, and subsequently had his honours restored to him. That one case, which is well known, Sir, Henry Newbould wrote a poem about.

There was another case which I knew very well. A non-commissioned officer in my regiment, a very fine soldier, rose to the rank of Company Quartermaster Sergeant and acting Quartermaster. Unfortunately he went in for gambling and betting, led an extravagant life and embezzled funds. He was tried by court martial, dismissed the service with ignominy, and forfeited his medals. But what happened? That man, Sir, died in 1918 Lieutenant-Colonel commanding one of the best battalions in His Majesty's army.

I feel, Sir, that this is an unnecessary thing. It might inflict hardship and I hope there are no people in this country from whom the Defence Force requires to be protected.

LT.-COL. THE HON. C. G. DURHAM: Your Excellency, I can entirely support what the last speaker has said in regard to clause 3. I hope the Government will delete it.

With regard to clause 4, Sir, I see provision is made for the civil officer to act in case Your Excellency is not handy. What would happen in the case of a riot; which could be suppressed in the matter of a few minutes, if an officer other than the District Commissioner happened to be handy on the spot? If he has got to go and report that there is a riot brewing—it may be a matter of 50 miles away and he might not find the District Commissioner there—what action shall he take? Shall he remain standing still and see the riot develop worse, or may he take action as the Defence Force officer?

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I support the deletion of the third clause.

I should like an explanation from the hon. the Attorney General in regard to some remarks he has made about the limitation to their own Province or to their own District of mobilised forces. I did not understand that reference, Sir, because it surely is not a matter of mobilised forces in a District or Province being limited in their movements or control. The point is a point of information that I should like a word about.

THE HON. THE ATTORNEY GENERAL: Your Excellency, there are three questions which I would like specifically to answer. The first is that of the hon. Member for the Lake. I am not in a position to say that the Central Defence Force Committee has approved of the second clause of the Bill, Sir, but they have been referred to and they have not disapproved, Sir. I think it is one of the cases in which silence may be taken to connote consent.

LT.-COL. THE HON. C. G. DURHAM: Might I explain that Your Excellency? The Defence Force Committee had a meeting yesterday and they then accepted.

THE HON. THE ATTORNEY GENERAL: The second point is that raised by the hon. Member for Kikuyu. I am afraid I may not have made the position sufficiently clear in regard to clause 4. This deals only with formal mobilisation. The duties of a member of the Defence Force remain unchanged

by that. In such an event as the hon. and gallant Member has just envisaged, their duty would be plain. It requires a proclamation to mobilise them, but there does remain the duty of every citizen to put down rioting, to protect the lives of others, even if the performance of that duty entails the use of force, and if he does choose to use that force, Sir, he is, under the Criminal Procedure Code, protected. That is also the answer to the point raised by the hon. and gallant Member for West Kenya. This deals only with mobilisation, Sir, and the powers of a District Commissioner, so far as mobilisation is concerned, are limited to his own district. If the Defence Force crosses the borders of that district, Sir, they are not doing the right thing, for they are not, strictly speaking, acting under a mobilisation proclamation issued by the Provincial Commissioner.

HIS EXCELLENCY: The question is that the Defence Force (Amendment) Bill be read a second time.

The question was put and carried.

THE DETENTION CAMPS (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Detention Camps, Sir, were started five years ago and they are, I think I can say, a great success, but they are not nearly such a great success as they might be for the reason that the only offences for which persons can be sent to detention camps are those set out in the Schedule. The Schedule, Sir, as it is, is really ludicrous. For instance, if one creates a disturbance in Government Road, one may be sent to a detention camp, but if you reach the Railway platform before committing a breach of the peace, there is no alternative but imprisonment. Again, if you commit a breach under the Native Liquor Ordinance, the punishment is detention, but if you commit an equally common breach under the provisions of the Abuse of Opiates Ordinance, then you have to go and join the criminals.

It is the generally expressed wish that that quite meaningless differentiation should cease, and it is therefore proposed, Sir, under this Bill—which looks much more lengthy than it really is—that all persons—who, in the opinion of the magistrate, can be adequately punished by six months imprisonment, can be sent to a detention camp. The magistrate has to take into consideration not only the nature of the crime, but the age and antecedents of the offender, and if he is then satisfied he may, for any such offence order detention in lieu of imprisonment. The effect of that I hope, Sir, will be that we shall gradually evolve a new class of prison—the prison detention camps—where the population will be young offenders, misdemeanants of the more minor offences; and where no one will be incarcerated for longer than six months.

Special provision is made in the Bill to exclude from detention camps habitual criminals, so that the young offender will have a chance of undergoing his period of detention without being almost unavoidably brought into contact with the old criminals.

I might say that the cost of detention to the Government is about one-third of the cost of imprisonment. That, I hope, will go some little way towards appeasing any opposition which might be felt on the other side of the House.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

THE HON. COSWAY HARVEY: Your Excellency, I intend to support the extended application of this measure, which, we are told, is such a conspicuous success. It is surprising though, Sir, that we hear so little of the activities and what is done in these institutions. From what I hear, Your Excellency, I think it is highly desirable that discipline should be tightened up at the outstations and that sufficient restraint at least should be imposed to satisfy the offenders that they really are undergoing punishment. In this connection I am told that one Government order was to the effect that detention camps should be enclosed by means of a fence, not necessarily unclimbable.

We heard, Sir, some very funny reports of the detainees at the Nairobi Detention Camp at a meeting a few weeks ago and I made it my business, in company with an hon. Member opposite, to make an inspection of the Nairobi Detention Camp in the Public Works Yard, and I must say that my impression of that institution was that it was an extremely well run affair, serving its functions most admirably.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE ELECTRIC POWER (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of a Bill to Amend the Electric Power Ordinance.

If there is one class of the community which richly deserves its name, Sir, it is that class known as "printers' devils." In this particular case they have excelled themselves. Apparently, in setting up a most important section in

the Revised Edition of the Laws, something happened to the forme, and the compositor took it upon himself to put it right. The result is that we have a perfectly meaningless phrase regulating a most important branch of the law—that relating to local authorities and Municipalities, and holders of licences under this Ordinance. That alone, Sir, is quite sufficient to justify the introduction of an amending Bill, but if hon. Members will look at the second part of clause 2, and also clause 4, they will see two further errors which are directly traceable to the same source.

The only portion of the Bill that remains, Sir, is clause 3. That provides, Sir, for what is commonly known as a "fringe order." The object is this, Sir. If there lies just outside the area of the licensee's sub-licence to any supplier of electric power, premises which desire to have electric power, it will—after this amendment becomes law—be competent for the Governor to permit the licensees to supply those premises, even though they might be just outside the area of their license. If there is another licensee operating in the area in which the premises are situated, the Bill provides that the local authority within whose district the premises are situated shall decide as to which of the licensees shall be consulted. It is, I think, an obviously desirable principle. Many buildings will be opened in the course of time just on the fringe of a Municipality and there is no reason why they should not have the advantage of electric power.

THE HON. T. FITZGERALD (POSTMASTER GENERAL): Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE LOCAL GOVERNMENT (DISTRICT COUNCILS) (AMENDMENT) BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, this is a small amending Bill, which is largely concerned with filling up a few holes in the principal Ordinance, holes which experience has shown to exist. Much inconvenience I gather has been experienced by Provincial Commissioners in being bound to attend meetings of district councils. The position has been held to be, so far as district councils are concerned, on all fours with the position as regards native councils, and it is suggested now that that they should have the right to attend and speak, but that they should not be bound to take the chair.

There is a further amendment in respect of the jurisdiction of district councils. It has been found that unless the roads and so on are vested actually in the council they have no right to sue individuals in the courts for damage done to such roads.

Finally, Sir, there is another point in respect of public decency and control of native dances. In native areas District Commissioners have authority and in local government areas the local district council has, but there is no provision for such areas as non-native areas which are not subjected to constituted local government. It is therefore proposed to give the district commissioner jurisdiction over such offences in those areas.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

*Council adjourned to 10 a.m. on Monday,
14th April, 1930.*

MONDAY, 14th APRIL, 1930.

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Monday, 14th April, 1930, His Excellency the Governor (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of 11th April, 1930, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table:—

By THE HON. THE COLONIAL SECRETARY (MR. H. M. M. MOORE):

Report of Inquiry into Organisation of Administrative Offices.

By THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR, K.C.):

Registrar General's Annual Report, 1929.

MOTIONS.

KILILESHWA GRAZING RIGHTS.

THE HON. F. A. BENISTER: Your Excellency, I beg to move the following motion:—

"That a Committee of Inquiry be appointed immediately to investigate—

"(1) The object of issuing Gazette Notice No. 1368, dated 11th October, 1929;

"(2) The reasons for subsequent action taken thereon;

"(3) The effect of such action."

It is with great pleasure that I propose to move a motion such as this, which I feel confident will receive the approval of both sides of the House. At the same time, Sir, I am hoping at the moment that Government has not made up its mind to accept the motion, because I would rather convert them by argument than by their studying the question beforehand.

This happens to be, Sir, what one would call a dispute between two soldiers, and one knows that when soldiers disagree it is very difficult to find a way out of their troubles. One, I find, served under Her Majesty Queen Victoria in South Africa, and the other gained his majority in the front trenches of the Pay Offices in Nairobi. It has been said, Sir, that I am criticising a Government Department, but that is not fair, Sir, because I am not doing anything of the kind: I am merely trying to bring it before this House in order to get a thorough examination of all the points by a Committee which will go into all the details and, I believe, solve the problem as between these two people and the particular stretch of land involved.

It has also been said, Sir, that the Government have nothing to fear—I have never suggested that they have—because they are on a good wicket. I do not know if the wicket would be described as a batter's or a bowler's wicket; the only thing I feel at the moment is that I am in first. I hope the Government will bowl straight, and, as I have the privilege of following on, I hope to have a second chance of controverting any arguments that are brought forward.

Now, Sir, to get to the actual facts of the position: It appears that there were 700 odd acres of land situated at a place called Kileleshwa, and up to 1926 or 1927 this land was used by all parties—natives as well as Europeans—for grazing; in fact, it appears to have been a common grazing ground. All of a sudden, the users of that ground were told that they could no longer use it as a common grazing ground—it had been let to one party. Now, Sir, this is the only mistake that I can trace the Government have made. In every other point the Government are right. In turning these people off it appears—I cannot trace any notice given publicly by the Government in the Gazette or a notice to the users by the Government—the whole 700 acres were let to one man at Sh. 20 per month, and the individual who obtained that grazing lease and acquired the land off his opponents told them that now the land was his and they could get off. It seems to me that is the only actual mistake that the Government have made. I will show you how they thought it was a mistake, and how the Head of the Department felt it was a mistake, because immediately the unsettled parties appealed to the Head of the Department he at once saw that everything was not right.

Then I come to the object of issuing Gazette Notice No. 1368. The object of that notice was, Sir—and it is quite plain—to rectify what may be termed an injustice to the individuals who, by a mistake—there is nothing wilful about it at all, Sir—had been deprived of the privilege of grazing cattle on that land. How do I prove that was the reason?

By the fact, Sir, that, as you will see from the map, the Land Office or the Survey Office were told to survey the land so that the three farmers could obtain one access to the separate portions required, but a greater idea must have crept into the minds of the Survey Office, namely, that water must necessarily be on each of the three portions or else one would have been of no use. So you see, Sir—it is very plainly marked—it was quite obvious that the Land Minister decided that it was a just and reasonable division to allow the three people concerned to have an equal portion of ground, and, as in the native land law, as far as possible of equal value. This was done, Sir, and done most cleverly. The division of the land, if you look at the map, it must be admitted must have been done by a most experienced and clever surveyor, because there is no question about it that neither the one nor the other could complain of the land which had been allotted for the purpose of satisfying his legitimate demands.

There you have, Sir, the object. Quite clearly the object was to remedy an error which had crept in, not wilfully—the object was to remedy that error and give three people an equal chance to the 700 acres in the proportions of 234, 233 and 237.

Now, Sir, we come to the reasons for the subsequent action. If you will look at the notice you will see that there is a very particular clause there, No. (f)—no, (j): "The highest or any tender will not necessarily be accepted." I think it will be admitted, Sir, that we all know that in cases of this kind that clause is definitely put in in order to protect the poorer man. As you know, Sir, a large corporation can and must to-day in other countries—not in this—overbid a poor man, and so squeeze him out. It is clear that it was not in the Commissioner of Land's mind that one man could obtain control of the whole three plots. However, the individuals who required what is called No. 1 plot and No. 2 plot, which were necessary for the development of their farms, went to the Land Office, and spoke to a gentleman there, saying: "We have no idea what the value of the land is, or what you require for it. Would you give us some idea of the figure which the Government would accept? At the present moment, Sh. 20 is being paid for the whole 700 acres. Do you think that if we offered Sh. 20 ourselves, which would give the Government three times the amount of money they have been receiving, would that be acceptable?" A gentleman, whose initial begins with "M"—not the present Commissioner of Lands

HIS EXCELLENCY: Order, order. If the hon. Member wishes to refer to an officer of the Government, he should name him, not refer to "M" by initials.

THE HON. F. A. BEMISTER : I beg your pardon, Sir—the name is "Mortimer." He, in all fairness, said, "Yes, I consider that would be a fair deal for the Government." No. 1 and No. 2 applied and put in that figure. They only applied for their respective portions.—But another gentleman, the gentleman who had already had the original 700 acres, applied for all the three, and the Government accepted his tender. I do not know what figure it was, but of course it was more—I presume it was more, because the Government are business men, and it is obvious they would get more. But you see, Sir, that object of his in applying for all three showed that he wanted to get away from the Commissioner of Land's desire to allot portions requisite for the development of the three individuals. By that means, Sir, he has destroyed the work of the Land Department—or the Survey Department; the money which has been expended on the survey has been lost; it is of no use because, had it been the intention of the Government to put it all in one, it would not have wasted time and money in dividing it. Now, Sir, you have the object and you have the reason, and now I want to point out the effect of it.

By this division of land in this way, by letting all this land in this way, a British subject is being hemmed in and gradually deprived of the proper cultivation and maintenance of his crops. He has a dairy farm, and simply by an act of God in giving heavy rains during the last few months he has been able to maintain his cattle without what we call "storm feeding." At the same time, Sir, I think it will be appreciated by you that it is not the policy of Government to allow itself to be tricked in this way.—Its intention was perfectly clear; its intention was to give three men an equal right to land which would enable them to develop; it never contemplated for one moment the application of one man for the whole area, and I contend, Sir, if the Government will only have an inquiry, it can be very clearly shown. There need be no need for any fuss or expense. Give it over to the Land Board; let these men hear both sides of the question; let them study, not only the letter, in which, Sir, you are right—absolutely, in the letter of the law you are right—those men, Sir, will inquire into every detail, and will admit the spirit of the law; and certainly, Sir, I have never known that the spirit of the law prevents an Englishman from earning his living.

LT.-COL. THE HON. C. G. DURHAM : Your Excellency, I beg to second this motion, if only to give Government an opportunity of vindicating its officials. Too frequently things are said about departments, Sir, and the Heads have no means publicly of denying any accusation brought against them by

people who honestly believe that they have a grievance. I hope the Government will acquiesce in the appointment of this Committee.

HIS EXCELLENCY : The question is :—

"That a Committee of Inquiry be appointed immediately to investigate—

- "(1) The object of issuing Gazette Notice No. 1368, dated 11th October, 1929;
- "(2) The reasons for subsequent action thereon;
- "(3) The effect of such action."

CAPT. THE HON. E. M. V. KENYALY : Your Excellency, I support the motion because in the relation of the history of this transaction one sees a contradiction of purpose in the minds of the Land Department, and I think, Sir, that that was not intended; and Government can accept this motion and take some action on the report of the Committee which will rectify the position. I am not concerned with the facts but with the principle. Government is undoubtedly, it may be said, responsible for getting the greatest value for a State asset, and Government was therefore right in accepting the highest tender. But, Sir, in the exercise of the responsibility for getting the greatest payment for an asset of the State, Government must pay some attention to the surrounding circumstances, and I think, in this event, the surrounding circumstances are such as will dominate or superimpose a theory other than that theory—and a better theory—and that is a businesslike acceptance of principles.

Apparently the sub-division must have cost some money, and I suggest that the difference in the tenders for the temporary question of the leasing of this land should bear some definite relationship to the cost of the work done. I do not know what the cost of the work done amounted to, but I suggest that if the subsequent actions of Government in accepting a single tender rather than three tenders is considered in relationship to the cost of the work done in survey, and in relationship also to Government's original intention to maintain three persons—possibly with the idea of preventing any monopoly in dairy supplies to Nairobi, or possibly Government was concerned with the cheapness of supply—then I think Government can remedy this position, either now or at some later date.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. H. T. MARTIN) : Your Excellency, the hon. mover of this motion expressed the hope

that Government had not made up its mind in advance to accept the motion; I can assure him that he will not be disappointed.

Now, Sir, he also said that Government had made a mistake in one point only, and that at the beginning of the proceedings—the point at which, as I understood him, it decided to put the matter out to tender. I take it his meaning was that they discovered they had made a mistake in the first place, and then went a long way about it to correct that mistake; but I was not quite clear as to the exact bearing of his argument. His main point, so far as I understand it, is this: that having given the former month to month agreement holder an agreement in disturbance of other peoples' rights, they then determined to put the matter right by dividing up the land and allowing three particular parties each to have a plot. That being the intention of Government, I cannot for the life of me conceive why it should have been put out to tender. The whole object of putting things out to tender is to publish an admission that there is a demand in a number of quarters for land, and to call for and inspect the details of such demand. Therefore I think there can have been no question of any preconceived idea being in the minds of Government as to who was to be allotted the land.

The details of this small transaction are quite simple; the details of its history. As the hon. mover said, Kileleshwa was an area of about 700 acres, overrun with everybody's cattle and goats and so on, natives and non-natives, and it was considered that when a definite application—and only one definite application was put in for temporary month-to-month rights—was put in it would be in everybody's interests to have somebody there who would see that the place was properly looked after and grazed. Well, Sir, that one application was granted in March, 1928, and it was definitely only a month-to-month agreement. Now, Sir, it was not, I think, for over a year—considerably over a year—until any dispute was brought to the notice of Government as to any possible rival having his customary grazing taken away from him, and I do suggest that if there was any individual genuinely suffering hardship during that period he could have brought up his grievance before. It is true, Sir, that this month-to-month agreement was made and was subsequently cancelled on the determination of Government to put the matter out to tender. The reason for putting the matter out to tender was perfectly simple. It is true that there were other applicants in the field—there was, I think, at least one, and later two. Well, Sir, I think it was very natural for Government to say to itself that if there is going to be any competition of this sort it should not be a matter which should have to be investigated every month; that is to say, at the termination of each

month's agreement. The Government therefore decided to vary the terms and make a longer agreement, and chose the opportunity of giving everybody—it might be a dozen people, it might be only the existing agreement-holder—a chance. The question of health, of the medical officer's opinion of health, was naturally one which became of importance, because this land would be required for grazing cattle used for the milk supply of Nairobi. In making up the terms therefore it was laid down that the applicant, if he was to be successful, would have to be an already registered dairyman. The terms were published and the tenders were received. There was only one qualified applicant, and he put in for all three plots. It was the same gentleman who, in the past, had been grazing for the past eighteen months on these three plots.

A point has been made of the expense of the survey. I am afraid I have not got the exact figures of what that small survey may have cost, but I think I can both say that it must have been extremely small—the departmental instructions were that surveys should be made so long as no considerable expense was entailed—and further I think I might say that this land will obviously not always remain grazing land as it is at present, because it is in a residential area near the centre of Nairobi, and any work done and any beacons put in for this particular purpose in this area will obviously be of value and can be used for future purposes.

Reference was made, Sir, to some conversation with Mr. Mortimer of the Department on the subject of a possible fair price. I think I have no need—I shall no doubt be corrected if I am wrong—I think there is no need on my part to misinterpret in any way the hon. mover's reference there. I imagine that no imputation of any sort was implied or meant, and I will not therefore refer to the matter any more.

THE HON. F. A. BEMISTER: Certainly not.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: I should like to mention, Sir, finally, that the amount of the tender which was accepted by Government was two-and-a-half times, for each block, the amount tendered by anybody else. None of the other tenderers, as I said before, were qualified according to the terms of the notice published.

HIS EXCELLENCY: Does the hon. Member wish to exercise his right of reply?

THE HON. F. A. BEMISTER: No, Sir.

HIS EXCELLENCY: The question is:—

"That a Committee of Inquiry be appointed immediately to investigate—

"(1) The object of issuing Gazette Notice No. 1368, dated 11th October, 1929;

"(2) The reasons for subsequent action thereon;

"(3) The effect of such action."

The question was put and lost.

LAND CLAIM BY THE WHITE SISTERS OF MANGU.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I beg to move:—

"That a Select Committee of this Council be appointed to inquire into and report on the case of the land claim by the White Sisters at Mangu in the Thika District."

I am very sorry that I have got to move this resolution, because the need for it should never have arisen if administrative action had been taken some time ago, and the whole question had been settled straight away.

However, Sir, as the administration of the native areas did not consider they were prepared to do that, I am moving this motion as the next best.

For the information of this Council, Sir, I must just go through the general history of this case, in which, I think, there is only one point, as far as I know, in any dispute. In the year 1907, Sir, the White Sisters bought from Miss Ina Harries 5,000 acres of land leasehold in the Thika District. In April, 1912, an area of 1,005 acres of the same estate was converted into freehold, the remaining 4,000 acres coming under a renewed lease for the residue of the original 99 years, that is to say, for 93 years. In 1912, the District Commissioner of Kyambu had the adjoining Native Reserve demarcated, but without employing a surveyor. The boundaries of the Native Reserve were marked by the digging of a trench. During 1928, a surveyor was employed by the District Commissioner, when the definite boundaries of the Native Reserve were settled on. It was then discovered that the District Commissioner in 1912 had made a definite mistake. He had cut off 80 acres from the holding of these White Sisters. Now, Sir, it also emerged then that in the meantime the natives had removed the boundary marks which were originally there, and that, Sir, is admitted by some of the natives themselves. You may say, Sir, that the White Sisters should have taken more steps in the meantime to have seen about this, but you must remember that they are not like the ordinary farming settler.

By the nature of their profession they are not well versed in worldly things, and apparently they did not do so until the mistake was discovered.

Now, Sir, when this happened in 1928 they then asked the District Commissioner to restore this land to them and to move the natives off; though they were quite prepared, if the natives made application to them, to consider any means of allowing some of them anyhow to remain on some of the land, in the form of squatters or otherwise.

They were then informed by the Administrative Officer that, owing to the mistake made in 1912, and its not having been rectified for all these years, therefore they had lost the right to that land. That position they did not accept. Last year, Sir—last June or July I think it was—the next phase came on when a letter appeared in the Press from a man named Fitzgerald, which I will read out, Sir; the first part of the letter is about something else:—

"As I am now properly on the rampage, may I refer to a second—what I choose to term—land scandal, which obtains at Makwa, near Chania. It would appear that here the White Sisters Catholic Mission has callously encroached on land in the Native Reserve which, according to the information I have received, is two miles in length and one in breadth; which is detrimentally affecting about 150 people."

It ends up with two more paragraphs, of which the following is the last:—

"These two cases, I may say, Sir, are only two among many of land belonging to Africans being pilfered in the Colony.—Yours, etc., **BERNARD FITZGERALD.**"

Father Bernhardt, of the Catholic Mission, wrote to this gentleman asking him to withdraw his very untrue statements, and a certain amount of correspondence ensued, but the only result was that after some months Mr. Fitzgerald wished Father Bernhardt to go and have an interview with the President and Secretary of the Kikuyu Central Association, on whose behalf undoubtedly he wrote that letter and was acting. Father Bernhardt quite rightly refused to have anything to do with these people; as it was not their business.

As far as I have gone, Sir, I do not think there is any dispute on the facts. The only dispute is as to whether any natives were on that land for a long time. I will read you, Sir, a letter from a native named Lazaro Mundia:

8th November, 1929.

P.O. Thika.

G.M.S. Kihumbuini.

"To the Father in-charge Bernhardt.

I beg to respectfully to you, regarding interview for the our Lands (Githaka at Makwa Location No. 8. I have had seen that your letter which you sent to Mr. Captain D. Fitzgerald about that land the case of it not for him. That Githaka land it is our owner.—If you wish to know all about it you must ask us, Because you said that the White Sister land you bought from open market from the Harries and Corvies during 1907. After that I mean to say that since the God creature the world we was continue on it and not move on it. We wish to why you left Mangu Location and you said Makwa it is your land. We cannot believe you for that you said.—Reply waiting. LAZARO MUNDIA."

That is the native side, Sir.—On the other side, I have here a copy of an affidavit signed by a man who was a late Father:—

" I, Stanislas Novicki, being of Polish nationality, and belonging to the Missionary Society called ' The Congregation of the Holy Ghost,' and known as ' Brother Josephat,' declare on oath as follows:—

That I, Brother Josephat, have been residing at the Catholic Mission, Mangu, Thika District, Kenya Colony, during the years 1906, 1907, 1908, putting up buildings at the Fathers' Mission and at the Convent of the White Sisters:

That I know the property belonging to the White Sisters; that I especially know the plot known as ' the 80 acres ' disputed by the natives:

That during the years 1906, 1907, 1908, no single native did live on the said 80 acres:

That all the above written is true to the full of my knowledge.

In witness thereof I put my signature hereunto this day of July, 1929."

In addition to that, Sir, there are three of the White Sisters who have signed a sworn affidavit to the effect that up to 1916 no natives have settled on those 80 acres. There was a chief, Mochegi by name, living near by—whom the Sisters visited frequently and nursed in his last illness before he died in 1916. Those Sisters used to go often to the disputed area, and knew it well, and, as I have said, Sir, they have taken the trouble to swear an affidavit that no natives were settled on the 80 acres referred to, either in 1907 or in 1912, nor up to 1916.

Now, Sir, those are the facts of the case, and as I understand that the Administration are not prepared to act and tell the natives that this land is not theirs, that they are trespassers on it, that they must go back to the land which is their land, which after all, Sir, we have spent some years recently, only culminating last week, in deciding exactly what their lands were, what were the boundaries and what rights they had in it. It does seem to me unfortunate that the Government, having taken some time ago the simple method of dealing with the question in that way, is not now prepared to do so to-day, so I move the appointment of this Select Committee. Sir, so that all the facts of the case can be thrashed out on the spot. As I understand it, the only argument against the White Sisters' claim is the one based on what is known as " adverse occupation." It does seem a great pity in these days, when you yourself, Sir, have spoken out about discipline in the Native Reserves, that things like this should arise, where the natives are egged on by this political organism to try and get possession of land which was not their originally; and cases like this, and cases like the case we had some time ago—known as the Pollitt Clark case—where the natives see the result is the turning out of the Wazungu from the land—cannot have anything but a very bad effect on the discipline amongst the native people. It is a fact that the natives laugh at the Administration, and come to believe that they are afraid to use their rights.

Part of the religious service of the church to which many of us belong is a service known as the Communion Service, and I remember one thing in that was: " Cursed be he who removeth his neighbour's landmark." It does not seem that this is the policy of Government at all. They seem to say: " If you steal land for long enough, then you have a right to keep the stolen property," and I do think it is a thousand pities that Government do not settle these things by direct administrative action instead of, as I understand it, wishing to push it off on to some legal point, and so putting the onus on these unfortunate Sisters to have to go to law on these cases. Only recently, Sir, in a case at home, in reviewing an appeal, the learned judge, Lord Duncedin, in his judgment spoke out very strongly and said he thought it was quite time the Crown realised that the Crown could be wrong, and, Sir, may I suggest the same thing to Government here: Government can be wrong, and it is their duty to see that every justice is done to the people of this country, of whatever race they are, even white people.

What happens, Sir, in other cases where white farmers are affected? In that very area—not very many miles beyond—there are two cases I know of. One of them, a compound growing coffee found in the course of their operations

that they had ploughed up over the boundary. The white Kikuyu watched them, saw them plough it, saw them harrow it, saw them make a good seed bed; and as soon as it was ready for planting they said: "You have come over the boundary; that is our land." Well, Sir, this company went into the case and got proper surveyors to see about it, and they found that it was not their land; they had gone over. They immediately, of course, handed back the land to the Native Reserve. I submit that if that is done by white farmers, it ought to be done when natives take land away from white people.

Only the other day, another incident occurred in the same neighbourhood, not very far from this area. There were some squatter farmers who were apparently squatting on Crown land. The administrative officer, when he found this out, immediately moved them off the Crown land on to the white farm, which was quite correct. It does seem that there is one law for the natives and another for the white man, and I am very sorry to hear the Government are not prepared to accept this resolution, and I do trust that, after the plain facts I have put before this House, Government will reconsider their action and will accept my motion.

LT.-COL. THE HON. C. G. DURHAM: Your Excellency, I beg to second this motion. I have thoroughly studied the case made out by the White Sisters, and it seems to me perfectly justified. I have had no opportunity of studying the counter-claim, but I hope, Sir, that the Government will make a definite and an early settlement.

HIS EXCELLENCY: The question is:—

"That a Select Committee of this Council be appointed to inquire into and report on the case of the land claim by the White Sisters at Mangu in the Thika District."

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I do not think there is a great deal further to be said; we have had the facts given to us. It is stated that survey marks were removed by the natives. If that is so, then Government has lamentably failed in its duty towards the country at large if it has not taken action against these people, either individually or collectively.

I feel, Sir, that this is a matter which should have been, and still can be, dealt with by administrative action. Government must recognise the sanctity of contracts entered into, and must not deny its covenants. I feel, Sir, that Government is not in a position to deny the validity of the contract

originally entered into. The policy, which at present appears to actuate the administration of this country, of government by pillage, instead of government based on judgment and equity to all persons, should be reviewed. After all, that is the best of British principles, and British principles should not be subverted to the expediency of the moment. We have seen responsible officials making statements which attempt to justify the continuance of administration by expediency in regard to the Mangu-Tana Scheme.

HIS EXCELLENCY: Order, order. The hon. and gallant Member must keep to the motion on the Order Paper.

CAPT. THE HON. E. M. V. KENEALY: Since I shall not be allowed to quote an illustration of Government's activities in this matter in support of my theory, I will close by appealing to Government to revert to government according to the principles which the British Empire has been controlled by in the past.

THE HON. THE ATTORNEY GENERAL: Your Excellency, one thing is clear from the speeches of the three hon. Members on the other side of the House in this matter is that there is a dispute between the White Sisterhood and certain natives who are occupying land in that vicinity, and it is purely and simply because there is that dispute that Government is unable to accept this motion.

The motion, I would remind hon. Members, Sir, is that the question be referred to a Select Committee of this Council. The reason for opposition, Sir, is a clear and simple one. The facts have been correctly stated, the facts have been admirably and moderately and temperately stated, but there does emerge that one all-important fact that there is a dispute as to the rights over this land, and in view of that fact, Sir, how can it conceivably be argued that a Select Committee of this Council is the proper body to decide on such a dispute as that?

The White Sisters, Sir, held their land by a lease under the 1903 Crown Lands Ordinance. That Ordinance, Sir, specifically provides a certain number of implied covenants. One of those implied covenants, Sir—I am quoting from section 16 (2) of the statute—is to refer all disputes between the lessee, his servant or agent, and the natives in villages or settlements in or near the land leased, to the Collector of the District. The Act further provides that if there are native settlements or villages, the area of those native settlements or villages may still be leased, but that area is excluded for practical purposes from the total area demised under the lease, and if there are disputes between the lessees of land

and natives occupying the land within or near the area leased, they shall be referred to the Collector, with a right of appeal to the Sub-Commissioner. The 1915 Crown Lands Ordinance, Sir which repealed the 1902 Act, made similar provision in section 86. Questions as to occupational rights of natives in or near an area leased are a matter for adjudication by the Senior Commissioner of the Province, and if the lessee of the land or the natives have dissatisfaction with the decision of the Senior Commissioner they may appeal to the Governor.

I am very grateful to the hon. and gallant Member for Kenya, with whom on this occasion I find myself in complete agreement, for the statement that this is a matter which still could be dealt with by administrative action. I am quite at one with him in saying that what we are all anxious to assure is that justice and equity should be done to all persons, but I find it difficult to conceive of a more unsuitable body to decide any matter such as this, where there is a direct conflict of evidence, than a Select Committee of this Council. Equally, Sir, I find it difficult to find justification for what would necessarily follow from the appointment of such a Select Committee, the ouster of the jurisdiction of the Senior Commissioner of the Province, or the exercise of such jurisdiction, from which there is a right of appeal to the Governor. This is a matter of dispute, a matter of the dispute of facts. The Noble Lord who moved the motion mentioned that he had four affidavits from lay brethren and members of the White Sisterhood. I have copies of those affidavits, Sir, but in addition I have no fewer than nineteen affidavits from natives making directly opposite statements. It requires a judicial body, it requires a man who is vested with judicial powers, to adjudicate on evidence such as that. The advantage of employing a person with such judicial functions, Sir, is that the finding which he makes can be made operative, can be enforced. I know of no means, Sir, of enforcing the opinion of a Select Committee of this Council except by legislation, and I have heard no argument this morning suggesting that special legislation is called for or warranted in the circumstances which are set out.

I have no intention of discussing the merits of the case. The whole of my argument, Sir, is that the merits do not enter into the matter at this stage at all. I am authorised, Sir, to state that the Senior Commissioner of the Province, who has for a considerable period been making every endeavour to effect an amicable settlement of this matter, has been instructed to adjudicate upon the matter in accordance with the terms of the Crown Lands legislation of the Colony; and for these reasons, Sir, the Government is not able to accept this motion.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I knew nothing about the facts of this matter until this morning, and the facts that I have gleaned have come to me in the last half-hour.

The hon. the Attorney General has stated that there is a dispute, and he has based his general argument on the fact that as there is a dispute and the machinery is laid down in the Ordinance, that machinery could not be overridden by a Select Committee of this Council, and the ordinary machinery should be utilised. That is probably correct, but what I am anxious to ascertain is what is the dispute; is it disputed that this land in question was part of the original lease, or is the only dispute as to whether, over the last eighteen years, natives have been living on this land and have therefore obtained a right to it by some kind of prescription? If that is the dispute, my suggestion is that it is no dispute, and it is a scandalous thing ever to raise that point; if, on the other hand, there is a dispute as to whether this area was ever part of the White Sisters' property, then I agree the matter should go to the Senior Commissioner, and evidence should be taken on that particular point. But is it or is it not the policy of Government or the Senior Commissioner to base a decision, or, if an appeal is taken, for the Governor to base his decision, on the question as to—even presuming that it was the White Sisters' land originally—whether it has now been lost to them by prescription or adverse occupation? I do not want to quote the names of people, especially in this case where the matter is under consideration and has not reached agreement, but there was a case exactly the reverse way round where, owing to a mistake made in the original grant, a mistake made by the surveyor on the deed plan—it was only discovered after some fifteen years—a European's house and tennis court were found to be encroaching on a Native Reserve. Did it go to the Collector to decide as to whether there was any question of adverse occupation or prescription? No, on action was immediately filed, owing to insistence by the Native Affairs Department, for forfeiture, and that action has now been temporarily discontinued owing to the good offices of the hon. the Attorney General and the Commissioner for Local Government, Lands and Settlement. No question was ever suggested there about adverse occupation, and I would ask the hon. the Chief Native Commissioner, or anyone else who knows where the dispute in this question is, whether it is as to the original land being part of the White Sisters' household or whether the only dispute is the question of adverse occupation.

THE HON. THE CHIEF NATIVE COMMISSIONER (MR. G. V. MAXWELL): Your Excellency, as I know the case there may be various forns of dispute, but because, as has been stated, it is a matter that must be judicially dealt with

LT.-COL. THE HON. LORD FRANCIS SCOTT: Will you please speak more loudly?

HIS EXCELLENCY: Will the hon. Member speak up.

THE HON. THE CHIEF NATIVE COMMISSIONER: This is an awful room to speak in.

because it is a matter that must be judicially decided, I do not think I ought to go very deeply into the merits of the case, but as the hon. Member who has just spoken wants to know what the form of dispute is, I think I can tell him so far as I know. As the hon. the Attorney General has explained, every agricultural lease—and this is one—is subject, under the Crown Lands Ordinance, to very specific covenants. One of those covenants is that where there is native settlement on the land the area occupied by natives is deemed to be excluded from the lease, and is not part of the land demised. So far as I know, it was originally claimed by the natives that they had native settlement on that land, and that this land on which they were settled was not part of the land demised. I think we must assume that when the Collector of the District went and made a trench in 1912 he was acting under the law which required him to go and define what was the native settlement, and therefore excluded from the lease. I think that must be assumed unless there is evidence to the contrary. That is a question which will have to be taken into consideration by the Provincial Commissioner if and when he examines into this question.

There is a further point which I have to make, which will probably have to come before a court of law, and that is this: according to the affidavits which were read out, it is not denied that there has been native settlement on that land since 1916. Now the fact is that this native or European or any other settlement does enter into the case. It is adverse occupation. If there has been adverse occupation since 1916, the Indian Limitation and Prescription Act must apply whereby adverse occupation for twelve years, so far as I know, constitutes a title.

REV. CANON THE HON. H. LEANEY: Your Excellency, like the hon. and gallant Member for Nairobi South, I have not heard of this case at all before this morning. My own feelings are that if, as I understand from the Noble Lord, the

White Sisters have undoubtedly lost land which they deliberately bought from another European, it belongs to them; and I most certainly hope they will get it back. But I should like to say, Sir, that I agree with the hon. the Attorney General and the hon. Member for Kenya that the Administration should deal with this thing. If we had a Select Committee we should probably have to ask them to be the chief evidence; I have enough faith in the Administration to be quite sure that they will be right. Therefore I am afraid I shall have to vote against the motion.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, the hon. the Attorney General in his reply said that Government could not accept this motion because it should be dealt with by the proper administrative machinery. If I may remind you, Sir, at the opening of my speech I said that I considered it should have been dealt with in that manner some time ago, but as it had not been dealt with in that manner I brought up this motion as the next best method. If the Administration are going to deal with this matter, which they frequently refused to deal with during all this time, I would be quite satisfied, Sir. But so far they have done nothing. The hon. the Attorney General said that the Provincial Commissioner of Kikuyu had been trying to make every endeavour to find a settlement; only yesterday I asked the Reverend Father, who is the chief person who is interested in this case, and he told me he had never seen the Provincial Commissioner, and had no communication from him whatsoever. All he had was from the District Commissioner, who told him he had forfeited his right to the land. I am sorry the Provincial Commissioner is not here to-day, as probably he could have given us some useful information on the subject, as the complaint is that this happened through an administrative mistake.

I cannot accept the hon. the Chief Native Commissioner's suppositions; he has no right to suppose that there is any evidence at all that this was excluded because natives were on it. All the evidence is to the contrary in 1916, because I am sorry to say that I am more prepared to believe the affidavits of four really good and holy people, whose lives are given up to good works and whose whole outlook is that of truth, than those of any number of natives who are trying to get this land. (Hear, hear.)

One other point, Sir. The hon. the Chief Native Commissioner says that it is admitted the natives have been there since 1916. It is not admitted. What is contended, Sir, is that up to 1916 there were no natives on that land. When the natives began to come after that is a question of dispute, on which I am not prepared to give evidence; but,

Sir, supposing 1917 was the first year in which they admit any natives went on, they protested in 1928, which is only a period of 11 years, and I believe that under that particular Ordinance which has been named the minimum is twelve years.

If, Sir, I can have an assurance from Government that this matter is going to be dealt with properly, and thoroughly investigated by the Provincial Commissioner under the powers which he has got, then I shall be satisfied, but I do want something done, and I do want justice meted out to these unfortunate people, who have been the victims of a very hard time.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I am prepared to give the Noble Lord that assurance.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, with the leave of Council, I beg to withdraw the motion.

HIS EXCELLENCY: By leave of Council the motion is withdrawn.

Council adjourned for ten minutes.

On resumption:

LOAN WORKS EXPENDITURE.

HIS EXCELLENCY: Is the hon. Member for Plateau South not in his place to-day?

COL. THE HON. W. K. TUCKER: Your Excellency, I understood from the Colonial Secretary, through him, that probably you, Sir, would allow me to sponsor this motion.

HIS EXCELLENCY: Very well.

COL. THE HON. W. K. TUCKER: Your Excellency, first of all, let me thank you, Sir, for allowing me to take charge of this motion. Precisely the line of argument that the hon. Member who is absent intended to take I do not know, but I do know this, that hon. Members on this side of the House are filled with serious misgivings with regard to the present financial system of controlling these loan works. They feel that the theoretical basis on which the work was to be controlled some years ago, when the system was introduced, has broken down, at all events in so far as maintaining the confidence of Elected Members is concerned, and they do feel, Sir, that immediate steps should be taken to create the sort of improvement they have in mind.

In my remarks, Sir, I am not criticising the Loan Works staff, who, in my experience, are a very capable and useful lot of men; what I do criticise is the system.

I would like, first of all, Sir, to refer to the Loan Works Committee. It was my duty, Sir, to sit on that Committee for several months during last year, and I am bound to say that, despite the very capable chairmanship of the hon. the Colonial Secretary, there was always an atmosphere of not knowing precisely what our powers were. To my mind the powers of that Committee, a very important Committee, have not been properly defined, and, as a consequence, in my judgment, a great deal of unnecessary time has been spent by that Committee in arguing whether or not they were entitled to deal with this, that or other items without reference to Council. The nearest definition I got to their powers, Sir, was when a motion was introduced into this House on July 16th of last year in regard to certain specific items, when the hon. the Colonial Secretary, in the minds of those on this side of the House, by referring to trivial items and excesses, reassured us to some extent that things of consequence would, at the earliest possible opportunity, be brought to the notice of this House.

Now, Sir, whatever governments do, they are always criticised, but I feel that Government is asking for criticism if they intend to perpetuate in the present form this Seasonal Return of Allocations, and so on. I think I must illustrate that, Sir, by one particular item. I would ask you to visualise, Sir, a citizen at Mombasa—and, after all, what I am going to say, Sir, is not entirely hypothetical. On page 90, he reads in the second column that a native general hospital has been voted to Mombasa at a cost of £14,350. He has not to look round Mombasa for very long to see that not a brick has been laid. There is no hospital there, although this item has been on the Schedule for a very long time. He then proceeds to the next column, only to find that that £5,000 of that was reallocated to Eldoret, and smaller items to Kilifi and Teita; and then no less a sum than £4,395 has been taken away in respect of establishment charges. Establishment charges in respect of what? Certainly, not one brick has been laid at Mombasa.

It is perfectly true, Sir, as I understand it, that the hon. the Director of Medical and Sanitary Services has modified and amplified his idea of hospitals down there to a point whereby it is not intended to proceed with this particular scheme, but that is not known to the man I visualise, and I believe, Sir, that this document—and all the others—is intended to cater for the information of people outside this House as well as those of us inside it.

If you link this item up with another one on page 36, where, years ago, £80,000 was allocated to new quarters and lines for the King's African Rifles, and if, following the same procedure as you had in Mombasa, you examine the other columns, you will find that no less than fourteen re-allocations occurred from time to time, with the result that, of the £80,000, £197 only remains, and, as I understand it again, it has been within the knowledge of Government for a very long time that neither the King's African Rifles lines nor the native hospital at Mombasa are to be proceeded with.

Now, Sir, to my mind that raises such considerations as this: First of all, is not the system at fault that allows items like this to remain on the Schedule long after it is known to Government and everyone else that they are not to be proceeded with? Is it not as easy to take items off the Loan Works Schedule as it is to put them on? I should have thought it a great deal easier. The second consideration which occurs to me is this: that this Loan Works Scheme—which I am not criticising this morning—that this Loan Works Scheme might not function but for this large reservoir into which they constantly dip in order to keep their accounts straight and their estimates within the limits of estimated expenditure. But if that is so, Sir, I think we on this side of the House might be disposed to agree to the creation of such a reserve fund, if it were required, with the one qualification that the balance was not unduly disturbed between the votes of that scheme as a whole and the private enterprise which it has so seriously dispossessed. It is worth noting, Sir, in regard to that point which I have made, that on page 16 there is such an actual reserve created in the case of housing for Government servants, where an item of £2,143 is shown under "Reserve for possible excesses." If it can be done in the one case, Sir, it can be done in another; and in any case it does not justify these huge reserves as I call them, which, in fact, are artificial.

I will just take one other instance—Kabete School. This House decided to spend £80,000 on a school at Kabete. If you refer to this schedule you will find that several thousands of pounds were taken away for the Eldoret School. Why? As I understand it, simply because in getting tenders for the first section it was found that, due to extreme competition at that moment, as well as a slight contraction in the cubic space involved, there was a little reduction on the estimate accepted. It is only within the last week or fortnight that tenders have been invited for the second section of this building. The contention of Members on this side, Sir, is that it might be premature to assume that there is going to be any real saving on the Kabete School. Alternatively, Sir, that

money was transferred to Eldoret, where a vote had already been given. The reason for that excess, in the judgment of Members on this side of the House is one which might have been and should have been communicated to them for the very definite fact that this money was available from other sources under the machinery controlling the Loan Works Scheme to-day.

There is one other matter, Sir, which I feel I ought to refer to. Like all other Members on this side of the House, I have accepted the fact—which is not a fact, but rather a view—that Government finance and Government book-keeping bear no relation to the system which obtains in other businesses in the world. That, Sir, I accept, but it is in all sincerity that I say that I have found the greatest difficulty in following—I hope I can use the word, Sir—the "conjuring" which takes place—and it is a very skilful operation—in getting through some of these items. I am going to instance one case only, Sir, in proof of the word I have ventured to use. During the time I was sitting on the Committee last year, an item of £20,500 was brought to our notice, Establishment Charges, which had not been distributed where it was intended to be distributed, namely, under two particular heads—two particular forms of expenditure. Well, Sir, earlier in the meeting my recollection is that the purse seemed to be empty—as I have used the word "conjuring" perhaps I should say "the hat seemed to be empty." The moment that this item came along, £20,500, the substantive Director of Public Works, with his assistant—and all conjurers carry assistants, Sir . . .

HIS EXCELLENCY: Order, order. I do not wish in any way—I have given the hon. Member very great latitude because I did not wish that it should appear at all that Government was not anxious that all facts should be explored in this matter, but I hope the hon. Member will remember that when you are dealing with the proceedings of committees which are confidential, you must have regard to the fact that such people who are members of it are not able to give their impressions of the discussions. Personal recollections of what passed in committee meetings are not desirable for repetition in this House because it is so unfair to other Members present at the time, who are not able to speak for themselves.

COL. THE HON. W. K. TUCKER: Well, Sir, my last desire was to say anything which was unfair. Am I at liberty to state that £20,500 was reallocated?

HIS EXCELLENCY : I do not wish to limit the hon. Member, but I do not think he is entitled to use a term such as "conjuring" in regard to the proceedings of other members of the Committee, who are not able to speak for themselves.

COL. THE HON. W. K. TUCKER : I abide by your ruling, Sir. This sum was disposed of during that afternoon over a number of other votes, and only a fortnight later it became apparent that the reallocation could not be carried out in view of the subsequent action of the Secretary of State which had come to hand, and yet a further reallocation was possible within those limits.

Now, Sir, on the last page of this Schedule is shown a long list of salaries in respect of Establishment Charges. I do not propose to develop the Establishment Charges argument, Sir, among other reasons because I am sure you would rule me out of order, but I do feel I am entitled to say this, because it is the Establishment Charges in a number of instances which Members on this side of the House take exception to in the way of reallocations; and I want to ask the hon. gentleman who replies to this debate, Sir, if he can give us an unqualified assurance that the establishment charges continue to bear approximately the same relation to the work involved as they did when this House accepted the Loan Works Scheme as a whole.

Items, Sir, might be cited *ad lib.*, but I think what is in the minds of Members on this side of the House has been sufficiently disclosed. If Government, Sir, feel that nothing requires to be done by way of improvement, then Members on this side presumably must endeavour to find other means of expressing this disapproval; if, on the other hand, as I hope, you, Sir, will realise, it is desirable to review the working of this Loan Works Scheme after the time has elapsed—if you, Sir, believe as I do most sincerely that the whole scheme should be tightened up tremendously—if much more definite terms of reference were laid down for the Loan Works Committee—if, for instance, Sir, three categories were created, such as :

- (1) Small items that the Committee without any question were entitled to deal with on their own;
- (2) Items they were entitled to deal with and proceed with subject to subsequent confirmation by this Council;
- (3) Items which, in their judgment, required the confirmation of this Council before the work was commenced;

—Sir (and if it is not presumptuous of me to suggest the means, particularly as you have reappointed me, Sir, to that Committee). I would like to suggest that the Committee itself be charged with the duty of examining the position in the light of what I have suggested with the idea of drawing up some schedule of the authority that they themselves would recommend, to be laid on the table of this House at the next session.

Now, Sir, the only other thing I want to say is that while Members on this side of the House agreed to this Loan Works Scheme originally, and while they tacitly agreed to it after it was affecting it, they always did so in the belief that the balance I referred to just now as between departmental work and private enterprise was being maintained within reasonable limits, because, after all, Sir, there is a good deal of private enterprise in this country which, rightly or wrongly, is encroached upon by the system in vogue.

Finally, Sir, I would like to say that, with last Thursday's memorable debate still ringing in my ears, you must understand, Sir, that Elected Members are more than ordinarily jealous just now of the control they have managed to get through years of perseverance in the affairs of this country, and they are less anxious than ever to see it relaxed at the present moment.

I beg leave to move the motion standing in the name of the hon. Member for Plateau South.

LT.-COL. THE HON. C. G. DURHAM : Your Excellency, as a member of the Loan Works Committee, I beg leave to second the motion.

It will be remembered that the question of reallocation was brought up before the House in July last. Since then, unfortunately, the Loan Works Committee have been compelled to reallocate various sums of money. I understand, Sir, that this Committee has the power to reallocate sums of money, provided that the money so reallocated is not spent outside the particular range of work for which it was originally voted.

Your Excellency, so late as February last your Committee—at least the unofficial members thereof—received a very rude shock when they were told by the Director of Public Works that he regretted having to put before them a schedule

showing an excess of expenditure of no less a sum than £14,000 on certain buildings. If I may mention that item, Sir:

Nakuru School	£5,000.
Eldoret School	£3,000.
Kitale School	£3,000.
Brickmaking	£2,800.

Of course, Sir, your Committee had no option but, subject to confirmation by Legislative Council, to pass the amount, the buildings having already been erected. The point, however, I wish to make is that throughout the progress of the work we were not aware that a loss had been incurred. In the case of the brick-making effort, the fact that it was being run at a loss must have been apparent after the very first month, Sir, and I feel that an investigation should now take place.

Notwithstanding the technical staff employed, colossal mistakes are made, which are so costly that if they were made by private firms such firms would have been bankrupt within a year. Your Excellency, mistakes such as those I have quoted suggest to me one thing only: that the Public Works Department should be reduced to a skeleton, and everything put out to contract. We should then know what we have got to pay. I trust Government will accept this motion.

HIS EXCELLENCY: The question is:—

"That the excessive reallocation of expenditure under Loan Works, as shown in the statement submitted to Legislative Council at this session, cannot be approved by this Council."

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, in supporting the motion, I should like to point out, with reference to the bricks at Kitale, that I think that matter was outside the control of the Public Works Department. They did build the boarding-house part of the school in concrete, but to reduce the cost they endeavoured to produce a suitable brick for the second building. They succeeded in producing a very fine brick, but to do that they had to transport part of the material from a considerable distance, to get the right mixture, and I do not think that a fair criticism against that item.

LT.-COL. THE HON. C. G. DURHAM: On a point of explanation, Your Excellency, the Director of Public Works gave us the information, or rather the promise, that he would inquire into the thing, and admitted that it was wrong that they should have lost money because they did not know, when they put the brick-works up, that they would have to cart sand and fuel and water from a distance. He admitted it was entirely wrong, and he was investigating the matter

LT.-COL. THE HON. J. G. KIRKWOOD: To continue, Sir: the water was on the spot, the fuel has always got to be carted to brick-works, and it is not always necessary to cart soil. There was every anticipation, reasonable anticipation, that when the brick-works were first started suitable soil would have been found. I do not wish to labour that point, Sir, but in conclusion I would say that that building, being built of brick, showed a very large saving against being built in concrete.

There are other items that I cannot agree with. It is really astounding, and I think it will astound this country when they realise it, that the amount of money voted for the hospital at Mombasa should have been utilised elsewhere. I can only presume that the hon. the Director of Medical and Sanitary Services is responsible for that money; it is not the proper moment, otherwise I should like to move a vote of censure.

The money that has been taken from the Kabete School and utilised elsewhere I consider is nothing short of juggling; there was no certainty that the building would be completed without finding some extra money to carry on the work.

Many items have been enumerated by the hon. mover, and it is not necessary for me to go into those details, but I do seriously think that it is past the time when these things should be allowed to occur, and I do hope that the result of drawing this House's attention, or the attention of the other side of the House, to the methods employed in the past will be their discontinuance in the future.

HIS EXCELLENCY: I have been anxious not to limit the freedom of discussion in any way on this matter for obvious reasons, but I hope hon. Members will remember that the discussion of proceedings in Committees is always very exceptionable. If members of Committees, which after all meet in private, are to give their personal recollections of discussions and statements, the work of Committees is going to become very difficult indeed. I am talking now of Committees of every kind.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I wish to support this motion for one reason, and that is that the House, and we on this side of the House, has not and have not the degree of control that we anticipated and that we considered necessary when we agreed to this particular method of dealing with Loan Funds. The application of the method has failed. We have recognised its failure, and we hope that Government has, or will soon recognise that failure,

and institute another method of attaining the result which we require, the result being the ultimate control of money which is supplied directly by this country.

THE HON. THE COLONIAL SECRETARY: Your Excellency, in reply to the motion moved by the hon. Member for Nairobi North and to the other speeches to which we have just listened, it seems to me that a distinction should and can be properly drawn between the constitutional principles—if I may use the term—underlying the constitution of the Loan Works Committee and their utilisation of the powers so committed to them.

The hon. Member for Nairobi North stated that during the time he was on the Committee he personally felt there was some difficulty in knowing exactly what the powers of that Committee were. Well, Sir, I should like to remind hon. Members of this House that one of the first motions which it was my lot to move in this Council on arrival in June or July last was in connexion with a matter of reallocation by the Loan Works Committee, and in moving that motion, Sir, I stated:—

“As hon. Members are aware, it has always been the practice, carried on with the approval of the House, to allow the Loan Works Committee certain latitude in approving reallocation of expenditure.”

That statement of mine, Sir, was not a random one; as a newcomer, I had sought for authority before making it, and the authority for that statement, Sir, is based on the debate which took place in May, 1928. In that connexion, Sir, I think I can perhaps give the information which the Noble Lord, the Member for Ukamba, asked for in a supplementary question as to the laying on the table of certain progress statements by the Loan Works Committee. I feel sure that if he refreshes his memory by reference to those debates, it will be the statement made by my predecessor to which he is referring. At that time the whole question of the constitutional position of the Loan Works Committee was considered by the Loan Works Committee itself, at a time when the Rt. Hon. Lord Delamere and the Hon. W. C. Mitchell were members of that Committee, and as a result of their deliberations it was agreed that a statement, substantially in the form of the statement which is now laid at each session of Council, should be prepared for the information of Members, so that they might quite clearly be kept informed of the action taken by the Committee. At the same time, it was agreed that the hon. the Colonial Secretary, when laying that paper and in the course of the debate, should make clear what he considered the scope of the powers of reallocation of the Loan Works

Committee to be. In the course of that debate, Sir—I will not read all that was said, it was a long one—the Colonial Secretary, dealing with these loan proposals, said:

“I would like to call the attention of Members to the Loan Statement which has been tabled during this session. I trust that hon. Members will find that this statement does embody information with regard to the loan in perhaps a clearer and fuller form than the statements which have been previously tabled.”

He then goes on to say:

“It must be realised, however, it is essential without the stoppage of work—for example, the housing of officers in out-stations and the erection of medical buildings—that there should be some discretion left to the Works Committee to allocate these sums between different stations, provided there is no increased expenditure on the head.”

In dealing with the discretion thus vested in the Loan Works Committee, the hon. Member for the Lake said:

“I do feel, Sir, that when a body is selected and appointed to do a definite job, we certainly should almost invariably accept their finding, as they are in a much better position to collect evidence and give intensive consideration to any detailed subject than is possible in this honourable House.”

Based on that debate, Sir, and on the powers which, as I understand the Loan Works Committee honestly thought had been invested in them, the principle on which we have gone is this: that if you take page 7 of the Loan Statement, all the items, Housing for Government Servants, Medical Buildings, Educational Buildings, Other Buildings, Maize-drying Installation, etc., have been regarded by the Loan Works Committee as Heads, and we have thought that it was not within our powers, that we had no right to reallocate money from one of those Heads to another without prior reference to the Legislative Council for authority; and it was to obtain such authority that on the debate to which I have just referred I moved the resolution in June or July last. It, however, you turn further on in the Statement to pages 12, 13 and 14 itself of the Loan Statement—we might take Appendix IV, for example—the Loan Works Committee has always believed that it was within their powers to reallocate savings and moneys between the items shown on those pages. Well, the reason for that action is this, Sir: not that the Loan Works Committee has any desire to arrogate to itself powers which this Council thinks, and perhaps very properly thinks, may be vested in them; but if the history of the items shown in the Loan Schedules is gone into, I think hon.

Members will themselves recall that in many instances the figures put down did not purport at the time to be fully considered estimates. I think I am right in saying that it was a Select Committee in 1925 that drew up a schedule of works suggested to be undertaken from a proposed loan, and at that time—my friend the hon. the Director of Public Works, who will speak after me, will be able to give you further information on that point—many of those figures were not in any sense regarded as hard figures. Similarly, you will remember that under the malarial section of the Loan, the work was done at very short notice, and the figures obtained and put into the Loan Schedule without careful verification. That being so, the facts which the Loan Works Committee were faced with were these: that when there had been time to go into the requirements carefully at a particular station, in some cases it was found that the requirements of that station had been overestimated, and in other cases that the requirements of another station had been underestimated, and if the work was to go on and the general intentions of this Council carried on, the Committee considered they were acting properly in re-allocating money between items in the manner in which I have just stated.

So much, Sir, for the constitutional position of the Loan Works Committee. I do not think, Sir, that you will wish me to go at great length into detail. The hon. Member for Nairobi North has mentioned particularly the case of the Mombasa hospital. As it illustrates the point I have just tried to make, I will also refer to it. That figure of £14,350—I believe the hon. the Director of Medical and Sanitary Services will himself tell you that he does not really know how it got there. When he came to consider the requirements of the hospital at Mombasa, in his opinion that figure had no relation to the requirements. In other words, he stated—and it was brought before the Committee at that time—that what was really required at Mombasa was a combined hospital, which would involve the expenditure of a far larger sum. The Committee therefore thought that it was reasonable, as that figure was not likely to be spent within any measurable period of time, that they should utilise it for other purposes. Although I do not wish to suggest that the hon. Member for Nairobi North was not aware of that fact at the time, it is at least interesting, Sir, as he has referred to the resolutions and decisions of the Loan Works Committee, that at the meeting at which this discussion took place, according to the minutes of that meeting, the hon. Member was himself present, and no record of dissent, either on his part or on the part of the hon. Member for Kikuyu, was recorded. I feel, in fact, Sir, in answering this motion—if it is to be regarded as a motion of censure on the Loan Works Committee—rather like the boy

on the burning deck. All my colleagues on that Committee, with the exception of the Director of Public Works apparently, have fathered and sponsored the motion, and I do suggest, Sir, that if, on the constitutional point they considered the matter unsatisfactory, they might have tabled that resolution and discussed the matter in the Loan Works Committee before it was brought up in this House.

There is, however, I suggest, a quite distinct aspect of reallocation, as to which I am in complete sympathy with the hon. mover of this motion. He has referred to the excessive expenditure—to a great excess of expenditure on certain schools, and particularly to the question of brick-making at Eldoret. That was only brought to the notice of the Loan Works Committee in February last. We felt the matter was most unsatisfactory, and required further elucidation at once. As a result of disclosures then made, I authorised the Director of Public Works to telegraph for the immediate return of an officer who was then on leave, who was mainly responsible, and as soon as he has come back and we have had time to go into this matter, it will be very fully inquired into. But such over-expenditure, as I see it, is quite distinct from the question of whether or not the Loan Works Committee has the power to take the action it has done in the past. If hon. Members feel that the powers granted are too large then I, as Chairman of the Committee, will be only too willing to consider the matter further, in the Loan Works Committee itself, but I would just like to add this morning that this Council, Sir, cannot be an executive body. In fact, I am not sure that possibly this over-expenditure which we deprecate might possibly have been more carefully kept track of if it had not been a committee controlling it but an individual. The more people there are having control of matters of this sort, the more difficult it is to keep track, and I do suggest that, on a body on which Unofficial Members are represented, they should take the responsibility for what they do, and not come to this Council before they have given a chance for the matter to be ventilated in the Committee itself.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, the spirit underlying this motion, I think, is not one of censure on the Loan Works Committee or on any individual officer. I am quite sure that the hon. the Colonial Secretary, as Chairman of that Committee, is as anxious as anybody in the country to control expenditure within its lawful bounds. The trouble is somewhat, I think, that it must be conceded that all Government undertakings are inclined to be extravagant. They have not got the threat against them, as a contractor has, that any overspendings that take place they

have to pay for themselves; and it is true, on the other side, Sir, to say that there is no encouragement of waste in the undertaking of these works; that a very close supervision must be maintained.

It has been brought to our notice to-day, Sir, that there have been great overspendings in places, and I am glad to hear that the hon. the Colonial Secretary is taking steps to see what is done, but we do want to see that all this money which is voted is not overspent on certain undertakings, and that others have to go without altogether, or be skimmed: In particular, there is the Kabete School. We should all be very sorry if that school was skimmed in any way. It has already had a good deal of its money reallocated to other purposes, and when I went out there, not long ago, I was sorry to see that the timber work did not look as though it was made of good local timber, but rather of cheap imported timber.

Another point, Sir, is—take a place like Narok, where the house of an individual is notoriously bad. That was all reallocated to Ngong—only £50 has been left after the reallocation to house officials at Narok, which I should have thought was very unsatisfactory to the official concerned.

THE HON. THE COLONIAL SECRETARY: On a point of explanation, Your Excellency, that particular reallocation came before this Council while the Noble Lord was away, and received the approval of Council.

LT.-COL. THE HON. LORD FRANCIS SCOTT: I am only pointing out this as an illustration; I am not trying to censure anyone.

There is one other point, Sir. The hon. the Colonial Secretary, in quoting the hon. Member for the Lake, said that when committees are appointed they must be relied on and supported. That is a principle I entirely agree with, but apparently some of the members of that Committee are not entirely satisfied themselves, or they would not have supported this motion.

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS (MR. W. M. LYNDE): Your Excellency, at the outset I should like to make it quite plain that in my opinion there can be no question, in considering the relative merits of contract and departmental work, that for ordinary straightforward building work and quite a lot of road and bridge work, there can be no doubt that from every point of view it is to the advantage of Government to undertake work by contract. That principle had been adopted in the Public Works Department—it was

adopted some years ago—but for certain reasons, I think in 1926, certain of the larger building works were undertaken departmentally. A recent departmental circular was sent home reporting that the reasons no longer existed, and that in future as much work as possible was to be undertaken by contract. The difficulties to which I refer, which arose in 1926, which caused certain of the work to be undertaken departmentally were, I think, chiefly those of time. A programme for schools was desired to be undertaken and work was desired to be commenced without delay. In order that large buildings like that may be let out to contract quite a large amount of preliminary work is necessary—drawings have to be prepared in greater detail than would be, the case were the work undertaken departmentally, and bills of quantities in fairly great detail have to be prepared, and at that time the necessary quantity surveying staff was not available—and it was therefore, I think, decided that some of these larger schools, especially Nakuru and Eldoret, also the Indian School, Nairobi, should be undertaken departmentally.

We have heard about the over-expenditure on certain of the schools, especially at Nakuru and Eldoret, but nothing has been said about the other side of the picture. There have been great savings. There was a large saving of money in connexion with the Indian School, Nairobi, which was also elected departmentally for similar reasons.

We have very great difficulties in connexion with the undertaking of this departmental work. It also depends, I think, on the personal element of the foreman who is in direct charge. The loan staff we have has been collected, I think, from all corners of the world, and we have some very excellent men indeed; on the other hand, we have had some men who have not been quite so good, and it all depends upon the man who is in direct charge of the work or exactly whether the work is carried out within the money or whether there is a slight excess. In that connexion, I should like to state that I have considered fairly carefully the position regarding the building programme undertaken in the Colony as a whole, and I can assure hon. Members on the other side of the House that I do not think, taking the building programme as a whole, that the excess on the whole of the programme will exceed 1½ per cent. That, Sir, I think, is not something to be ashamed of, but rather to be proud of. I know hon. Members may say, "Why an excess, why not a saving of 1½ per cent?" but I would refer them to the basis upon which all these amounts allocated for work are arranged. In 1925, as the hon. the Colonial Secretary has stated, a Select Committee considered applications from all over the country on the question of a large number of loan works. Figures were suggested as to what those applications which

were approved might cost. Those figures were not to any extent based upon estimates—no drawings were prepared. I think they should be regarded merely as token figures. When the time comes to undertake any particular work we look at the figure allowed for it in the Report of the Select Committee; we see there is so much for a school; we go to an architect, and say, "Please design a school costing so much money." Well, Sir, one knows architects, and when the estimate is made it will be found to cost more money than is available. Then starts the process of cutting down; one does not like this cutting down—it is a very disagreeable operation, but it has to be done, and I am afraid, Sir, that people are often too optimistic in this operation of cutting down. There is a tendency to leave too much in rather than to cut too much out. The result is that there is a general tendency that there should be an excess rather than a saving. We have, as I pointed out, considerable difficulty in arriving at estimates as to what these buildings will cost, because so much depends on the personal element. Large buildings have been erected on a scale which has never before been attempted, and it was quite a matter of doubt as to what the building might cost. It was also a matter of doubt as to which man we put in charge of the building work on the spot, and that was not known at the time the estimate was prepared.

Of course, in contract work this difficulty does not arise, because, if there is going to be any excess, that is known before the work is started. Tenders are invited, and in one or two cases the lowest tender has exceeded the token figure in the Select Committee's schedule of loan works, and additional money has had to be provided. The difference is that the additional money is provided before the work starts and not after it is completed.

The Public Works Department are not alone in having this difficulty in arriving at estimates of work. If you look at any list of tenders received, you will find that even among contractors themselves there exists a considerable measure of doubt regarding the cost of any particular work at any one place. You will find that there is very often as much as 50 per cent difference between the highest and lowest tenders. There is rather a tendency, I am afraid, to expect the Public Works Department tenderers to know exactly what the work is going to cost.

I will now deal with some of the questions raised regarding establishment charges in relation to the establishment charges appearing in the original schedule. The schedule of establishment charges was, I think, based upon all the loan work being completed by the end of 1930. There have been certain delays, and it is quite certain that the whole of the loan

work will not be completed by the end of 1930. In the meantime, the loan staff is here, and the result will, I think, be that the establishment charges on the schedule already arranged will not be quite sufficient to carry the establishment to the entire end of the programme of loan work.

Another important factor which bears on this point is the effect of these reallocations; several fairly large buildings, such as the K.A.R. lines, have been split up into a number of small buildings. The establishment charges in that connexion are materially increased. It will be quite understood that, in preparing drawings for one large building costing, say, £100,000, the work involved is very much less than in preparing drawings for a large number of small buildings costing the same amount of money.

In regard to the hon. and gallant Member for Ukamba's question regarding Kabete School, we had a certain amount of difficulty at the beginning of that school in connexion with the timber for the joinery, and I am afraid that a certain amount of imported timber was used in some of the joinery work made first of all, but I can assure the hon. Member that in future only local timber will be used for the whole of the joinery work. The timber-seasoning experiments which have been undertaken by the Public Works Department have been very successful, and stocks of timber which are difficult to obtain are now accumulating, so there will be no delay in that connexion again. It is the intention of the Department to utilise local timber for joinery not only for the Kabete School but everywhere.

In conclusion, Your Excellency, I should like to assure hon. Members on the other side of the House that I shall be only too pleased to place at their disposal all the information I can regarding the cost of works being undertaken and the progress, and also the difficulties which we encounter, which I can assure them are not small.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I only intervene in this debate because, as an ex-member of the Loan Works (Buildings) Committee, I have it clearly defined in my own mind as to what the functions of that body are. I consider there can be no doubt that it is an established and accepted fact, which has been known for a considerable period, that that body has executive powers and that those executive powers include the right to make reallocations. I do, however, suggest to the hon. the Colonial Secretary and the other members of that Committee that those reallocations must be within broad and reasonable lines. I would suggest that the reallocation in connexion with the £14,000 originally allocated to the Mombasa hospital was outside those limits.

If it had been found that the cost of the Mombasa hospital was only £13,000, we will say, or £15,000, there would have been nothing to prevent a reallocation one way or the other, so as either to reallocate the saving on the Mombasa hospital to some other work or reallocate the saving on some other work to the extra amount required for the Mombasa hospital; but when a sum of £14,000 odd has been found for a definite purpose, namely, the building of a hospital at Mombasa, and when it is found, on representations, as I understand, made by the hon. the Director of Medical and Sanitary Services, that this is out of all proportion, that it is absolutely no use to him, that he may as well have nothing as have that, inasmuch as he wants to build a combined hospital which will cost much more, then I think that there should be a definite saving shown of that £14,000 and another resolution brought before Council, if the Government so wish, asking for approval of a sum of £40,000 or whatever figure may be required for the building of a combined hospital at Mombasa, explaining the situation and showing the £14,000 which will be saved and the amount which will be required. That, I suggest, is the right procedure, and I would ask the hon. the Colonial Secretary and the Government to consider what I call the major reallocations, whereby the whole of one work is scrapped, should not be done without reference back to this Council.

LT.-COL. THE HON. C. G. DURHAM: Your Excellency, I simply rise on a point of personal explanation. The hon. the Acting Director of Public Works twitted me for not putting in figures when I quoted excessive expenditure. I should like to point out that £6,000 on the Kabete School is only an anticipated saving, and I shall be delighted to know that it will come to less when the buildings are finished.

COL. THE HON. W. K. TUCKER: Your Excellency, I will reply in two or three sentences only.

First of all, with regard to the hon. the Acting Director of Public Works' remarks when we laboured justification for this scheme as distinct from private contracts, I would say, Sir, that no one on this side of the House knew, or very much more definite measures would have been taken to express that point of view. In the first few sentences of my speech I tried to emphasise that I was in no way whatever reflecting on the Loan Works staff, Sir; I was merely reflecting on the financial system controlling all these works.

On a point of explanation, Sir, would you allow me just to say, in reply to your words about disclosing the proceedings of committees, that I did weight that point. I hope I am as prudent as other people in the ordinary way, but I did feel that the question of every item, except the most trivial,

coming before the Loan Works Committee, does come in front of this House, and it would therefore appear that I was not committing an indiscretion. None the less, Sir, I bow to your ruling, as previously.

HIS EXCELLENCY: The hon. and gallant Member must remember that he was not only dealing with matters of opinion that came before that Committee; he was dealing with observations made by other members of the Committee, which is another matter.

COL. THE HON. W. K. TUCKER: I accept that, Sir.

One thing I regret, Sir, is that the hon. the Colonial Secretary persisted in the £14,000 in respect of the Mombasa Hospital, and did not deal with my point in a general way. That was merely one instance which I quoted; there are many others, and if that sort of thing goes on, eventually it tends to modify Government's policy. Machinery should exist in some way whereby these works are taken lock, stock and barrel out of the Loan Schedule.

Similarly, I regret that the hon. the Colonial Secretary was unable to accept the suggestion I offered at the end of my speech that the motion might be withdrawn if Government showed some desire to meet our wishes with regard to reviewing the practical effect of this machinery now that several years have elapsed since it was theoretically created. That, unfortunately, he has not done, so I am afraid that Members on this side of the House will have to carry the motion to a division.

Finally, I accept the soft impeachment of the hon. the Colonial Secretary with regard to what I did in the meeting of the Loan Works Committee. It is quite true, Sir, that I voted in favour of one of the items referred to by the hon. gentleman this morning, but he, on his part, Sir, made a point that he had only been in the country a few days and that the issue of Loan Works was the first speech he made in this House. May I say, Sir, that it was the first meeting I had attended of this Loan Works Committee, and it only supports the strong plea I made this morning that on first entering that Committee—if not later, it is very difficult indeed at first—for new members to grasp what I suggest are vague and nebulous terms of reference. Subject to that, Sir, I accept what the hon. gentleman says, and if any apology is needed for voting one way in Committee, I would say that on the same day that the hon. Member made that first speech on the subject of the Loan Works Committee, I did make a very strong appeal at the end of my own speech on that day begging for a very definite expression of opinion in this matter.

so that, whether small or big, we should know whether so-and-so votes had to come back to this House for approval or not.

THE HON. THE COLONIAL SECRETARY : Your Excellency, on a point of explanation, I think I did state in my reply to the hon. Member that if, as a member of the Loan Works Committee, he agreed to raise this question to get our powers further clarified, I should be only too happy to go into that with him. If that is the assurance that he requires in order to withdraw the motion, I am happy to give it to him.

COL. THE HON. W. K. TUCKER : May I speak again, Sir?

HIS EXCELLENCY : Yes, on a point of explanation.

COL. THE HON. W. K. TUCKER : Well, Sir, I do regard the action of the hon. Member for Plateau South in putting this motion has been largely achieved by ventilating the subject, and I accept the suggestion of the hon. the Colonial Secretary that this matter shall receive the attention of the Loan Works Committee; and in consequence, and with the approval of this House, I will withdraw the motion.

HIS EXCELLENCY : Does the hon. Member who seconded the motion agree?

LT.-COL. THE HON. C. G. DURHAM : Yes, Sir.

HIS EXCELLENCY : I understand the motion is withdrawn.

BILLS.

FIRST READINGS.

HIS EXCELLENCY : I understand it will be a great convenience if hon. Members will agree to take the first reading of the Bills on the Order Paper. It will not take a minute.

THE APPROPRIATION BILL.

On motion of the hon. the Colonial Secretary, the Appropriation Bill was read a first time.

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

THE VAGRANCY (AMENDMENT) BILL.

On motion of the hon. the Attorney General, the Vagrancy (Amendment) Bill was read a first time.

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

THE LEGITIMACY BILL.

On motion of the hon. the Attorney General, the Legitimacy Bill was read a first time.

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

THE SUGAR (AMENDMENT) BILL.

On motion of the hon. the Chief Native Commissioner, the Sugar (Amendment) Bill was read a first time.

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

*Council adjourned to 10 a.m. on Tuesday,
the 15th April, 1930.*

TUESDAY, 15th APRIL, 1930.

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Tuesday, 15th April, 1930, His Excellency the Governor (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of 14th April, 1930, were confirmed.

PAPER LAID ON THE TABLE.

The following paper was laid on the table:—

By THE HON. THE DIRECTOR OF AGRICULTURE (MR. A. HOLM):—

Report of the Food Control Board, 1929.

ORAL ANSWERS TO QUESTIONS.

TAXATION.

LIEUT.-COL. THE HON. LORD FRANCIS SCOTT asked:—

What is the amount of taxation per head of population (including direct and indirect taxation) paid by—

- (a) Europeans;
- (b) Asiatics;
- (c) Africans?

THE HON. THE COLONIAL SECRETARY (MR. H. M.-M. MOORE): It is impossible to allocate indirect taxation racially except on an approximate and arbitrary basis. The Conference Statistician attempted to ascertain the proportions in which the different races contributed to tax revenue in 1926 and the proportions in which his calculations distributed the source of tax revenue between the different communities, when applied to the Revenue Estimates for 1927 and related to the 1926 Census figures, gave the following returns indicating the amount of taxation per head of population including direct and indirect taxation:—

	£	sh.	cts.
Europeans	36	2	59
Indians	6	11	57
Goans	17	10	3
Arabs and Somalis	2	13	95
Africans	6	50	

No attempt has been made since 1926 to carry out an analysis of the Colony's tax revenue on these lines and in quoting these figures the Government has no information as to their applicability at the present time.

LEAVE CONDITIONS.

THE HON. F. A. BEMISTER asked:—

What are the leave conditions attached to the position in the Public Works Department held by a pensioned officer of the Colony?

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS (MR. W. M. LYNDE): The ordinary leave conditions of the Colony are applicable to the position. The pensioned officer in question was, however, locally appointed and is not, therefore, entitled to a passage to England unless re-engaged for a further tour. He is entitled to vacation leave on full pay of two-and-a-half days for each completed calendar month of residential service.

OFFICIAL POISONER.

CAPTAIN THE HON. H. E. SCHWARTZ asked:—

What are the exact duties of the "Official Poisoner" employed by the Nzoia Local Native Council?

THE HON. THE CHIEF NATIVE COMMISSIONER (MR. G. V. MAXWELL): The poisoners employed by the Elgeyo and Marakwet Local Native Councils are natives whose duties are to exterminate destructive vermin, e.g. leopards, jackals, hyenas and porcupines. Both poison and traps are used for the purpose and it is considered essential to have salaried natives who can be trusted to use these poisons safely under the direction of the District Commissioner.

2. It was reported by the District Commissioner of these areas in October, 1927, that nothing that Government has yet done in these Reserves has been so much appreciated as the destruction of vermin. The mortality among the lambs and kids has been reduced by 90 per cent and maize crops can now grow to a great extent unmolested.

THE HON. CONWAY HARVEY: Arising out of that answer, Your Excellency, may we be told what sort of poisons these poisoners are entrusted with?

THE HON. THE CHIEF NATIVE COMMISSIONER: I am afraid, Sir, I shall have to have notice of that question.

HIS EXCELLENCY: Perhaps the hon. Member will put down a question on the subject.

THE HON. CONWAY HARVEY: If this might be taken as notice and a written answer sent to me I shall be satisfied.

THE HON. THE CHIEF NATIVE COMMISSIONER: I shall endeavour to obtain the information.

STAMP DUTY ON LEASES.

CAPTAIN THE HON. E. M. V. KENEALY asked:—

Has Government, prior to recent land sales, charged stamp duty upon leases from the Crown to lessees? If not, why are stamp duties now demanded?

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. H. T. MARTIN): The answer to the first part of the question is in the affirmative; consequently the second part of the question does not arise.

SUSPENSION OF STANDING RULES AND ORDERS.

THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR, K.C.): Your Excellency, with your leave, Sir, I beg to move that Standing Rules and Orders be suspended in order to enable a Bill to Amend the Criminal Procedure Ordinance to be introduced and passed through all its stages without due notice.

THE HON. C. F. G. DORAN (ACTING SOLICITOR GENERAL): Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that Standing Rules and Orders be suspended in order to enable a Bill to Amend the Criminal Procedure Ordinance to be introduced and passed through all its stages without due notice.

The question was put and carried.

BILLS.

FIRST READING.

THE CRIMINAL PROCEDURE (AMENDMENT) BILL.

On motion of the hon. the Attorney General the Criminal Procedure (Amendment) Bill was read a first time.

SECOND READING.

THE CRIMINAL PROCEDURE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of this Bill.

No explanation of the provisions of this Bill, Sir, is strictly necessary from me to-day for the reason that on moving the recommitment of the Criminal Procedure Code last week I moved and gave an explanation of an amendment to that measure which is in the same terms as the Bill now before hon. Members.

The reason for the measure can be stated very shortly, Sir. In 1926 the law was amended to permit of what is commonly known as pleading guilty by letter in minor offences. That was an extremely useful and essential and equitable provision to make, but practical difficulties have been encountered. Those difficulties are twofold, Sir. The first is that if a person who pleads guilty by letter to a minor offence, such as the serious charge of a motoring offence, Sir, has previous convictions alleged against him, it is quite impossible to prove those previous convictions because the accused is not before the Court and there is no machinery at present for ensuring that he comes before the Court.

The other difficulty is a more serious one, Sir. It has been found that fines in such cases have been imposed and they have been deliberately left unpaid, and because of a judgment of the Appeal Court, which is reported in Volume VIII of the East African Law Reports, it is impossible in such cases to impose a term of imprisonment. That is really the reason for the new provision. The 1st, 2nd and 5th sub-clauses of clause 2 are the existing law, Sir. The new matter is merely the 3rd and 4th of the sub-clauses.

The necessity for clause 3 is, I imagine, obvious, Sir, inasmuch as practical experience has shown the necessity for this legislation and it is essential that the provisions of this Bill should be made retrospective, so that those persons who at this moment have had fines imposed upon them which they deliberately refuse to pay can be made amenable to the law.

I beg to move, Sir, that the Bill be read a second time.

THE HON. C. F. G. DORAN: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that Council resolve itself into Committee of the whole Council for consideration of the Bill clause by clause.

THE HON. C. F. G. DORAN: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that this Council resolve itself into a Committee of the whole Council for consideration of the Criminal Procedure (Amendment) Bill clause by clause.

The question was put and carried.

The Council went into Committee.

In Committee.

THE CRIMINAL PROCEDURE (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 3.—Application of Ordinance.

CAPT. THE HON. E. M. V. KESKELY: Your Excellency, may we have information in regard to the degree of retrospectio that will apply?

THE HON. THE ATTORNEY GENERAL: That I can give very easily, Sir. It is not limited in time at all. If a fine is still unpaid it will be liable for payment now, Sir, no matter how long it is since it was imposed. It cannot, of course, Sir, antedate 1926, when the first amendment was made.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill be reported to Council.

The question was put and carried.

On resuming.

HIS EXCELLENCY: Order, order. I have to report that a Bill entitled a Bill to Amend the Criminal Procedure Ordinance has been considered in Committee of the whole Council and reported to Council without amendment.

THIRD READING.

THE CRIMINAL PROCEDURE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that a Bill to Amend the Criminal Procedure Ordinance be read a third time and passed.

THE HON. C. F. G. DORAN: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that the Bill be read a third time and passed.

The question was put and carried.

The Bill was read a third time and passed.

MOTIONS.

SCHEME TO ADVANCE MONEY TO ASIAN CIVIL SERVANTS TO ENABLE THEM TO BUILD THEIR OWN HOUSES.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Scheme to Advance Money to Asian Civil Servants to build their own Houses be amended in the four respects which hon. Members will find set out in the Order of the Day.

Hon. Members will recollect that this Scheme was before this Council on the second day of this present Session and on that occasion, Sir, hon. Members on the other side of the House asked for certain minor amendments to make it clear that the provisions of this Scheme would be limited to the Municipal Area of Nairobi and to other similar centres. An undertaking was given by Government on that occasion, Sir, that the necessary amendments would be made and hon. Members will find them now. I hope to their complete satisfaction, embodied in the four amendments of which notice has been given.

I beg to move that the Scheme be amended in those four respects.

THE HON. THE TREASURER (MR. H. H. RUSHTON) : Your Excellency, I beg to second the motion.

HIS EXCELLENCY : The question is :—

“ That the Scheme to advance money to Asian Civil Servants to enable them to build their own houses be amended as follows :—

(1) Section 3—

That the second paragraph of Section 3 be deleted and the following substituted therefor—

‘ The Scheme will be for houses to be built within the Municipal Area of Nairobi, but it shall be at the discretion of the Board to extend it to other Centres under such conditions as it may see fit to impose. The Scheme will be open for applications for a period of two years only from the date on which it is brought into operation.’

(2) Section 6—

That Section 6 be amended by the deletion of the words ‘ a radius of ten miles of Nairobi House ’ in line 5 of the section and the substitution therefor of the words ‘ the Nairobi Municipal Area ’.

(3) Section 7—

That Section 7 be amended by the deletion of the words ‘ and its environs ’ in line 6 of the section.

(4) That Section 7 be further amended by the deletion of the words ‘ and their environs ’ in line 10 of the section.”

THE HON. CONWAY HARVEY : Your Excellency, I should like to express our gratitude to Government for meeting our wishes in connection with this matter, which we do regard as

of considerable importance. The great advantage now, Sir, is that there is no danger whatever that the provisions of this measure will in any way run counter to the principles so clearly enunciated in the White Paper of 1923.

HIS EXCELLENCY : The question is :—

“ That the Scheme to advance money to Asian Civil Servants to enable them to build their own houses be amended as follows :—

(1) Section 3—

That the second paragraph of Section 3 be deleted and the following substituted therefor—

‘ The Scheme will be for houses to be built within the Municipal Area of Nairobi, but it shall be at the discretion of the Board to extend it to other centres under such conditions as it may see fit to impose. The Scheme will be open for applications for a period of two years only from the date on which it is brought into operation.’

(2) Section 6—

That Section 6 be amended by the deletion of the words ‘ a radius of ten miles of Nairobi House ’ in line 5 of the section and the substitution therefor of the words ‘ the Nairobi Municipal Area ’.

(3) Section 7—

That Section 7 be amended by the deletion of the words ‘ and its environs ’ in line 6 of the section.

(4)—That Section 7 be further amended by the deletion of the words ‘ and their environs ’ in line 10 of the section.”

The question was put and carried.

REPORT OF THE SELECT COMMITTEE ON THE FOOD AND DRUGS (ADULTERATION) BILL.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I beg to move :—

“ That the Report of the Select Committee on the Food and Drugs (Adulteration) Bill be adopted.”

Hon. Members will gather from the very short time that has elapsed since this Select Committee was appointed that its duties were not unduly onerous. The Bill has been considered in Select Committee and one amendment only has been recommended. Hon. Members will see that in section

3 of the second Schedule to the Bill, the Schedule dealing with milk; provision is made for a second analysis, and that section includes the provision that that second sample must be submitted to the same analyst to whom the original sample was provided. The views of the Select Committee, Sir, were that in a country such as this, where leave overseas comes not infrequently, such a provision was likely to be quite impracticable. The Committee therefore recommend, Sir, that that section be amended to provide that the second sample should be sent to the same analyst who had done the first analysis unless the services of such analyst were not available. That is the only amendment recommended, Sir, and I beg to move that the Report of the Select Committee be adopted.

THE HON. THE DIRECTOR OF MEDICAL AND SANITARY SERVICES (DR. J. L. GILKS): Your Excellency, I beg to second.

HIS EXCELLENCY: The question is:—

“That the Report of the Select Committee on the Food and Drugs (Adulteration) Bill be adopted.”

The question was put and carried.

BILLS.

THIRD READING.

THE FOOD AND DRUGS (ADULTERATION) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Food and Drugs (Adulteration) Bill be read a third time and passed.

THE HON. THE DIRECTOR OF MEDICAL AND SANITARY SERVICES: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that the Food and Drugs (Adulteration) Bill be read a third time and passed.

The question was put and carried.

The Bill was read a third time and passed.

SECOND READINGS.

THE APPROPRIATION BILL.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to move the second reading of a Bill to Apply a Sum of Money for the Service of the Year ending the 31st Day of December, 1930.

As hon. Members are aware, the passing of this Bill is really a formal matter in order to give legislative sanction to the Estimates which have already been discussed and passed by this Council. Owing to pressure of work last Session this Bill was not introduced then and has been left over to the present time. In the interim, the observations of the Secretary of State on the Estimates have been received and certain of the items of expenditure have come under review. Therefore, as hon. Members will no doubt have observed, the Schedule to the Appropriation Bill does not in every case conform to the totals as shown in the Estimates which passed this Council.

The Heads of expenditure which are affected are, first, Military Extraordinary: in the Estimates as passed by this Council a sum of £142,872 appeared under the Head Military; it will be seen that in the Appropriation Bill the figure which now appears is £129,508 against Military Recurrent, and £4,500 against Military Extraordinary.

The next item that has been altered is under Public Debt Funded—whereas in the Estimates as passed £707,500 appeared, the figure now in the Schedule is £772,500.

Finally, under Heads XXXIII and XXXIIIa, Public Works Extraordinary—which have been shown here grouped together—expenditure both against Revenue and Surplus Balances—there is again an alteration. Whereas, in the Estimates as passed by this Council, the figures stood at £53,815 and £111,037—making a total of £164,852—the figure shown in the Appropriation Bill is £144,352.

Perhaps, Sir, I should give just a word of explanation as to those differences. If you take the case of Public Debt Funded first, that has really no effect on the expenditure or revenue of the Colony: it is a cross-entry and its exclusion is due to the fact that the interest on the first payment of the sinking fund on the 1927 five-and-a-half millions loan is not due until 1931. This brings us, Sir, to the two items, Military Expenditure and Public Works Extraordinary. When analysed, the net result is that under the Head “Military” a saving has been effected on the Defence Force Vote of £8,864. This has been done on the instructions of the Secretary of State, who, having observed that the figure which now appears in the Schedule was that which was originally presented to Council by Government, considered that this figure, which made provision for a considerable increase in the Defence Force Vote, was, in his opinion, adequate, regard being had to the general financial position of the Colony.

The other cut which has been made is under Public Works Extraordinary, against roads. The net reduction is £20,500. I am afraid I am not in a position to give Council detailed information as to the grounds on which that vote has been cut, but I can only presume that it is because the Secretary of State has some apprehensions as to the extent to which we are impinging upon our Surplus Balances, a view which, as hon. Members will remember, was voiced in some measure from their side of the House. What he has stated in this respect is " . . . that my approval of expenditure from surplus balances was given on the understanding that any re-votes or further provision required next year to complete approved works will be found from revenue, my intention being that any such re-votes or further provision should (together with any re-votes or further provision in respect of works provided for under Head XXXIII Public Works Extraordinary of the present Estimates), form a first charge against the provision to be made under Head XXXIII, Public Works Extraordinary, in the Estimates for 1931. Consideration is being given to the general question of the expenditure from surplus balances referred to in paragraphs 25 and 26 of your despatch, and I shall, as stated in my telegram, communicate with you further on this subject at a later date."

That despatch has not yet been received and therefore I am in some difficulty in dealing with the question of expenditure from Surplus Balances.

There is just one other point, Sir, which perhaps I should mention. At the request of Elected Members I gave them what information I could to assist them in studying the Appropriation Bill and at the date of that letter I informed them that, apart from these items which I have just mentioned, which have been definitely excluded by the Secretary of State, he had provisionally reserved his approval on certain other items. Since the date of that letter, a further telegram has been received from the Secretary of State to the effect that he has approved all the items under Head III, Agriculture, which were temporarily in suspense, with the one exception of a sum of £500 for the Superintendent of Fencing. That is still not excluded, but he wishes to reserve his judgment until he has had time to study the Fencing Bill, which has been forwarded to him.

The other items which remain reserved are the £5,000 vote for Sea Fisheries, as regards which, as already explained in my letter to hon. Members, the Secretary of State says that before anything is done on that item a wider investigation should be held. That matter is now being taken up. The

other item is under Head XVIII, Closer Settlement—£3,402—which again he wishes to reserve judgment on until he has had further information on the subject of the Land Bank.

I beg, Sir, formally to move that the Bill be read a second time.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

THE HON. CONWAY HARVEY: I intend to oppose this motion, Sir, very largely in order to express our resentment once again at the action of the Secretary of State for the Colonies in interfering with a decision arrived at by Elected Members and approved by the Government of the Colony. One does not for one moment, Your Excellency, challenge the Secretary of State's constitutional right in this matter, but we do consider that it is very unfair indeed—more especially as this is the first occasion for a very long time since the Secretary of State has arbitrarily challenged details in the Estimates of this Colony as passed by this House. I do suggest, Sir, with very great respect, that if, after careful scrutiny, the courteous and proper course would have been for those suggestions to have been referred back to the Select Committee and to this House.

We all admit, Sir, that Surplus Balances should not unduly be raided for recurrent expenditure, but we do consider that a most admirable case exists for their employment in connection with many capital works. The net result of this intervention is the conversion of a surplus of £2,750 into a deficit of £13,386, as, in addition to the items of expenditure which have been assailed, I learn from indirect sources that the Secretary of State has ordered a reduction of the revenue estimates by no less a sum than £25,000. I have . . .

THE HON. THE COLONIAL SECRETARY: Your Excellency, on a point of explanation, the hon. Member's information is incorrect. All that the Secretary of State has done is to order the excision of £25,000 in respect of the loan charges—which, as I explained, is a cross-entry, and cancels out with the other £25,000 on the expenditure side—and to draw attention, in addition, to the question of an item of arrears of taxation which appears in the Budget, and to ask for further information as to whether the 1929 arrears are likely to be received in full or not. That item of revenue, Sir, has not been definitely cut out of the revenue side of the Budget.

THE HON. CONWAY HARVEY: I am very grateful for the explanation, Sir, which will be of very great interest to everyone in the Colony.

Perhaps, Sir, a case can be made out for the reduction in the Military Vote, although we consider that the estimate, as passed by this House, should have stood; but, Sir, we are not satisfied—and we never shall be satisfied that a case exists for the arbitrary reduction made in the road vote. It is, Sir, a matter of very serious moment indeed to the Colony that certain sections of a road for which this money was allocated cannot be repaired—and here, Sir, I should like to emphasize how very much indeed the Colony suffers and the Roads Section of the Public Works Department is handicapped every year owing to the belated assent to these Estimates. It is, Sir, of very vital importance that road work should be performed during the first three months of the year, when conditions are particularly favourable for the economic and profitable expenditure of such funds as may be voted.

So far as the items which are deferred for further consideration are concerned, Sir, my last remarks in regard to roads apply. If they are to be deferred until about June or July, Sir, it is obviously quite impossible for the Department concerned to secure the staff to do this work, which the Select Committee at the end of last year considered absolutely necessary. We understand, Sir, that belated approval has been obtained to the Agricultural Headings, which we believe to be particularly essential, but it is extremely unfortunate that approval, so far, has not yet been forthcoming for the other two items, Sea Fisheries, £5,000, and Closer Settlement, £3,492, and we do consider, Sir, that it is very high time that those in authority should arrive at a definite decision in regard to the Land Bank, which has been under discussion for a large number of years. We do consider that the introduction of the Land Bank proposals is likely to exercise a very profound influence on the agricultural development of Kenya, and we consider that a decision on that point should no longer be delayed.

LIEUT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, the information which has been afforded us by the hon. the Colonial Secretary this morning is very interesting and it bears out the very odd methods which the Colonial Office have seen fit to take as regards these Estimates. Some items the Secretary of State has sent back for further information on various points, on some of which he has been satisfied; on others he still wants further information—that is an attitude to which no one can object. That is the proper method by which he should exercise his authority; but it

seems very strange that when he has done that with regard to certain votes he should absolutely arbitrarily order that economies are to be effected on two other votes, on the subject of which, with all due respect, I say he can know nothing whatever about. Now, Sir, how can anyone at the Colonial Office realise or know how much money is necessary; if they had the slightest knowledge of conditions here they would feel that no money should be cut off road construction.

With regard to defence, Sir, defence in Colonies is a very old standing cause of friction between the Home Government and the Colonies. Anybody who studies the history of the Colonial Empire will find that over and over again it has been a cause of trouble—in Canada, New Zealand, Australia, South Africa—and as long ago as, I think, about 1860, it was finally decided that all self-governing Colonies must be responsible for their own defence and the Home Government responsible for all outside military defence. Now, Sir, it may be argued that we are not a self-governing Colony—we are not, and we are told we never shall be, though I hope some day we shall. It is only that we have gone a little ahead; we have taken on in this Colony the responsibility for our own defence—we pay for it all and we also, Sir, take on a certain amount of Imperial responsibility with regard to our defence. It was decided by a very large majority in this country that this Defence Force was necessary, and if one is to have a Defence Force it must be brought up to a certain stage of efficiency. In a Defence Force of this sort that stage of efficiency is very small indeed, very elementary, but that cannot be achieved unless the elementary requirements for training young people are available, such as rifles and equipment for camps. Again, Sir, unlike most votes in this country, as I see it, the Defence Force vote, which includes original equipment, should not be an increasing vote in future years, but a decreasing one. Rifles last a longish time, tents last not quite so long, and the number of people who have got to be put through their training will not increase but will rapidly decrease. So, Sir, I do think it is rather unwarrantable that arbitrarily a sum of money should be cut off what was decided, after very deep deliberation on the part of Government, as well as the unofficial side, was necessary.

THE HON. CONWAY HARVEY: Hear, hear.

LIEUT.-COL. THE HON. LORD FRANCIS SCOTT: If the Secretary of State for the Colonies had sent out here and said that he considered the times were bad, that our expenditure was too great, that we must economise, that our Budget was rather extravagant, I do not think anybody out here would have quarreled with him, even if he had said that we should

economise on certain Heads and had mentioned roads and defence and so on—one could not have quarreled with him. If he had said that, Your Excellency, and asked Your Excellency's Government to consider all these things in conjunction with the other Members of this Council, nobody could have taken objection, but we do really strongly object to this arbitrary use of power to say that this, that and the other must be done, without any consideration of the people here who have given a great deal of time and thought to considering the questions.

Now, Sir, bearing all this in mind—I must say in this case, Sir, that I do not wish to say anything about the gentlemen at the Colonial Office because they did not accept it—this country was, to my mind, deliberately misrepresented in that usually very accurate and careful paper the *Times*. There was a leading article, which must have mislead anybody who did not know the facts, saying that we had cut down Medical, Education and Public Works votes and had added on to the Defence Force, which, by implication, meant that we had taken away from these necessary things just to add to this Defence Force. The result of that was seen in the question asked by that very well-informed gentleman, Major Ormsby-Gore, which obviously implied the same thing. What are the facts, Sir? If you look at the Budget here, Education Department, so far from being cut down, shows an increase of £27,000 on last year; the Medical Department shows an increase of over £20,000; and as far as Public Works are concerned, there does not seem to have been any very serious cut that I can see. It is, Sir, rather disheartening to the people in this country—it must be to the official side as much as to us—that after weeks spent in going into these Estimates and sorting everything out, saying where economies could be made, what services could possibly be put off a little longer, and then coming to the conclusion that the Budget as passed was the best possible, to find that not only are our actions misrepresented in the public Press at home but that arbitrary action is taken instead of the matters being referred back for further consideration in this country.

CAPTAIN THE HON. E. M. V. KENEALY: Your Excellency, we find our decisions in matters of law guided by precedent, and that is an excellent way of dealing with matters of law, but Government has also accepted that as a guiding principle in their actions in this country. We have demonstrated our ability to manage our domestic affairs, and also our affairs with an Imperial aspect, and to manage them satisfactorily, with dignity, and with a certain amount of intelligence. We have been able to finance ourselves, although we have suffered the disability of being forced to accept the advice of our

financial advisers at home, and we still have been able satisfactorily to meet our obligations in the past. We find now that it is not anything other than our domestic affairs, which in the past we have satisfactorily handled, which are the subject of amazing criticism in the actions of the Secretary of State. But, Sir, I am not going to lay all the blame upon the Secretary of State, because I do not think that he is entirely blameworthy. I consider, Sir, that the Government in this country is to a very large extent responsible for the actions of the Secretary of State which have provoked so much criticism from this side of the House, inasmuch, Sir, as, in framing the Estimates two or three years ago, we adopted a policy which could have no financial justification whatever, and that was that we did draw upon our Surplus Balances for certain activities, and by some peculiar method at the end of the year the Surplus Balances were to a certain degree tied up on the form of a surplus with our current revenue. One or two of us on this side of the House did protest against that method of controlling our finance and framing our Budget, but our protests were unheeded. I feel, Sir, that in so far as the Secretary of State has recognised the wrongness of that procedure his action should be endorsed, but, Sir, in so far as his actions interfere with the planning out of a domestic policy, which has been considered and agreed upon for a number of years in this country, so far should his actions be adversely criticised.

Now, Sir, one of the major issues is the use to which Surplus Balances should be put, and last year we had a Committee appointed to deal with the disposal of Surplus Balances.

HIS EXCELLENCY: Order, order. I hope the hon. and gallant Member will confine himself to the Appropriation Bill before Council. The discussion of past dealings with Surplus Balances does not seem to me to be relevant.

CAPTAIN THE HON. E. M. V. KENEALY: Well, Sir, I shall be forced to accept your ruling. Can I mention Surplus Balances in any form, Sir?

HIS EXCELLENCY: Only in so far as they arise out of this Appropriation Bill.

CAPTAIN THE HON. E. M. V. KENEALY: Well, Sir, there has been an alteration in the call that we may make upon our Surplus Balances. It is a little unfortunate that I am prevented from analysing things because I cannot present to you, Sir, or to this House, a true picture of that action unless I review the past. However . . .

In regard to the domestic interference with our road expenditure, Sir, that is an action which provokes a high degree of disbalance, or unbalance—I do not know what the term is—in our Budget. We have at present the staff to give effect to road expenditure, but we have not the money; although we have a permanent commitment in regard to staff, we have not the money to give effect to their activities in road work. That, Sir, is an unwarranted and rather absurd interference with our domestic affairs.

We have been told that there is a despatch dealing with Surplus Balances—but I had better not mention Surplus Balances again.

Another matter of domestic interest to us which, although it has not yet been definitely put a stop to, is only pending and upon which judgment is reserved, is the Superintendent of Fencing. That is a domestic activity—fencing. Fencing is essential; the country has decided it is essential. It is a domestic activity—it has been interfered with. Now, Sir, if the Government of this country has failed to substantiate a case for fencing, I feel the Government of this country is to blame. I can only conclude from the action of the Secretary of State, in which he has reserved judgment on that, that this Government has lamentably failed in making representations of such a character as unequivocally to express the point of view that fencing is utterly essential in this country for the conduct of our domestic affairs in farming and agriculture generally.

In regard to the excision of the Fisheries vote, there too, Sir, I feel that the Government of this country must accept the responsibility for not adequately having represented our requirements in the matter.

When we come to the matter of Closer Settlement, then I am utterly astonished and bewildered at the action of the Secretary of State. We have, Sir, received Your Excellency's assurance in regard to the closer settlement proposals, that their limited application had received the approval and endorsement of the Colonial Office. That statement was publicly made in this House, and surely, Sir, the interference of the Secretary of State at this stage amounts to a denial of the responsibility of the Governor of this country; and if it does, and in so far as it does, and I believe that it does, it is a matter which does merit, and rightfully merit, the just resentment of every Member on this side of the House, as well as the loyal resentment of Members on the other side. On this side of the House the resentment is genuine. I hope there will be further comments on that particular point; we cannot have this utter disregard of speeches and undertakings.

In the past the Empire was won on reasonable and equitable lines, and if we disregard our pledges in this manner and refuse to accept our commitments, it shows that we are departing very, very sadly from our ancient prestige and practice.

The delay in coming to decisions on many of these matters, Sir, has already been commented upon. That, no doubt, is a matter of procedure which cannot at the moment be got over, but I feel that if the Government of this country had made the correct representations to the Secretary of State there would not have been the difficulty and delay which has accrued. We feel, Sir, that the only reasonable and just method of handling a situation such as this—which is unprecedented, in so far as the last five or six years are concerned, anyhow—would have been to remit the whole thing for the consideration of the Committee which framed the Budget and allow the lack of balance that is manifested in this present Appropriation Bill to be rectified on a balanced ratio between the various items. I feel, Sir, that as our spending capacity has been limited by money being taken off, without any suggested reductions in staffs, who will therefore be employed kicking their heels because no work can be found for them because there is no money to finance that work, is a ridiculous situation and must be rectified in some way. I do not know how it can be rectified. I do not know whether our unanimously voting against this motion will have that effect, but, Sir, it is an absurd situation; everybody recognises it is absurd, and it is the duty of the Government of this country to propose some method of rectifying it.

I feel, Sir, that in regard to the Defence Force Vote, even if the total vote for the defence of the country did not require reduction, it could have been reduced possibly without any injury to ourselves, and possibly without any injury to our Imperial commitments; but, Sir, I am utterly opposed to any reduction in the Defence Force Vote as applicable to the European Defence Force of this country. I feel, Sir, that if economy was required, that economy should have been effected in the King's African Rifles Vote. I have not any doubt that that can be done. It has been promised for a number of years, and I feel that we should unanimously support and strongly endorse the necessity for an adequate sum being provided for our own Defence Force.

THE HON. E. POWYS CANN: Your Excellency, I feel that in criticising the alterations which have been made in the Budget, as prepared by the Select Committee, that one is on very treacherous ground, so far as everybody in this country is concerned, because, after all, that is the first great and

important work of Members on this side of the House and of Government. I feel, therefore, that in defending these items as agreed to, one is taking up no defensive view, but the view of the Government and the people of the Colony; and that being so, I think the alterations made by the Secretary of State assume a more serious aspect. Assuming that he is impressed purely with the financial side of the question, supposing that he does think that we are inclined to spend too much in this country, the obvious method for him to adopt is the way suggested by the hon. Member for Ukamba, to say, in broad terms: "You are spending too much and I think a certain reduction should be made," and leave those reductions to be carried out here by this House as a whole—that is to say, the Elected Members working in conjunction with the Government. But that has not been done, and I am afraid I cannot help thinking, on looking at the items which have been deducted, that possibly some other motive lies at the back of them. There are four items which have been changed. Three of those four are all matters which definitely affect the advancement of white settlement in this Colony; the fourth is a matter merely of accounting.

Taking the Military vote first. The military expenditure of this Colony is definitely divided up into two sections—the defence of the Northern Frontier and the local defence of the Colony. I think it has been argued, and argued truly in this House over and over again, that the defence of the Northern Frontier is to a large extent an Imperial matter—at any rate, it is a matter which affects other territories besides this. I maintain that if economy was so essential in the mind of the Secretary of State, he might have helped us out in the expenditure which we have to incur on Imperial grounds. But that is not so; he has let that stand. He has left this Colony to bear the whole of the Imperial burden, but he has sought to deny us the right to protect our own country; and an examination of the way in which that vote has been handled seems to give further colour to my point. The items which have been cut out are mainly non-recurrent items—items necessary on the inception of the force; items which, if deleted, make the establishment of that force almost impossible. The deletion of those items carries with it results far more serious than the mere loss of so many thousands of pounds. They do literally render the establishment of an efficient force well nigh impossible.

Very much the same argument applies to the question of the cut in roads. Admitting that there may be two opinions as to the proper method of employing Surplus Balances—that is a perfectly fair and reasonable attitude to take up, but I maintain that it is not reasonable for a person living so far

away, so entirely remote from any detailed knowledge of the circumstances, to take out any particular items from expenditure on Surplus Balances and say that it has to be deleted. Again, roads are, to a large extent, the essential of white development, whereas they are not the essential of less elaborate forms of development. The primitive races make use of them, and great use of them, but they are not so essential to them as they are to the more advanced form of development.

Then the next vote reduced by the Secretary of State, the Agricultural vote—the items are: Superintendent of Fencing

THE HON. THE COLONIAL SECRETARY: Your Excellency, on a point of explanation, I do not know whether I made myself quite clear, but nothing has been cut out of the Agricultural vote at the moment: the items have only been held up pending further consideration.

THE HON. E. POWYS COBB: Your Excellency, I thank the hon. the Colonial Secretary for his explanation. I was clearly wrong in saying they had been cut out, but the bare fact that items of this sort—Fencing, expenditure on Closer Settlement, and Sea Fisheries—should be the items selected for further examination, to my mind carries the same suggestion. It seems to me, Sir, that in the criticisms of the Secretary of State upon the Budget, as agreed in this country, the criticisms are less of a financial than of a political colour.

LIEUT.-COL. THE HON. C. G. DURHAM: Your Excellency, I should like to touch on the Military vote first. It will be remembered, Sir, that the Defence Force Committee thought they had put up a very good case indeed for the sum of £8,364 now cut. The total amount of this sum will not be recurrent; some £4,000 was simply for equipment, arms, camp equipment and so forth. The rest, Sir, was to train the young men in the Colony. Now, Sir, it will be hard to say that on the vote we have got to-day that they can be thoroughly trained. Somebody put forward that training at the moment was not necessary. Your Excellency, I think it is entirely necessary that the young men of the country should be trained. I can see no reason why those of us old horses should be saddled up every time anything comes along; it is up to us to train the young idea. Without the money we cannot do it.

With regard to the roads, Sir, unless it is the deliberate intention to retard the roads of this Colony, I cannot understand the reason for this cut. Anyone in his senses knows

that the roads are the very life-blood of the Colony, and if we are to go on at all with our settlement in the future we must continue with these roads and make them good.

HIS EXCELLENCY: If no other hon. Member wishes to address Council, I will call upon the Director of Public Works.

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS: Your Excellency, the incidence of reduction in the road vote has been very carefully studied in collaboration with the Road Engineer, and the items that have been left in are those considered to be of the greatest advantage to the country as a whole. I do not propose at the moment to give the details of the exact items which have been cut out. The schedule of roads was decided by the Central Roads and Traffic Board and I do not think the approved schedule has yet been made public, so no useful purpose would be served by referring to the details.

There was one question, Sir, asked by the hon. and gallant Member for West Kenya regarding the road staff. I can assure the hon. Member that there are no road foremen sitting idle as a result of this cut. The necessary reductions in the staff have already been made. The bulk of the staff of road foremen are on temporary appointments and can be terminated at a month's notice.

CAPTAIN THE HON. E. M. V. KENEALX: Your Excellency, on a point of explanation, I did not suggest that road foremen were kicking their heels, but other persons in the Public Works Department, not necessarily road foremen. I am satisfied that road foremen are not.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I should like to say a word on the question of the belated approval of the Estimates, to which attention was drawn by the hon. Member for the Lake, because I think possibly that, linked up with that consideration, may be the action which the Secretary of State has taken in respect of certain votes.

As hon. Members are aware, the sittings of the Select Committee last year were considerably prolonged and only concluded just before Christmas. As a result, the covering despatch forwarding these Estimates to the Secretary of State could not be got off before the 11th January. That necessarily meant that the Estimates were in the hands of the Secretary of State somewhat later than usual and it was difficult for him to give the early approval to the Estimates that we all should like. So much is that the case, that

he has mentioned this year the possibility of our having our Estimates Sessions earlier, possibly in August, in order to get the Estimates home. I do not propose to go into that suggestion now in detail, because there are weighty pros and cons against such a proposal, but I do think it is only right to say, in justice to the Secretary of State, that his belated approval to the Estimates this year was in part due to the belated manner in which they were forwarded to him from this Colony.

That brings me to the other point which has been made. Hon. Members have all agreed that there is no question of the constitutional rights of the Secretary of State to allow and disallow Estimates, but it has been suggested that in any case, in view of the practice which has grown up in this Colony, it would have been more courteous for him, instead of arbitrarily disallowing certain votes, to have referred the matter back to this Council again for consideration. It is not within my province, Sir, to champion the procedure, for or against, which the Secretary of State may have adopted, but I do suggest that there is this practical consideration that had that course been adopted instead of, as soon as we received telegraphic approval of the Estimates, our being able to get out the necessary instructions to Heads of Departments to operate on such votes as were liberated, that course would not have been possible and we should have still had to wait more or less in a state of suspended animation until we had another Select Committee, confronted with perhaps considerable difficulties in deciding how they were going to make an economy of £20,000, or £30,000, or £40,000. I put that forward, Sir, as a suggestion.

Distinction in this connection has been drawn between the action which the Secretary of State has adopted in dealing with the Defence Force vote and the Roads vote, and that which he has adopted in the case of the Fencing, Sea Fisheries and Closer Settlement. I would again remind hon. Members that there is a distinction between these five votes. In the case of the Defence Force and Roads our case was fully stated, both in the Estimates Memorandum and in the covering despatch. The Secretary of State had all the facts before him, and he has taken the decision, which I know in the opinion of hon. Members opposite is to be deprecated, but he had all the facts before him upon which to take that decision. In the case of the Fencing, he has by no means turned the thing down. He has only made it clear—and I think it is reasonable—that until he has had time to consider fully the Fencing Bill that expenditure arising out of the Bill should not be automatically approved by him. The same applies in the case of the Sea Fisheries. Hon. Members will

themselves remember that that £5,000 vote for Macfisheries was brought up at the eleventh hour in the Select Committee, that the proposal originally came forward before the Select Committee in a different form, and then it was finally decided at very short notice that it would be desirable to deal with the matter by a £5,000 vote and endeavour to obtain the services of Macfisheries in the matter. No time was available for the Government fully to state a case for or against such a proposal; all that we could do was to forward the facts and a copy of the Select Committee's memorandum. All that the Secretary of State has now done—he is not in the least antagonistic to the proposal, in fact he is most anxious to encourage our fisheries—is to suggest that the matter might be further explored, and on receipt of our further views he will go into the question again. The same, Sir, in a measure applies to the question of Closer Settlement. The matter has been referred back now to the Select Committee on the Land Bank question, and he wishes that the whole matter should be dealt with in a comprehensive manner. So much, Sir, for the manner in which those items have been dealt with at home.

There is just one word I should like to say before I sit down. I should like to remove any fear that the action taken on the Estimates has put the Colony in a worse financial position. Naturally, by the cuts that have been made, our position is better than that for which we originally budgetted. If hon. Members will recall, in framing the skeleton of the Budget we hoped that on the 31st December last we should have a surplus of £703,136; in point of fact we have a balance of £707,977—in other words, we are £5,841 better off than we anticipated. If to that sum be added the estimated revenue, after deducting the £25,000 on Loan to which I have referred, we get a total figure of £4,169,000 odd; the estimated expenditure, after deducting the cuts made by the Secretary of State, is £3,555,000 odd, leaving an estimated balance at the end of the year of £614,000 odd, or £35,000 odd better than we had budgetted for originally. Therefore, Sir, without any question, the position of the Colony is better than it was before.

I do not think, Sir, I need keep the House further beyond to state that, though we naturally deprecate the expenditure which we have recommended being curtailed in this manner, it seems to me that until we know the attitude which is going to be adopted by the Secretary of State on the general Surplus Balance policy, which to that extent does affect the Road vote, it is premature for us to go into the matter further. In respect of the Defence Force, I think it should be remembered that even with the cuts made the

increase is very large; whereas in 1929 the figure was £6,000 odd, the amount now provided is £12,000 odd—nearly 100 per cent increase on last year's expenditure.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

(The Council adjourned for ten minutes.)

THE VAGRANCY (AMENDMENT) BILL.

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

The objects of this short six-clause Bill, Sir, are, as hon. Members will see from the statement of Objects and Reasons annexed thereto, of a two-fold nature. The first of these objects, Sir, is to enable advantage to be taken of the offers which have been made by various charitable organisations in the Colony—such organisations as the Salvation Army and the League of Mercy, who have undertaken to take charge of vagrants of certain classes, particularly European female vagrants. As the law now stands, Sir, it is impossible to take advantage of this generous offer, inasmuch as the law provides that the Government may set aside buildings to be places of detention, but it cannot be said that the League of Mercy, who undertake to make provision for vagrants in certain circumstances, fall within the purview of the law as it now stands.

The second object, Sir, is to make it perfectly clear, in view of suggestions that have recently been thrown out, that the provisions of the Ordinance relating to the finding of work for vagrants are not a veiled form of forced labour, that the Ordinance cannot be used as a means of providing forced labour for employers. The suggestion is so absurd, Sir, that the mere mention of it carries its own recontation, but as it was necessary to amend the Ordinance for the first reason, it has been considered advisable to make it perfectly clear that the Government has no intention, or had no intention, of employing the vagrant class in forced labour of any description.

I beg, Sir, to move that the Bill be read a second time.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

THE HON. CONWAY HARVEY: Your Excellency, I am sure hon. Members will support this very necessary measure, which, in my opinion, Sir, is considerably overdue, inasmuch as it has been the practice up to now to send unfortunate vagrants to prison, where presumably they are called upon to conform to prison discipline, which seems distinctly unfair on the unfortunate individuals concerned, as poverty cannot accurately be described as a "crime." As a matter of fact, Your Excellency, it must be well known that not so very long ago there was a case of an administrative officer who had to be detained in this way, and I suggest, Sir, that it is far more proper to invoke the assistance of those admirable social institutions—the Salvation Army and the League of Mercy—in this connection.

I am not going to oppose the contemplated amendment to Clause 10, Your Excellency, and I am very glad to hear my learned friend say that no case exists for the introduction of legislation on those lines. I think I can quite safely say that no case is likely ever to arise when such a measure will be necessary in any way.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE LEGITIMACY BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill relating to children born out of wedlock be read a second time.

It has always been a source of amazement to me, Sir, and I am sure that amazement is shared by many other hon. Members, that it was only in the year 1926 that England, with its great tradition of equity and fairness, saw fit to make legislative provision for the illegitimate child. But I am glad to say, Sir, that since the Imperial Parliament made that provision very many Colonies gladly and immediately followed that lead; and now Sir, it is my privilege to introduce a similar measure in this Colony.

The provisions of the measure, Sir, can be regarded from two points of view. There is first, Sir, the small provision, which hon. Members will find in Clause 11 of the Bill, relating to the relationship on intestacy of an illegitimate child and its mother. That provision, Sir, is one that no hon. Member can possibly cavil at. It stands quite apart from the provisions of all the rest of the Bill.

The major portion of the Bill, Sir, deals with the analogous but quite distinct matter of legitimation—of the acquisition by an illegitimate child of the status of legitimacy. Shortly and simply put, Sir, the provisions of the Bill are these: if both the parents of an illegitimate child marry subsequent to the date of birth of that child, that child may become legitimate, either from the date of commencement of this Ordinance or from the date of marriage of his parents, whichever last happens, in one of two ways. If both parents are still alive and within the Colony, then, Sir, there is a simple procedure laid down whereby the parents may appear before the Registrar and, on proving the birth and parentage of the child and subsequent marriage of the parents, that child's birth is registered as legitimate. If, on the other hand, Sir, it is not possible for the parents themselves to appear before the Registrar, then a slightly and necessarily more cumbersome procedure is provided of a petition to the Supreme Court for a declaration of legitimacy. Ample safeguards are laid down, Sir, inasmuch as the Attorney General is a compulsory respondent of such a petition and due and ample notice of that petition has to be given in order that all enquiries as to the *bona fides* of the claim may be made.

The other provisions of the Bill, Sir, deal almost entirely with the consequences of legitimation—the consequences of the acquisition of the status of legitimacy by the child. Clause 5 states shortly what those rights are so far as the devolution of property are concerned. The second part of that clause deals with the necessary consequences of the right of inheritance, the ranking of legitimate and illegitimate children into a seat in the family. There is a saving provision, Sir, in Clause 12 for dignities and titles of honour, and Clause 9, Sir, safeguards the revenue, so far as we are concerned, by making it abundantly clear that death duties are payable in such cases as they are in the case of inheritance by a legitimate child. That broad principle is one that must so essentially commend itself to everyone in this House, Sir, that I do not propose to take up more time in discussing it, and I shall formally move that the Bill be read a second time.

CAPTAIN THE HON. H. E. SCHWARTZ: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE SUGAR (AMENDMENT) BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to move that the Bill to amend the Sugar Ordinance be read a second time.

It is a very short Bill, Sir, and its objects are twofold. The first is to remedy what was an obvious omission when the original Sugar Bill was framed. Under that Bill it was made an offence for natives in prescribed areas to be in possession of sugar or sugar juice without a permit, but there is no machinery provided to catch the person who provides or supplies sugar to a native who has no permit to possess it. Some time ago Government was advised that the omission could be rectified by means of Rules made under the Ordinance. That course was taken and the Rules were made, but when a conviction was recorded and the case came before the Court of Appeal, it was held that the Rules were *ultra vires*. It has therefore become necessary to make that provision by amendment to the Ordinance.

This amendment is very much wanted and has been asked for, not only by the natives of the Ukamba Reserve, to which this Ordinance particularly applies, but by the European residents as well. With Your Excellency's permission I should like to read two short resolutions. The following is a resolution of the Machakos Local Native Council held on the 7th February last:—

"It was resolved that the Council urges most strongly that the Sugar Ordinance should on no account be repealed but that it should be amended to provide for the punishing of the seller of sugar to any person not possessed of a permit, as laid down in Government Notice No. 310 of 1928."

That Government Notice was the Rule to which I have referred.

There has been a further unanimous resolution of the District Committee of Machakos, which is as follows:—

"That this committee strongly recommend that the Sugar Ordinance should be amended to permit of the incorporation of the Rules published under Government Notice 310 of 1928. Further, that this committee strongly recommends the retention of the Ordinance thus amended and strengthened, and desire to express their conviction that in spite of the inevitable evasions due to the lack of police staff, the operation of the Ordinance has had a salutary effect upon the native population and its repeal would be both retrogressive and deplorable."

There is a further provision in the Bill before the House to induce—to enable Courts to award a portion of the fine to informers. That, Sir, is to try and lessen the evasions to which the district committee has called attention, for where you have natives anxious to obtain sugar and certain people anxious to supply it for profit, it is very difficult to detect all the sources of supply.

There is precedent for such provision in various Ordinances that are on the statute book, namely, the Prevention of Cruelty to Animals Ordinance, the Game Ordinance, the Customs Management Ordinance and the Trout Protection Ordinance, and I trust the House will accept the principle in this case.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Bill be read a second time.

THE HON. CONWAY HARVEY: Your Excellency, as we have definitely approved the main principles in the Sugar Ordinance I am sure no one will cavil at the first amendment proposed by the hon. Gentleman, but, speaking for myself, Sir, I do take very grave exception to the introduction of this most pernicious principle of paying informers. I do think, Sir, that it is a most despicable thing that this principle should be so frequently introduced into our legislation. A case may possibly be made out in certain circumstances for its utilisation in highly civilised communities, but there is no doubt whatever, Sir, that when we are dealing with semi-civilised natives it is putting a very serious temptation in their way, and so far as I am personally concerned I shall always oppose the introduction of this principle.

LIEUT.-COLONEL THE HON. LORD FRANCIS SCOTT: Your Excellency, there is no question that the original Ordinance did inflict hardships on certain individual people. Those people have complied with the law since it was introduced, but the self-sacrifice, so necessary on their part, has been to a great extent frustrated because other people have been able to evade the law, and the result of the original Ordinance has not been as complete as one could wish it. For that reason I wish to support this Bill.

With regard to section 3, I, like everybody else, dislike the principle of paying informers, but if it is the only method by which this Bill can be made effective, I am afraid one has to put up with the evil of this method in preference to making the Bill of no use altogether.

THE HON. W. F. G. CAMPBELL (SENIOR COMMISSIONER, UKAMBA): Your Excellency, it is not my intention to weary this House with a dissertation on the merits of the Sugar Bill. We who are closely associated with its working know how successful it has been. The good results are apparent to anyone—even to anyone with only one eye. (Laughter.)

It will be remembered, Sir, that this legislation was introduced in 1923, the Bill meeting with considerable discussion and opposition. As a result of that, Sir, a Select Committee of this House was appointed in 1925 to consider the working of the Ordinance. The hon. the Chief Native Commissioner has read two resolutions, passed by the Local Native Council and the District Committee, Machakos; I will now content myself with reading the concluding paragraphs of that Select Committee's Report, which Report, I may say, was a unanimous one:—

"It has been shown to the satisfaction of the Committee that the Ordinance has been successfully administered without harshness and undue hardship, further that it has already improved the moral and social state of the people whom it was designed to benefit."

The Committee went on to say:—

"On the question of payment to informers of small rewards in special cases there was a difference of opinion among the Committee. It is recommended that consideration should be given to this proposal in the light of further experience."

As regards this suggested clause, Sir, with reference to the payment of rewards to offenders, I take the full responsibility for it because I was the one who originally made the suggestion. There are two arguments in favour of this clause to which I would direct the attention of this House. The first, as the hon. the Chief Native Commissioner has said, is that this is not revolutionary legislation. You have this provision in four Ordinances existing to-day, and I have not heard that any of those Ordinances have been abused as the result of this clause. If we find in the Ukamba Province that pernicious prosecutions are brought in the hope of getting rewards, we have full powers effectively to deal with them. I should also like to point out, Sir, that this clause, if embodied in the Bill, would not be operated by young or inexperienced officers. The District Commissioner, Kitui, is an officer who has known Ukamba for twenty years; the District Commissioner, Machakos, has known it for seventeen years; I have known it for eight years. Therefore I can assure this House that this clause, if incorporated in the Bill,

will be exercised with the greatest discretion. In the words which were used by my friend, the hon. and gallant Member for Nairobi South, last week: "Do trust the man on the spot."

The second argument I must use, Sir, is this: to all of us in this House, who have merely a nodding acquaintance with *tembo kali* and champagne, it may be difficult to realise how hard it is to prevent the smuggling of sugar into this Machakos district. We have a native population of roughly 350,000 people, and it is quite safe to say that the majority of the people, certainly the young men of the tribe, would welcome the repeal of the Ordinance. In addition, there are numerous trading centres, and in the past the traders who earned their livelihood in those centres have proved themselves very willing to aid in the smuggling of sugar, seeing that the profit they make on any transaction is anything up to 200 per cent.

I should like, Sir, to relate to this House a little incident that came to my own personal observation. The incident shows how difficult it is to deal with the smuggling of sugar. During the earlier months of last year—I think, Sir, it was one of those months during which I was engaged on one of those particularly strenuous tax-collecting *safaris* (laughter)—I came across a missionary whose headquarters are situated on the banks of the Athi River, the river which forms the boundary of the district. This missionary said to me that for the past three weeks he had hardly been able to get any sleep owing to the singing and shouting of the Wakamba who, having crossed the river and bought their sugar, were bringing it back into the Reserve, that is, the prohibited area. I suggested to this missionary that he should enlist the services of four or five of the more intelligent people and get them to watch the drift for, say, two days and two nights. Some months later I again saw this missionary and I asked him what luck he had had. "Well," he said, "I duly sent out those men and they watched the drifts for two days and two nights. On the morning of the third day they returned to my mission station escorting a very small child with a very large lump of sugar." (Laughter.) "But," said the missionary, "this appears to me a very inadequate result from two days and two nights vigil." "Yes," they replied to him, "it is a bad *shauri*, but, though we did in fact capture a very large number of people, we had to let them all go because we found they all came from our own location." (Laughter.)

That, Sir, does show the difficulties we are up against. As regards this clause—payment to informers—I would suggest for the consideration of this House that if, as the result of any action of an informer in making a catch or

breaking up a drinking party, in the course of which he has received a thick ear, it is very small encouragement to be told by the magistrate that he will later on receive his reward in another place. (Laughter.) He would much prefer something on account, and I sympathise with him. (Laughter.)

Finally, Sir, as this is probably the last occasion on which I shall have the honour of addressing this House, because I am shortly retiring and going on the dole, I should like to pay a tribute to the excellent manner in which the Wakamba have behaved themselves during the recent difficult months. Efforts have been made to undermine the loyalty of the tribe, endeavours have been made to collect money from them for propaganda, but to all these attempts the Wakamba have turned a deaf ear and been content to accept the advice of their District Officers. I have no hesitation in saying that had the conditions which existed eight years ago continued, when it was no uncommon thing to see old men and young men hopelessly drunk by ten o'clock in the morning (this is the object of passing the Sugar Ordinance), I very much doubt whether I should have been able to pay the tribute to the Wakamba which I pay to-day. It is, Sir, because of my very keen interest in the welfare of this tribe that I ask this House—and I ask with some confidence—to help us and support us in the measures which we wish to take to save from their own foolishness so attractive and so large a tribe as the Wakamba. (Applause.)

CAPTAIN THE HON. E. M. V. KENEALY: Your Excellency, I hope another opportunity will be given to the Senior Commissioner, Ukamba, to withdraw or amend one or two of his remarks. Presumably he is speaking as a responsible Government official—I do not know if he remembers what the remark is; if not, Sir, I should like to call it to his attention. Two remarks. One was, Sir, that he sponsored the policy of giving rewards to "offenders," and the other was that this, he thought, was the last occasion on which he should speak. I trust he will amend both those remarks. (Laughter.)

THE HON. W. F. G. CAMPBELL: Your Excellency, if I inadvertently used the word "offenders" that was due to excessive nervousness on my part. (Laughter.) Obviously, the word should be "informers". I would remind the hon. Member that I am here merely in the capacity of an officially well-balanced steam roller and I cannot be drawn.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that this Council resolve itself into a Committee of the whole Council for consideration clause by clause of the following Bills:—

- The Interpretation and General Clauses (Amendment) Bill.
- The Defence Force (Amendment) Bill.
- The Detention Camps (Amendment) Bill.
- The Electric Power (Amendment) Bill.
- The Local Government (District Councils) (Amendment) Bill.
- The Immigration Restriction (Amendment) Bill; Clause 10 *et seq.*
- The Appropriation Bill.
- The Vagrancy (Amendment) Bill.
- The Legitimacy Bill.
- The Sugar (Amendment) Bill.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that this Council resolve itself into a Committee of the whole Council for consideration of the following Bills clause by clause:—

- The Interpretation and General Clauses (Amendment) Bill.
 - The Defence Force (Amendment) Bill.
 - The Detention Camps (Amendment) Bill.
 - The Electric Power (Amendment) Bill.
 - The Local Government (District Councils) (Amendment) Bill.
 - The Immigration Restriction (Amendment) Bill, Clause 10 *et seq.*
 - The Appropriation Bill.
 - The Vagrancy (Amendment) Bill.
 - The Legitimacy Bill.
 - The Sugar (Amendment) Bill.
- The question was put and carried.
The Council went into Committee.

In Committee.

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL.
The Bill was considered clause by clause.

THE DEFENCE FORCE (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 3.—Amendment of section 11 of the Principal Ordinance.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I understood that the Government were going to delete this clause.

THE HON. THE ATTORNEY GENERAL: That is so, Sir. I was waiting for the hon. Member formally to move it.

HIS EXCELLENCY: If the hon. Member will formally move the deletion, Government will accept it.

LT.-COL. THE HON. LORD FRANCIS SCOTT: I move that clause 3 of this Bill be deleted.

The question was put and carried.

Clause 4.—Repeal and replacement of sub-section (2) of section 23 of the Principal Ordinance.

THE HON. THE ATTORNEY GENERAL: I beg to move that in consequence of the deletion of the preceding clause that this clause be renumbered 3.

The question was put and carried.

THE DETENTION CAMPS (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE ELECTRIC POWER (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE LOCAL GOVERNMENT (DISTRICT COUNCILS) (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE IMMIGRATION RESTRICTION (AMENDMENT) BILL.

Consideration of the Bill, clause by clause, was continued.

Clause 10.—Conditional permits.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I beg formally to withdraw my amendment that this clause be deleted in view of the amendment being moved by the hon. the Attorney General.

HIS EXCELLENCY: The amendment is by leave withdrawn.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that in sub-clause (3) of this clause, in line 23, the word "shall" be deleted and the word "may" substituted therefor, and that in line 24, same sub-clause, the word "shall" be deleted.

HIS EXCELLENCY: The question is that in sub-clause (3), clause 10, lines 23 and 24, the word "shall" be deleted and the word "may" be substituted therefor.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I would suggest, for the consideration of the hon. the Attorney General, that the second amendment might make things awkward. The first amendment means that he has discretionary power to cancel the permit, but if this is cancelled the deposit must be returned. You cannot give discretion to anyone to return the deposit.

THE HON. THE ATTORNEY GENERAL: I did not move, Sir, that the word "may" be inserted in the second case.

CAPT. THE HON. H. E. SCHWARTZ: I beg your pardon, but the effect of the motion is that "may" governs both operations.

HIS EXCELLENCY: I beg the hon. Member's pardon. I put the amendment wrongly to the Committee.

The question is that in sub-clause (3), line 23, the word "shall" be deleted and the word "may" substituted therefor; and that in line 24 the word "shall" be deleted.

The question was put and carried.

Clause 11.—Amendment of section 12 of the Principal Ordinance.

THE HON. THE ATTORNEY GENERAL: I beg to move in this clause that after the word "or" in line 41 there be inserted the words "with the consent of the Government of the country concerned."

The question was put and carried.

Clause 17.—Schedule A.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that Schedule A be amended by the insertion, before the word "Ireland" of the word "Northern."

The question was put and carried.

Clause 17.—Schedule B.

THE HON. THE ATTORNEY GENERAL: I beg further to move that in Schedule B, on page 7 of the printed Bill, the figures "1930" be substituted for the figures "1929" in the two places where these figures occur.

The question was put and carried.

THE APPROPRIATION BILL.

The Bill was considered clause by clause.

Clause 2.—Public revenue charged.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I beg to move that the words "three million five hundred and fifty-five thousand five hundred and thirty-five pounds" be deleted, and substituted therefor will be the words "three million five hundred and eighty-four thousand and ninety-nine," thus putting back into the Appropriation Bill the amount that has been arbitrarily cut out by the Secretary of State.

HIS EXCELLENCY: I am afraid the hon. Member is not able to move that amendment, without my leave, and I cannot give leave to move an amendment increasing the charges of the Colony.

The question is that clause 2 stand part of the Bill.

The question was put and carried by 19 votes to 8.

Ayes: Major Brassey-Edwards, Messrs. Campbell, Dobbs, Doran, Fitzgerald, Dr. Gilks, Messrs. Holm, Horne, Canon Leakey, Messrs. Lynde, MacGregor, Martin, Maxwell, Montgomery, Moore, Rushton, Scott, Walsh, Colonel Wilkinson.

Noes: Mr. Benister, Lt.-Col. Durham, Capt. Kenealy, Lt.-Col. Kirkwood, Major Robertson-Eustace, Capt. Schwartz, Lt.-Col. Lord Francis Scott, Col. Tucker.

THE VACANCY (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE LEGITIMACY BILL.

The Bill was considered clause by clause.

Clause 3.—Legitimation by subsequent marriage of parents.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I beg to move an amendment which I understand the hon. the Attorney General on behalf of Government is prepared to accept, and that is that the word "domiciled" in line 22 be altered to the word "resident."

HIS EXCELLENCY: Is the hon. Member prepared to accept that?

THE HON. THE ATTORNEY GENERAL: I think, Sir, it raises some complicated and difficult questions, but I agree with the hon. Member who has just spoken that it is better to extend it to everybody "resident in the Colony."

The question was put and carried.

Clause 12.—Saving.

CAPT. THE HON. E. M. V. KENEALY: I propose the deletion of this clause, Sir, because I think it is an entirely unnecessary one. I feel, Sir, that in dealing with a matter such as legitimation there should be no restrictions of this nature introduced, and I propose its deletion.

HIS EXCELLENCY: I am afraid I cannot accept the amendment. The matter is entirely one for the orders of His Majesty's Government.

THE HON. THE ATTORNEY GENERAL: It will require a substantive motion, Sir.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency . . .

HIS EXCELLENCY: The hon. Member is not in order in speaking to his amendment. I have ruled the amendment out of order.

CAPT. THE HON. E. M. V. KENEALY: I take it your ruling applies only to British orders, honours and titles.

HIS EXCELLENCY: The succession to honours and titles of a foreign power is not subject to my ruling.

THE HON. THE ATTORNEY GENERAL: My view of this provision is that in that case the sole effect of this clause would be that in this Colony in such a case we should not recognise the succession to any such foreign order or dignity or title of the person legitimated by this Ordinance.

CAPT. THE HON. E. M. V. KENEALY: Surely, Sir, the instructions from His Majesty embrace only English or British titles, honours and dignities.

HIS EXCELLENCY: It is not possible for this Council to legislate about foreign honours; it is not within its purview at all.

CAPT. THE HON. E. M. V. KENEALY: Well, Sir, it is doing so.

THE HON. THE ATTORNEY GENERAL: I can assure the hon. Member that the clause is taken verbatim from the English Act of 1926.

THE SUGAR (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the ten measures which have just been considered in Committee of the whole Council be reported to Council.

The question was put and carried.

Council resumed its sitting.

On resuming.

HIS EXCELLENCY: I have to report that the Bills noted on page three of the Order of the Day have been considered in Committee of the whole Council and have been reported to Council, in some cases with amendments and in some cases without amendment.

THIRD READINGS.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that:—

The Interpretation and General Clauses (Amendment) Bill,

The Defence Force (Amendment) Bill,

The Detention Camps (Amendment) Bill,

The Electric Power (Amendment) Bill,

The Local Government (District Councils) (Amendment) Bill,

The Immigration Restriction (Amendment) Bill,

The Appropriation Bill,

The Vagrancy (Amendment) Bill,

The Legitimacy Bill, and

The Sugar (Amendment) Bill,

be read a third time and passed.

CAPTAIN THE HON. H. E. SCHWARTZ: Your Excellency, would the hon. the Attorney General agree to hold up the third reading of the Bill relating to Children Born out of Wedlock until we can ascertain how the Bill is affected by altering the word "domiciled" in other parts of the Bill? I have been trying to go through it but it is impossible here. It will make no difference here.

THE HON. THE ATTORNEY GENERAL: I have been through it already, Sir. The word "domiciled" is used in one other place, but it is used in an entirely different sense there.

CAPTAIN THE HON. H. E. SCHWARTZ: It is used in other places.

THE HON. THE ATTORNEY GENERAL: That is the only place where it might possibly be affected; but I have no objection to deferring the motion for third reading until to-morrow.

CAPTAIN THE HON. E. M. V. KENEALY: I hope the Government will exclude the Appropriation Bill from the motion so that a division can be taken upon that alone.

THE HON. THE ATTORNEY GENERAL: Sir, with the deletion of the Appropriation Bill and the Legitimacy Bill, I beg to move that the other Bills be read a third time and passed.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the—
The Interpretation and General Clauses (Amendment) Bill,

The Defence Force (Amendment) Bill,
The Detention Camps (Amendment) Bill,
The Electric Power (Amendment) Bill,
The Local Government (District Councils) (Amendment) Bill,

The Immigration Restriction (Amendment) Bill,
The Vagrancy (Amendment) Bill, and
The Sugar (Amendment) Bill,

be read a third time and passed.

The question was put and carried.

The Bills were read a third time and passed.

THE APPROPRIATION BILL.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to move that the Bill to Apply a Sum of Money for the Service of the Year ending the 31st day of December, 1930, be read a third time and passed.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Appropriation Bill be read a third time and passed.

The question was put and carried by twenty-four votes to three.

Ayes: Mr. Bemister, Major Brassey Edwards, Messrs. Campbell, Dobbs, Doran, Fitzgerald, Dr. Gilks, Messrs. Hohn, Horne, Lieut.-Col. Kirkwood, Canon Leakey, Messrs. Lynde, MacGregor, Martin, Maxwell, Montgomery, Moore, Major Robertson Eustace, Mr. Rushton, Capt. Schwartz, Mr. Scott, Colonel Tucker, Mr. Walsh, Col. Wilkinson.

Noes: Lieut.-Col. Durham, Capt. Kenealy, Lieut.-Col. Lord Francis Scott.

The Bill was read a third time and passed.

*Council adjourned to 10 a.m. on Wednesday,
16th April, 1930.*

WEDNESDAY, 16th APRIL, 1930.

The Council assembled at 10 a.m., at the Memorial Hall, Nairobi, on Wednesday, 16th April, 1930, His Excellency the Governor (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MAULEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of 15th April, 1930, were confirmed.

ORAL ANSWERS TO QUESTIONS.

REDUCTION IN POSTAL RATES.

CAPTAIN THE HON. E. M. V. KENEALY asked:

Will Government state how it is that the reduction in postal rates affecting the Colony's revenue has been imposed without prior reference to and approval by this House?

THE HON. THE COLONIAL SECRETARY (MR. H. M. MOORE): The proposal to reduce the postal rates as from the 1st April, 1930, was specifically referred to in paragraph 17 of the Memorandum on the Draft Estimates for 1930 and the Estimates of Revenue which were passed by the Legislative Council on the 19th December, 1929, allowed for the reduction in rates to take effect from the 1st April, 1930.

The reduced rates were properly brought into effect by means of rules made by the Governor in Council under the applied Indian Post Office Act.

CAPTAIN THE HON. E. M. V. KENEALY: Arising out of that answer, is it not a fact that the reduction was not specifically referred to this House?

THE HON. THE COLONIAL SECRETARY: I think my answer sufficiently covers the point inasmuch as this House passed the Estimates of Revenue and Expenditure, and the Estimates of Revenue provided for this reduction in rate. I think that very clearly this matter was brought before the House and approved by it.

MOHABA-NAIROBI-NAKURU TELEPHONE LINE.

CAPTAIN THE HON. H. E. SCHWARTZ asked:

What steps, if any, are being taken to instal a telephone line between Mombasa and Nairobi?

THE HON. T. FITZGERALD (POSTMASTER GENERAL): Financial provision has been made for a trunk telephone line from Mombasa to Nairobi and thence on to Nakuru. The Nairobi-Nakuru section is in course of construction and it is hoped to begin work on the Nairobi-Mombasa section about August next. Preliminary organization work is in hand and an adequate initial supply of material is already in the country.

IMPERIAL AIRWAYS SERVICE.

COLONEL THE HON. W. K. TUCKER asked:

Whether the East African Governments who are subsidising the Imperial Airways Service have taken steps to secure that only the most efficient and approved machines are to be used in conveying passengers and mails to and from Eastern Africa?

THE HON. THE COLONIAL SECRETARY: Assurances in this regard have been asked of the Secretary of State by this Government.

THE HON. CONWAY HARVEY: Your Excellency, on a point of order, I have been requested to ask what the prospects are of answers being forthcoming to-morrow to a further series of questions, more especially to those relating to the Registration of Domestic Servants, Film Censorship and the Kikuyu Central Association?

THE HON. THE COLONIAL SECRETARY: Your Excellency, the answer to the last question, I think we shall be in a position to table to-morrow. The other two I will look into and find out what the position is.

COLONEL THE HON. W. K. TUCKER: Arising out of that answer, may I ask whether the question that I handed in some days ago with regard to Commercial Travellers might also be answered to-morrow, because it is a matter of great moment to the commercial community?

THE HON. THE COLONIAL SECRETARY: I will look into that also.

HIS EXCELLENCY: I think hon. Members are aware that when there is difficulty in answering questions before Council adjourns, questions can always be answered in writing as soon as possible afterwards and published in the press if the hon. Member desires.

MOTIONS.

CENTRAL OFFICES AND LAW COURTS.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to move:—

"Be it resolved that this Council hereby approves the expenditure of a sum of £200,000 upon the purposes specified in the Schedule hereto and undertakes to approve the inclusion of such sum in the Schedule to a future Loan Ordinance together with such further sums as may be necessary to cover the cost of issue of such Loan.

Be it further resolved that this Council hereby rescinds its resolution of the 16th July, 1929, approving the provision of £110,000 for Law Courts.

SCHEDULE. £

1. Central Offices ...	154,000
2. Law Courts ...	136,000."

Your Excellency, as hon. Members will see, the object of this motion is twofold. Firstly, it is proposed that a sum should now definitely be provided to enable the Government to carry on with the Central Offices, which it has been agreed, I think, on all sides of the House, are most urgently required; and secondly, that a further sum should be added to the money originally voted for the Law Courts, for the purpose of adding a third storey thereto for the accommodation of Government offices.

Your Excellency, this matter of Central Offices and Law Courts has been so frequently before this House and Committees of this House in one form or another that it is probably unnecessary for me to go into very great detail. At the same time, perhaps, to refresh the memories of hon. Members, I would like to remind them that this question of the erection of Central Offices has been discussed off and on ever since 1914. In 1925 a committee composed of the Director of Public Works, the General Manager, the Commissioner for Lands and the Mayor of Nairobi reported in favour of the construction and erection of Central Offices on Secretariat Hill. This report was referred to a Select Committee of Council on Loan Proposals in 1925, and this Select Committee, in stating that a sum of £250,000 would be necessary in the near future, remarked that the need was obvious and that its provision would undoubtedly tend to the expedition of business. In accordance with that resolution; the matter was considered by Executive Council, which advised that Government offices should be divided into two groups: one, Law Courts and offices which require accommodation in the

centre of Nairobi; and two, the Central Offices of Government, comprising also a Legislative Council Chamber—and a committee was appointed to advise both as to accommodation and siting.

Hon. Members will recall that the next step was that taken in July last, shortly after my arrival in the Colony, I moved a resolution on this same subject, carrying out the policy which, as I believed, had been accepted on both sides of the House, and possibly, Sir, I may have been at fault in that, as a newcomer, when dealing with that resolution, I did not perhaps make the recommendations and the proposals of Government clearer. My only excuse is, Sir, that in view of the history which I have just stated I really believed that we were on common ground. The position was and always has been that the Government fully realises that certain offices to which the public particularly require to have access can be more suitably sited in the centre of the town, and it was never proposed at the time that resolution was tabled that that policy had been departed from. All that was suggested was that the Central Offices of Government, which have more particularly direct connection with the legislative work done in this Chamber, should be sited on the Secretariat Hill and grouped round the Legislative Council Chamber in order to expedite public business. In the course of that debate, Sir, an amendment was moved which had the effect of providing the money asked for for the Law Courts but postponing the question of the Central Offices, very largely owing to controversy on the subject of site; and a Select Committee of this Council was appointed to consider the question of site.

As hon. Members are aware, that Select Committee has sat and has reported, and unfortunately it was impossible to arrive at agreement. Two contradictory reports as to site were tabled, and therefore the Government is in the position that it must accept one report or the other, and in doing so naturally it must be guided by what it believes to be in the best interests of the Colony.

Since that Select Committee reported, Sir, a good deal of water has flown under the bridges, and only quite recently the Municipal Council of Nairobi and the Town Planning Authority passed a resolution to the effect that, provided they were assured that accommodation would be provided in the City Square for the district offices in the manner I have suggested, they have no objection to the siting of the Central Offices on Secretariat Hill. I think, therefore, Sir, that any difficulties that may have occurred over the question of site have been removed, and we are really faced rather with the question as to whether at the present moment it is desirable to expend this sum of money on what is generally admitted to

be a most desirable public service. In that connection, Sir, it is hardly necessary for me to labour the urgency of improved office accommodation. Hon. Members on the opposite side of the House, Sir, in the course of the debate in July last, gave encouraging testimony to the need for an improvement in that regard. The hon. Member for the Lake, Sir, himself stated that: "quite apart from this symbol which these Central Government Offices and Supreme Court Building would represent for faith, solidity and permanence, I believe the expenditure can be amply justified on economic grounds. I consider, Sir, that it is perfectly disgraceful that Government servants should be called upon to work under such sordid and insanitary conditions as they have been working under for many years in Kenya."

Further on, Sir, another hon. Member—the hon. Member for Nairobi North stated: "I regard this, Sir, as one of those issues which should not be decided on our personal ideas so much as on the desires of our constituents and I must frankly state that, in so far as the people whom I temporarily represent are concerned, I do not know their wishes." That difficulty which the hon. Member felt has, I believe, now been removed, and therefore, Sir, I feel that I can with all confidence rely on his support in this matter, as he went on to state: "I am prompted, Sir, to urge that this committee be appointed very promptly if the House and you, Sir, accept the amendment, with the recollection, among other things, of a very striking figure given as long ago as 1920 or 1921 before the original Geddes Committee, when that Committee was convinced, beyond all question, that, apart from the better work, apart from the greater work that would be performed in the case of Central Buildings, there was a specific large financial saving, both in the direction of such minor things as messenger boys and unnecessary files, and a very much greater one in the case of important and highly paid Heads of Departments who, of necessity, wasted a very great deal of time on such occasions as waiting outside Executive Council and so on. In the case of a Central Building, they would be at the beck and call of the telephone, and very much valuable work would be contributed to the State which is now denied."

Then the hon. Member for Mombasa also gave his tribute to the great increase in efficiency which would be obtained by Central Offices in the manner proposed. He stated, Sir: "Your Excellency, I am sorry to interfere in a debate of this kind, but I do not quite see where the question of the financial position arises. It has been decided very carefully that great economies are to be effected by the erection of these buildings, and to refer to these buildings as having no relation to economy

is quite wrong. There is no question about it that the Railway Manager could prove in a very short time that the work of his men and the economies effected in working will be enormous, notwithstanding the glorious building that he has put up, which I certainly think will look well on picture postcards in the future."

Well, Sir, I hope I have said enough to convince the House that the proposals which we are now putting forward are perfectly sound, on the score both of efficiency and economy; and I would at this stage, Sir, like to draw the attention of hon. Members to the fact that in the resolution as tabled to-day it is not proposed to spend the full sum that we asked for in July last. We have abstained from doing so because we feel that what is essentially urgent at the present moment is, as I said before, the grouping of these central departments round a Legislative Council Chamber, which will so much expedite public business. In this respect, Sir, I can speak from personal experience because, like my hon. friend the Attorney General, we have both served in another Colony where the Central Offices, accommodating the departments which we suggest shall be grouped round the Council Chamber here, were so grouped, and the amount of time which was saved, both by Government officials and members of the public, was extraordinary.

I will now, for the information of the House, Sir, explain to them what are the modified proposals which I commend to their support, but before doing so I will just make this one further point. As appeared from the debate yesterday, it is quite clear that at the moment the Secretary of State is keeping a jealous and watchful eye on our finances, but he has already, in view of the representations which have been made to him in the past, recognised the necessity for this expenditure, and he has, in fact, authorised the Government to spend the full sum of £310,000 which was originally proposed. As I will now explain to you, we have cut down those figures at the moment because we feel that what is most urgent is to get this matter started. If and when funds permit, it may be possible to add to this building to provide for other departments.

The proposals under this scheme are these.

To deal with the Law Courts first, which is a small matter and can be got out of the way, the proposal is to add a third storey on to the Law Courts, which is desirable both on grounds of economy and appearance. The Departments which it is proposed to accommodate in that third storey are the Registrar General's and the Survey and Registration Departments, in part or in whole. That incidentally will bring,

particularly in the case of the Registrar General, a department which has great and constant dealings with the public to the most suitable position for the purpose.

We then propose, Sir, under the Central Offices Scheme, which is to be sited on the Secretariat Hill:—

Secretariat,
Treasury.
Attorney General's Department.
Audit.
Education.
Medical.
Archives.
Central Library.
Three Committee Rooms.
Despatch Office.
Legislative Council Chamber.

I should just like to stress this last item because apparently when I spoke to this motion before it was not generally realised that the former scheme included a new Legislative Council Chamber. This Council Chamber is, I might say, the pivot of the scheme:—

Two Galleries and Lobbies.
Three Speakers' Lobbies.
Four Typists' Rooms.
Lounge for Members' visitors.
Common Reading and Writing Room.

That means, Sir, that certain departments will not be accommodated which originally it was intended to accommodate in these Central Offices, but it is considered that the departments I have mentioned are those which are most urgent, and if and when funds permit the question of the extension of that building can be considered.

I beg, Sir, formally to move the motion standing in my name.

THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR, K.C.): Your Excellency, I beg to second.

HIS EXCELLENCY: The question is:—

"Be it resolved that this Council hereby approves the expenditure of a sum of £200,000 upon the purposes specified in the Schedule hereto and undertakes to approve the inclusion of such sum in the Schedule to a future Loan Ordinance together with such further sums as may be necessary to cover the cost of the issue of such Loan.

Be it resolved that this Council hereby rescinds its resolution of the 16th July, 1929, approving the provision of £110,000 for Law Courts.

SCHEDULE.		£
1. Central Offices ...		154,000
2. Law Courts		136,000."

THE HON. CONWAY HARVEY: Your Excellency, I beg leave to move an amendment, of which notice has already been given:—

"That the figure £290,000 be deleted and the figure £136,000 substituted therefor; and that the item—

1. Central Offices ... £154,000

be deleted from the Schedule.

Now, Your Excellency, as the hon. mover has stated, we all know that an overwhelming majority of this Council agreed on the 16th July last year to the expenditure of £110,000 on Law Courts. The hon. gentleman stated, Sir, that since then "much water has flown under the bridges" (laughter) . . . "flowed under the bridges." Your Excellency, I should like to remind him that the turbid waters of agricultural depression have washed away many of the bridges of agricultural stability. We do consider still, Sir, that a most excellent case exists for the erection of the Law Courts as already agreed to. It is, we realise, almost impossible to carry on under the present abominable conditions. I can speak, Your Excellency, with first hand knowledge as I have recently spent several hours in those filthy Courts—perhaps I may say in the rôle of witness (laughter)—and I do sympathise with Government's proposals in this connection. I do consider, Sir, that the addition to the original proposal to provide for the erection of a third storey is amply justified on the grounds given by the hon. mover, but, Sir, we should like to hear a little more about the siting—the precise spot in relation to the City Square where this building is to be erected. My views, Sir, have already been clearly expressed in the Report of the Committee which sat on the subject in regard to the merits of the Secretariat Hill site as compared with the City Square, and I do not propose to recapitulate them now. We should also like to know, Sir, when replying to the debate, if the hon. gentleman will let us know to what extent Government has committed the Colony in respect of the architect's fees in regard to these buildings, and I venture to express the hope that the maximum use will be made of local architects and other local amenities. I think it highly probable, Your Excellency, that my hon. friend feels somewhat like the

majestic eagle about to pounce on the unsuspecting rabbit, and I may, Sir, be accused of inconsistency, but, Sir, may I remind you that "With consistency a great soul has simply nothing to do, he might as well concern himself with his shadow on the wall." (Laughter.)

I still support the principle of Central Offices, Sir, but I do say most emphatically that the time for the expenditure of this enormous sum is not yet. I think we should wait until we recover from this appalling and unprecedented depression which is shared by the whole world in common with Kenya. Kenya will probably, owing to its wonderful resiliency, recover quicker than many of the agricultural countries, and when that time arrives, Your Excellency, hon. Members on this side of the House will be only too pleased to reconsider any proposals which the Government may put up. A good deal, Sir, has been said about the need for a better Legislative Council Chamber. Well, Sir, I consider that we are quite capable of carrying on as we are for a considerable time to come. Conditions are not ideal, but I should like to pay a tribute to the enormous improvements that have been effected in regard to acoustics and lighting during the last twelve months.

Your Excellency, it is important for everyone fully to realise that the proposed expenditure on Central Offices of £154,000 represents the first step only. When that money is expended, in my view we shall be irrevocably committed, and I have been told that it is the first downward step which is the critical one.

HIS EXCELLENCY: Does the hon. Member wish to move his amendment?

THE HON. CONWAY HARVEY: I beg leave formally to move the amendment of which notice has been given.

HIS EXCELLENCY: May I have the amendment?

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE: Your Excellency, I beg formally to second the amendment.

HIS EXCELLENCY: The question is that in line two of the motion the figure £290,000 be deleted and the figure £136,000 substituted therefor; and that in the Schedule—

"1. Central Offices ... £154,000"

be deleted.

Before any other hon. Member addresses Council, I think I should ask whether it would not be for the convenience of Council that the debate should be taken on the amendment.

If that is the case, I will agree that hon. Members should deal both with the Law Courts and the Central Offices on the amendment. I think it is more convenient than if we attempt to cut the debate into two parts.

THE HON. CONWAY HARVEY : I agree, Sir.

HIS EXCELLENCY : And when the amendment is dealt with the other resolution can be taken as a matter of form.

COLONEL THE HON. W. K. TUCKER : Your Excellency, I rise to support the amendment in so far as the immediate proceeding with the Law Courts is concerned. The people whom I represent deeply deplore that after waiting many years, which culminated in the debate in this House on the 16th July last year when a motion was carried with one dissentient authorising the immediate expenditure of £110,000 on the Law Courts, that work has not been proceeded with. We quite understand, Sir, that the unfortunate controversy over the siting of the Central Offices has, to some extent, been responsible for the delay in the Law Courts. Where I supported the expenditure of £110,000 nine months ago, so in the same way I support the amended item of £136,000 this morning.

It is true, as the hon. the Colonial Secretary has said, that the situation has slightly altered in the sense that on further consideration such bodies as the Town Planning Authority, whom I was endeavouring to support in the attitude I took last July, have, in the light of subsequent events, materially altered their views. At any rate, that is how I regard it.

Now with regard to the Central Buildings, I much appreciate the honour the hon. the Colonial Secretary has done me in quoting at great length from the speech I made here nine months ago, particularly as it follows another little quotation of what I had said last year only a couple of days previously. Now, Sir, I do not recant a word I then said. One little detail I mentioned nine months ago I repeat to-day, that very few statements of figures have impressed me more than those put forward by the late Director of Surveys before the Geddes Committee in 1921 as to the tremendous economies to be effected by centralising Government offices. Since I made that statement, Sir, I have been equally impressed in the last few months by the effect, as I see it—and I have been in very close touch with the effect—of the central Railway buildings. I have stated many times, and I do not think it is an exaggeration, that either they get ten per cent

more work or they get ten per cent better work out of the staff, and very likely both, as a result of the better conditions under which the staff works.

If I may be personal for one moment, Sir, with regard to the fact that a Legislative Council Chamber is included in this item, I should like to say that possibly it would then be no longer necessary for hon. Members, particularly those sitting in this corner, to spend their week-ends recovering from the lumbago they inadvertently picked up during the week sitting near this wretched door. So much for that.

I am afraid I am bound to regard this issue very much in the way of looking at a new motor car: it is obvious it is more comfortable than the one I have got; its utility is unquestioned; its economy is unquestioned—but we have to bring a proposition like that in our daily life into the same view, and that is its relation to everything else. Now, Sir, we have heard a lot about the vistas which this building on the Secretariat Hill would open up. I suggest to you, Sir, that there are other vistas. I suggest to you, Sir, for instance, that you opened up a vista in your speech two or three weeks ago of a very considerable body of farmers who are badly in need of help from Government funds, whether out of revenue or out of Loan funds. Then, Sir, another vista was opened up in the country, and particularly in this town, a few months ago in the building up of a Defence Force which we could be proud of, and to which the young and old of this town responded most enthusiastically. May I say, Sir—I hope you will allow me, in passing—as Chairman of the local force—to pay tribute to the courageous and manly way in which officers, non-commissioned officers and men are facing their disappointment and temporary discouragement. A third vista was presented to us a couple of days ago when that admirable report of Messrs. Wade and Mayer was laid on the table. It disclosed to us most lamentable building conditions so far as Government servants are concerned in other parts of the country. I say these three items have to be taken into account when one is weighing up the urgency—there is no question about the need—of the Central Buildings.

I do think, Sir, that to take this line is not to doubt our faith in the future of the country. I suggest that a steady programme requires to be carried out from that point of view as well as others, and if we proceed with the Law Courts this year and give these various groups of people something substantial out of those Loan funds or revenue, as the case may be, then and then only will be the time to proceed with this further scheme.

The only other point I would like to make, Sir, is this: it certainly would happen in one's own business. If an overshadowing scheme such as we all confidently anticipate in regard to federation is in the offing, I cannot help thinking that in business—and I think in Government it may be the same—that if that scheme is very near to us, it may modify or alter in some respects the accommodation which Government regard as so essential for the work of the officers of the Colony.

THE HON. E. POWYS COBB: Your Excellency, I wish to ask what your wishes are. I desire to move a further amendment. Should I move it now?

HIS EXCELLENCY: An amendment to an amendment? Perhaps the hon. Member will let me see it. (A written amendment was passed up.)

I am afraid that the hon. Member's amendment, if taken, would have to be taken as an amendment to the substantive motion. It is not an amendment to the amendment now before Council. I would suggest to him that he can carry out what he desires to do by simply mentioning the terms of his amendment and making a speech upon it.

THE HON. E. POWYS COBB: Now, Sir?

HIS EXCELLENCY: Yes, you can make a speech upon it now, but if you desire to move an amendment you must wait till this amendment is disposed of.

THE HON. E. POWYS COBB: May I do that, Sir?

HIS EXCELLENCY: Yes, certainly.

CAPTAIN THE HON. E. M. V. KENEALY: Your Excellency, until a better amendment, which I hope will later be put up, is introduced, I intend supporting the present one.

Now, Sir, Government has utilised words expressed on this side of the House and has quoted those words against us. When you quote the opposition to support your case it is because you have a weak case, and when you talk of an individual as so and so himself said, then you accentuate the disabilities that you already suffer under. That has been done.

Surely, the first object of having Central Offices is that they should be central. The suggestion that the Central Offices should not be central comes from the Government. This was the point, Sir, that I raised, and it was on this point

primarily that I fought last time I opposed the passage of a motion similar to this one, and that was when Government had not even given us any information as to the site. Government has become a little less timorous and given us its decision in regard to the site, and the Government has taken the wrong decision. It is suggested that the local authority and the Municipal Council and the Central Town Planning Authority have made representations to Government and Government has not applied those representations; and that Government has acted on the modifications of those representations. I submit that in dealing with the question of Central Offices the Government and not the Local Authority, not the Municipal Authority and not the Town Planning Authority, alone is concerned—the country at large is concerned. The country at large has not yet expressed an opinion and until it has, by reference either to urban authorities or rural authorities elsewhere, I am going to oppose that part of the motion.

Now, Sir, I am going to oppose that part of the motion also because of the incorporation of a sum of money, not specified but by inference allowed, in the provision of a Council Chamber, primarily because a Council Chamber was suggested. I do not know how the suggestion arose and what merit it had, but it obviously must have come from Government. When the building of Government House and the provision of £80,000 for the building of Government House in Nairobi was considered, we were then told that a sum, probably involving a sum of £30,000, was to be devoted to building a Council Chamber there, and nothing was done. Because it was not specifically mentioned in the Schedule we were told that we had no reason for criticising Government for not incorporating it. I do not think that was an admirable way of dealing with the matter, and until a specific sum is set aside for a Council Chamber building and it is mentioned that that sum is to be used solely and wholly for that purpose and no other I shall not support this motion in a loose and frivolous manner to incorporate a Council Chamber monetary provision in a general provision such as this.

I think, Sir, that the point was made by one of the Nairobi hon. Members that until we have some decision in regard to closer co-ordination of services—until we have some decision on that matter—it is probably inadvisable to spend any further sums of money on Central Offices in this country. No doubt a case can be made out for the Law Courts, but since the siting of the Law Courts is very intimately concerned with the siting of the Central Offices—and we have not yet been told where the Law Courts are to be situated—in the centre of the Square or on one of the sides of the Square—

and will prejudice the discussion of the ultimate siting of the Central Offices, I can support neither motion. I can support the amendment, because the amendment goes a certain way towards meeting what I hope will be introduced later on as another amendment. I support the amendment as far as it goes.

CAPTAIN THE HON. H. E. SCHWARTZE: Your Excellency, it is with the greatest possible hesitation and reluctance that I am going to support this amendment, because I realise to the full the desire and necessity for improved Government offices in Nairobi, as I have to spend large slices of my life in that hut known as the Attorney General's office, or in that temporary shelter known as the Secretariat. If the proposal were to expend a considerably less sum of money on the immediate erection of adequate and improved Government offices—in the midst of which could afterwards be erected a Legislative Council Chamber, I think that in all probability I should support such expenditure. But desirable as an improved Legislative Council Chamber is, for the reasons which have been stated by the hon. the Colonial Secretary, and for reasons of comfort, which need not be—the arguments for which need not be accentuated here amongst Members who work in this building—I do honestly believe that a much greater need exists for the improvement and erection of other Government offices, not necessarily in Nairobi. I hear stories of hospitals under water, of doctors' houses with water pouring through the roof, and surely that is at least of equal urgency to a Legislative Council Chamber.

I hope, Sir, it will be fully understood by Your Excellency and everyone else that my position—at least, my support to this amendment—has nothing whatever to do with the decision which has this morning been announced—the decision which Government has taken with regard to the site. I hold the view, and always have, that Government's decision in the matter in course of time will be proved to be an incorrect one, but I consider it would be a dog-in-the-manger policy to state that "if you don't let us have the offices where we want them we won't agree to grant the money in a place where they are not wanted." I agree that a decision on the site has to be taken, and I am only glad that Government has taken a decision. On these questions, whether one agrees with the decision of Government or not, I think it is the duty of Government in such cases to come to a decision as they have done, and if one gives a decision one welcomes the fact that it is a decision, and I trust that Your Excellency will be able before long to inform this Council and this Colony, if a decision has yet been reached, what the decision is in regard to the question of grouped or non-grouped hospitals.

HIS EXCELLENCY: Perhaps it will interest the hon. Member if I say that a statement on that matter will be made to-morrow morning.

CAPTAIN THE HON. H. E. SCHWARTZE: Now, Sir, the position to day is not the same as it was in July last, and I think the hon. the Colonial Secretary, with his usual fairness, will admit that the economic position is different. As I have stated before, I have no fears in regard to the economic future of this Colony, but I do think it is not the moment to embark on definite new expenditure which has not been already approved.

I am not going to speak on the Law Courts just now because I understand the hon. Member for the Rift Valley is going to make an attempt to postpone the building of these as well, but that was definitely included a year ago and there is a very great difference between expenditure agreed to and initial expenditure asked for. I would welcome the time when every Member on this side of the House will be able to support a resolution proposing expenditure for complete and adequate Central Offices, be they sited wherever they may be sited, but if this proposal is to include so much as has been suggested by the hon. the Colonial Secretary, it is, Your Excellency, with real reluctance, that I feel compelled to support the amendment.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I am thankful that I was not mentioned in despatches this morning by the hon. the Colonial Secretary (laughter). I do not feel that my hand in consequence is tied. I claim that I have not yet lost my sense of proportion and I cannot class myself amongst those who consider that the primary industry of this Colony is buildings. I have always been under the impression, and I shall remain under that impression until somebody convinces me I am wrong, that the primary industry of the Colony is Agriculture. We all know that quite recently there has been a crash in the primary products of the world. It is not Kenya only that has to suffer; it is universal. That being so, it is quite reasonable to suppose, or be forewarned, that not only the present year will be affected by the depression in the price of these products, but it probably will have an effect even next year or the following year, and I anticipate financial difficulties as far as the producers themselves are concerned, with the facts as stated. Up till now I have not seen any inclination or determination by Government to realise and get down to solid facts. Ever since I have been in this Council I have endeavoured and on one special occasion did ask at Mombasa over two years ago for the land laws of this Colony to be investigated.

HIS EXCELLENCY: Order, order. I hope the hon. Member will keep to the motion before Council. Discussing the land laws is really travelling a good distance from the motion.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: I have no intention of discussing the land laws beyond making the statement I have already made.

I consider that the Land Bank is absolutely essential, not only a bank on the details of the one that has been discussed in this House, but a bank financed on very much broader lines, a bank . . .

HIS EXCELLENCY: Order, order. The hon. Member can oppose the motion but, as I have explained, he is not discussing another subject which he is not entitled to discuss. The details of the Land Bank or the land laws or subjects of that sort do not come within the terms of the motion.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: It was my intention to draw attention to the fact that finance had not been supplied for a Land Bank, which I consider in priority to buildings. This capital that is proposed to be put into buildings could be used for the objects I have mentioned. This money could be used for Closer Settlement, and until there is some specific measure taken to implement the measures that I have spoken of I shall certainly oppose the expenditure under the proposed head of the Law Courts. I realise that our present Law Courts are a disgrace to the Colony and consequently, under different conditions from those which we are going through at the moment, I should be prepared to support the motion, but under the present existing circumstances I do not think we are justified in putting our money into bricks and mortar *versus* human beings. As I see it, what is required here to make this Colony successful is a progressive agricultural policy, which at the moment is lacking. There were many recommendations put in by the Agricultural Commission, which are contained in the Agricultural Report and which require money. They did suggest and recommend for Government's consideration long term credits, in paragraph 77 they made a recommendation; in paragraph 78, which I ask Your Excellency's permission to read . . .

THE HON. THE COLONIAL SECRETARY: On a point of order, Your Excellency, is not the hon. Member straying rather far from the text?

HIS EXCELLENCY: I did not hear what the thing was he was proposing to read.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: I proposed to read a recommendation contained in the Report of the Agricultural Commission asking Government's immediate attention to find money to . . .

HIS EXCELLENCY: Order, order. Will the hon. and gallant Member please resume his seat?

I have already told him twice that he is not entitled to discuss agricultural matters on this motion. If he persists in doing so I must ask him to resume his seat and remain there.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: I find it very difficult, Your Excellency. I feel that under the existing circumstances I am like one who is entering the ring with his hands tied behind his back. I bow to your ruling and for the moment, as you suggest, I shall resume my seat, but I shall still retain my opinions.

LIEUT.-COL. THE HON. C. G. DURHAM: Your Excellency, I am sorry I have got to disagree with the last speaker. I have always supported the building of the Law Courts, and I intend still doing so.

With regard to the other beautiful scheme put up by the hon. the Colonial Secretary, Sir, I cannot agree at the moment. I do agree that the country cannot afford it at the moment, notwithstanding the new accommodation he is going to give us.

I notice, Sir, with an immense amount of pleasure, that he has abandoned the scheme for purchasing the Hill site for some £50,000. It will be remembered that in the last scheme £50,000 was set aside for the making of roads. That, Sir, I am glad to see is excluded now.

I think there is little else to be said. I support the amendment.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. H. T. MARTIN): Your Excellency, I propose, if I may, to speak entirely to the terms of the amendment, that is to say, with regard to the hon. mover's own proposition. He has seen, as I think other hon. Members have seen, that the siting question is a difficult one and one on which more than one opinion can be held and held. But, Sir, he bases his case on one thing, as I understand it, and on one thing only, on the economic factor, on the fact that the country at this moment cannot afford money to put up these buildings. Sir, I am going to suggest to

him and to other hon. Members that the country at the present moment cannot afford to do anything else. Now, Sir, what is the position at the present moment as regards Government offices? They are scattered all over the town. They are occupying extremely valuable sites of land, and even then—they are not sufficient for public purposes. In addition to that, enormous sums are being spent on renting offices on land which does not belong to Government. There are other considerations, Sir, to which I will refer later, which have some sort of relationship to the siting question, but for the moment I should like to make a few remarks upon this purely economic value question.

I remember some years ago, Sir, an attempt was made to find out what was then the approximate *stand premia* value of a number of the sites occupied by Government offices which remain there to this day. The figure, if I remember rightly—and I am pretty sure I do remember rightly—was something in the region of £100,000. Now, Sir, in addition to that we are hiring—I am afraid I have not got the figures—in the town, as I said before, and paying a large amount for other sites. In other words, we are losing the capital value, we are losing the rental value of those most valuable plots, and in addition to that we are paying money instead of taking it in. If these things were added up—it is very difficult, of course, in valuations in advance of sales to be definitely certain of figures—but I suppose hon. Members can see we have a definite figure of expenditure, and if any case is to be proved to show that that expenditure is in itself self-supporting and economic, then such figures could be equally definite.

There are other considerations and I should like to refer to them at once. We have here a gradually growing capital. For some years we have been doing our best to guide its growth, and that guidance has, I think, perhaps inflicted a certain amount of hardship—I will not say for the moment unnecessary hardship—on the normal land activities and building activities of the city. The reason has been that proper town plans had to be made out. In town planning I think it is quite obvious there are certain points which, if not decided upon early in the proceedings, make it impossible to have a complete plan, particularly in respect of roads and other communications. Now, Sir, it has in the past greatly hampered the town planning authority not to know whether a large block of public buildings was going to be sited, we will say, in the City Square or on the Hill, and so on. The result of that has been that areas cannot be proceeded with as they would have been proceeded with, and if we go on indefinitely not deciding what is going to be in the City

Square, or we will say, on the Secretariat Hill, so long as we continue in that state of indecision so long will the final town plans be postponed.

Now, Sir, whether or not the amount of money which can be found annually or in a lump sum from the sale of those buildings is the equivalent of any particular building figure or not, I cannot say, but there is an enormous sum held in suspense until some such figure as this is spent on Central Buildings. I think nobody can possibly deny that.

A lot has been made of the present economic condition of the country and the policy of allowing expenditure which will be, it is assumed, I imagine, unproductive, but I would urge this, that the longer this particular economic process is held up in respect of Nairobi land the less advantageous economically will it be to the Colony in the end.

THE HON. F. A. BRISTOL: Your Excellency, I have a most difficult task to perform to-day and one which I hope I shall never have to do again, and that is to recant from my vote on the Committee on siting. I voted against the Hill site after what I believed to be mature consideration. Subsequently I have made a lot of enquiries and to-day I want to record that I agree entirely with the siting of these public offices, when they are built, on the Secretariat Hill. I would like to emphasise the reason for that, Sir, and it is this: the necessity in the future for expansion. It was pointed out to me by a gentleman only this morning in discussing this matter and it was compared with Pretoria, where they had built beautiful offices, magnificent offices, intending, of course, for them to last a few years. To-day they are quite inadequate and they have no room to expand. The only way they can expand is to blow the back of the hill off, which is a very expensive business. If you had these offices in the City Square you would have the same difficulty: you would only be able to build for to-day. That, Sir, is what I intend to try and impress on my fellow Members.

With regard to the general question, we have heard that the country cannot afford it, that the country is in a terrible state, and that other things are wanted more necessarily, more quickly—but, Sir, it is really like referring to the remarks of Mr. Bonanzo when he was editor of *Punch*; a man once said to him: " *Punch* is not as good as it used to be." " No," he said, " it never was."

It must be remembered that in 1925, five years ago, this building was passed—this vote was agreed to. The whole proposition was designed and passed by responsible men. Now, Sir, I would ask my friends if they have been all bad

years since that time; if there have been no good years since 1925? If that is not the case—if it was a bad year in 1925 and a good year in 1926—why was it not built in 1926? You can rely upon it, Sir, that there never will be a good year to build. It is a strange thing, Sir, that whenever Government offices—I do not want to curry favour at all—but whenever Government offices are considered it is always reckoned that the cheapest and the lowest will do. This view I entirely disagree with, and in July last I mentioned the Town Hall of the London County Council. I believe, Sir, if you went straight away now with a definite policy and erected these buildings—personally I would like the full scheme but nevertheless you are agreed on the lesser scheme—erected these buildings to-day—they will take two years to build and before that two years is up the price of materials will have gone up, the whole world will have re-established itself and everyone will be satisfied.

Let me tell you the real reason for postponement. This country is a country of depression and rising all the way along. Some of you will remember that in 1918 or 1919 a commission came out here because Government servants were not getting enough money. So they raised it. In 1921 a commission said that they were getting too much. All this, Sir, spoils confidence. What we want is a settled definite policy; go straight away through; get it into your minds what you want and you have it—in 1925 you agreed to go straight ahead. You will then gain the confidence, not only of your own people, but of the whole world, because they will say: "These fellows know what they want and they are going to get it, and they are going the way to get it."

THE HON. THE COLONIAL SECRETARY: Your Excellency, I should like in the first place, on behalf of the House, to congratulate the hon. Member who has just sat down for the courage of his convictions, and on behalf of the hon. Member for the Lake to extend to him a hearty welcome to that band of great sons of Kenya who realise that consistency is not the only virtue.

The hon. Member for Plateau North, Sir, has complained that I have not mentioned him in despatches. I will try to remedy that defect at once by saying that, on a hasty reference to what occurred in the last debate, I am afraid he is not qualified to join the hon. Member for Mombasa; he has shown the most steady consistency in his attitude, namely, that the financial position is one that should be carefully enquired into before we embark on schemes of this nature.

But, Sir, whereas, when speaking in July last, it was locusts and famine, and considerations of that sort, on which we were asked to halt, it is now another question which has been put up, and I must say, Sir, that I do feel that there is a great deal to be said in regard to what the last speaker stated—has every year been a bad year since this matter was first mooted in 1924?

The question has been fully examined from the financial side, as I said before, and the expenditure approved from Loan Funds by the Secretary of State; and in this respect, Sir, I would like to suggest to the hon. Member for Nairobi North that a comparison between one small saving or cut in expenditure on the current vote is no comparable analogy to a question of a large expenditure of this sort which is to be met from Loan Funds and borne by posterity. Provided we are satisfied that the financial structure of this Colony is truly laid, the fact that in July last we suffered from a temporary depression, which, as I am glad to say, as hon. Members know, we were none the less able to come out from the year with a larger surplus balance than we budgeted for—and even though at the moment, as we all admit, the state of the markets is depressed, we should not take such a short-sighted view when dealing with a large problem of loan expenditure such as this.

In order that hon. Members, Sir, may feel that the Government is not in any sense unsympathetic towards the position of the markets to-day, I should like to point out to them that the Secretary of State has in principle already agreed to the earmarking of £240,000 for a Land Bank. That money is now at the moment locked up for that purpose and should it be that the present situation is such that it is thought that some immediate assistance should be given to the agricultural industry, I have no doubt whatever that on a sound scheme being put up the Secretary of State would be prepared to consider the utilisation of those funds for such a purpose instead of for the Land Bank. I therefore do, Sir, suggest to hon. Members that they should not press the economic situation too far. It was pressed in July last and the Government gave way. What has happened? Nothing. Neither the Supreme Court has been gone ahead with nor have the offices. If we take the same line again now, what will happen? Nothing. I do suggest, Sir, that on a matter which has been engaging the attention of the country since 1914, if, as the hon. Member for West Kenya states, the country at large has not yet been able to make up its mind on the subject—I do suggest that the Government should make up its mind for it.

CAPTAIN THE HON. E. M. V. KENEALY: Your Excellency, may I correct a misapprehension in the mind of the hon. the Colonial Secretary?

HIS EXCELLENCY: On a point of personal explanation, yes.

CAPTAIN THE HON. E. M. V. KENEALY: I did not suggest that the country at large had not yet made up its mind. I suggested that the matter should have been and had not been referred to the country at large.

THE REV. CANON THE HON. H. LEAKEY: Your Excellency, in spite of the fact that I expressed my views upon the new buildings scheme at the debate last July yet I have endeavoured to listen to the debate this morning with an open mind, prepared either to stick to my guns, or recant, like my hon. Friend on my right, if so led to do.

The absolute need of these new buildings has been amply shown this morning, both from this side of the House and the other; but there has also been shown that it may be somewhat of a financial risk to embark on the whole scheme at once.

On the grounds, Sir, that delay is dangerous, procrastination leads you nowhere, and only those who are prepared to take an occasional risk get to where they wish, I hope that the building of these much delayed offices will be got on with as soon as possible.

I regret therefore, that I shall not be able to support the amendment.

HIS EXCELLENCY: The question is that the figure £200,000 be deleted and the figure £136,000 be substituted therefor; and that the item—

“ 1. Central Offices ... £154,000 ”

be deleted from the Schedule.

The question was put and lost by six votes to twenty-four.

Ayes: Lieut.-Col. Durham, Mr. Conway Harvey, Captain Kenealy, Major Robertson Eustace, Captain Schwartze, Col. Tucker.

Noes: Mr. Bemister, Major Brassey-Edwards, Messrs. Campbell, Cobb, Dobbs, Doran, Fitzgerald, Dr. Gilks, Messrs. Holm, Horne, Canon Leakey, Messrs. Lynde, MacGregor, Malik, Martin, Maxwell, Montgomerie, Moore, Brig.-Gen. Rhodes, Mr. Rushton, Lord Francis Scott, Messrs. Scott, Walsh, Col. Wilkinson.

Declined to vote: Lieut.-Col. the Hon. J. G. Kirkwood.

CAPTAIN THE HON. E. M. V. KENEALY: On a point of order, Your Excellency, the decision was that the “ ayes ” have it I think.

HIS EXCELLENCY: I did not give any decision at all. I said: “ the Clerk will call the Roll ” and at the end I said: “ I think the “ ayes ” have it,” because that is the usual form in which I put the question.

(Council adjourned for ten minutes.)

THE HON. E. POWYS COBB: Your Excellency, I beg to move the following amendment:—

“ That the following words be added after the words ‘ such Loan ’ at the end of line seven—

‘ Provided that Government undertakes to suspend the work, if a continuation of it is likely to prejudice in any way the provision necessary for the agricultural development of the Colony.’ ”

Sir, my attitude to-day is identical with that which I took up in July of last year, namely, that I fully recognise the desirability of the works in question—no one appreciates a fine building more than myself—and entirely apart from the other point of view, I feel very strongly the wrongness—I can use no other word—of the squalid conditions under which so many members of the Civil Service of this Colony are to-day working. I feel that that applies not only here in Nairobi but also in the out-stations, and I think hon. Members on this side of the House as a whole have always shared that view, because the most cursory study of the loan works commitments and the most cursory study of the Budgets, both for last year and for preceding years, clearly show that the subject has been present to the mind of Members and that very substantial provision has been made. The trouble is, I think—it is a point that has often been made—that we have so much leeway to make up that it is very difficult to arrive at a satisfactory state of affairs all over the country without running the risk of prejudicing the provision necessary for the even more essential services, the provision necessary for the support of our key, of our one, industry—agriculture. I think that the hon. the Colonial Secretary, in moving his motion, felt something very much akin to what I feel myself, for he deliberately asked the question as to whether now was the particular and opportune time for embarking upon these heavy items of expenditure. He went on to say, later on, in replying to the debate on the last amendment, that excuses for postponing the work seem to have a habit of growing and multiplying from time to time whenever this vote came up,

but in common fairness I would remind him that if, in last July the reasons against these votes were the presence of locusts and famine, surely now, when a world-wide depression of prices is upon us, the situation is even more acute and that there is even greater need for caution, because, on top of those troubles of last year, is added this new and wholly unexpected trouble. While I have perfect confidence in the ability of this Colony to right herself—and right herself, as the hon. Member for the Lake said, possibly quicker than many other countries—yet I believe we ought to proceed with caution, and if Government could see its way to giving the assurance which I venture to ask for in this amendment, I feel that a feeling of contentment and security would at once pervade the country. I feel that to-day one of the most important things is to restore confidence, and restore it quickly, because, judging by the statistical figures of the world production, there is some fear that we may not yet have passed the worst point of the depression. I fear that in some ways the effects of the present depression, and possibly its continuance, are going to be felt more severely in a few months to come, and therefore I believe it would be very greatly appreciated by the country and would go a very long way to restore confidence if the Government could give the undertaking that I have asked for.

LIEUT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I beg leave to second the amendment.

My attitude on this question, Sir, is one entirely governed by economic conditions and the economic outlook on these two items. The hon. Member for the Rift Valley has explained very clearly the attitude of those of us who hope that nothing in this way will prejudice the necessary healthy development of the one basic industry in this country—agriculture—and, Sir, I do hope that Government will see its way to accepting the motion. Given that amendment, Sir, which implies that Government are going very carefully to consider the economic conditions in all their aspects and are not going to rush the country into any expenditure which proves to be not absolutely necessary or for the best benefit of the country; given that, Sir, I am one of those who believe that it is essential, sooner or later, to have these buildings. I believe there would be definite economies in the end by having such buildings, and I also, Sir, believe that the right place for Central Offices is on the Hill. But, Sir, I should like to know a little bit more of the arguments put up by my hon. Friend, the Commissioner for Local Government, Lands and Settlement, as to how much benefit will accrue to the country from the release of the land on which the existing buildings are, both the various Government offices

and the Law Courts; how much will accrue actually to the country's finances and how much to the finances of the Municipality. I think, if we could have more detailed figures on that, it might show us that there was less danger of extravagance in these items than appears at present on the face of it. It seems to me it is entirely an economic question and we do want all the data, from the economic point of view, which could be put before us.

I have great pleasure in seconding the amendment.

HIS EXCELLENCY: The question is that the motion be amended as follows:—

“ That the following words be added after the words ‘ such Loan ’ at the end of line seven—

‘ Provided that Government undertakes to suspend the work, if a continuation of it is likely to prejudice in any way the provision necessary for the agricultural development of the Colony ’ ”

THE HON. THE COLONIAL SECRETARY: Your Excellency, I am authorised to state that, although we cannot accept the amendment in the actual form in which it is put, because to do so might properly be regarded as an admission that the Government required special warning in that direction and that in the ordinary course of events the Government would not, before embarking upon any heavy expenditure of this kind, have careful regard to the general capacity of the Colony to bear it, at the same time, Sir, I am only too glad to give the assurance which underlies the spirit of the amendment. As I tried to make out, Sir, in speaking to the House before, in the opinion of Government the passing of the resolution now before them does not in any way affect the provision already agreed to by the Secretary of State in principle that £240,000 for the Land Bank should be provided, and should the expenditure now proposed on these offices be found incompatible with any other sound and economic provision for agricultural development, it would of course be delayed accordingly.

THE HON. E. POWYS COBB: Your Excellency, I am very grateful indeed for that assurance, and with the permission of my seconder and of the House, I would ask leave to withdraw the amendment.

HIS EXCELLENCY: Does the Noble Lord agree?

LIEUT.-COL. THE HON. LORD FRANCIS SCOTT: Yes, Sir.

HIS EXCELLENCY: I understand the amendment is by leave withdrawn.

The question is:—

Be it resolved that this Council hereby approves the expenditure of a sum of £200,000 upon the purposes specified in the Schedule hereto and undertakes to approve the inclusion of such sum in the Schedule to a future Loan Ordinance together with such further sums as may be necessary to cover the cost of the issue of such Loan.

Be it resolved that this Council hereby rescinds its resolution of the 16th July, 1929, approving the provision of £110,000 for Law Courts.

SCHEDULE.	£
1. Central Offices ...	154,000
2. Law Courts ...	136,000.

The question was put and carried.

PUBLIC BUILDINGS.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to move:—

Be it resolved that this Council hereby approves the expenditure of a sum of £20,850 upon the purposes specified in the Schedule hereto as a charge against Loan Account and further approves provision being made therefor by re-allocation of the amount from the sum already approved for—

A—Public Buildings:

(1) Housing for Government Servants, Nairobi.

Other Buildings.	£
Administrative Office, Kisumu...	3,500
Medical Store, Nairobi ...	17,250
	<u>£20,850.</u>

In speaking to the resolution which stands in my name, Sir, I should like to explain to the House that in the first place the only excuse for taking these two resolutions at what is probably regarded as somewhat short notice by this House is the real urgency which underlies them.

To deal first with the case of the administrative offices at Kisumu; the Report of the Inquiry into the Organisation of Administrative Offices was laid on the table of this Council

one or two days ago, and although the Government has not yet had time to consider all the recommendations in that Report and the attitude which it intends to take upon them, their attention was particularly directed to chapter six, page forty-three of that Report, in which particular attention is drawn to the really very disgraceful condition of the offices of the District Commissioner, Central Kavirondo.

The hon. Member for the Rift Valley, in speaking to the last motion, Sir, drew attention to the fact that it was not only in Nairobi that Government offices require attention, and I think nothing could give a clearer—nothing would support his statement more clearly than the terms of this Report.

I do not wish, Sir, to take up the time of the House by reading it in full, but if they will turn to that page they will find these words: "We find it difficult to speak in moderation of the offices of the District Commissioner, Central Kavirondo." And then they go on to point out how the buildings themselves have been condemned by the Medical Officer of Health in his letter of the 2nd December, 1929. I feel that a case of urgency has been made out and I recommend it to the consideration of Council.

The other item is the Medical Store, Nairobi. The urgency in building another Medical Store in Nairobi is equally great. In the first place, the existing accommodation is quite inadequate, and in the second place, we are in occupation of land which the Railway is constantly demanding us to vacate. In fact, we really ought to have got out of this site by December of last year, but owing to the courtesy of the hon. the General Manager we have got an extension until the end of this year; but I understand from him that without very seriously interfering with his own building programme a further delay cannot be allowed. On the grounds therefore of the great urgency of these two items I have had them included in the Schedule.

I should just like to make one further point, and that is that this resolution does not involve the voting of any new loan monies for the purpose. This is merely in conformity with the practice which I tried to explain the other day in regard to reallocations. This is being brought to the notice of this Council because none of these items originally figured in the Loan Schedule. Money, however, has been found for financing these projects from the savings shown on page sixteen of the Loan Schedule under the block item "Provision for Advances under Housing Scheme, £14,000." All that money is no longer required, as it has been agreed that such advances may be financed in future from Surplus Balances.

I beg, Sir, formally to move the resolution standing in my name.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is—

"Be it resolved that this Council hereby approves the expenditure of a sum of £20,850 upon the purposes specified in the Schedule hereto as a charge against Loan Account and further approves provision being made therefor by re-allocation of the amount from the sum already approved for—

A—Public Buildings.

(1) Housing for Government Servants, Nairobi.

SCHEDULE.

Other Buildings.	£
Administrative Office, Kisumu	3,600
Medical Store, Nairobi	17,250
	£20,850."

THE HON. CONWAY HARVEY: Your Excellency, as the hon. mover stated, this motion has been rather sprung on us, but I do sincerely trust that no one will object to at least the first item in the Schedule, the provision of finance in order to erect suitable accommodation for the administrative staff at Kisumu. But, Sir, there is a reason for the delay, and there is a reason why Government has for so long neglected its responsibility in this matter. It will be remembered, Sir, by a great many hon. Members that several years ago I put in a plea for the Resident Commissioner to be domiciled in a more central spot in relation to the district in which his work lies. That, Sir, would automatically have released the moderate accommodation which he occupies now for the District Commissioner, Central Kavirondo; but as the Government has decided not to follow out the suggestion, it is absolutely imperative for the reasons so clearly expressed in this admirable Report, Sir, that this work should be proceeded with without delay.

So far as the other item is concerned, Your Excellency, I am not satisfied that the hon. mover has produced a very convincing justification for so large a sum as £17,250 for the purpose of the Medical Store, and I should like to be assured, Your Excellency; that before this work is embarked on all the details in connection with it will be subjected to detailed scrutiny by the Works Committee.

LIEUT.-COL. THE HON. C. G. DURHAM: I would like to ask, Sir, as I understand it, when the original buildings were put up, were they put up under a contract with Government? I want to know whether the General Manager can substantiate his claim to that particular ground.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, item two, for Medical Store, Nairobi, I take exception to; consequently I cannot vote for it. It seems to be a very large amount to spend on a Medical Store. It may or it may not require that amount. I have no information whatever of the details and can only express the opinion on a very wide and general ground, but it does seem a very large amount. I would also remind Your Excellency that during this Council it did appear that a previous vote of £14,000 for a hospital at Mombasa was spent on other buildings and not for the purpose for which it was voted. I presume the Government will pass this motion—the old steam-roller will be brought into action—but I would like an assurance that there will be no deviation of this money for a Medical Store for other purposes.

THE HON. C. M. DOBBS (SENIOR COMMISSIONER, NYANZA): Your Excellency, I do not think it is necessary to say very much more in connection with the first item in the Schedule because the whole matter has been dealt with at great length in this Report; but I would like to state that this is not the first letter which has been written on the subject. This letter—quoted in the Report—was written when it was discovered that the money was not forthcoming in the Estimates for the present year. I do not think the conditions in that office can really be realised by anybody who has not seen it—the office in which the A.D.C.'s work. Some few months ago, when a criminal case was proceeding there, the proceedings were interrupted because a snake fell from the roof on the top of the accused. I think that kind of thing is apt to upset the ordinary routine of office work. The atmosphere in a small room in a station like Kisumu—where it is very hot in the afternoon—without a through draught is unspeakable. In sending in this letter I sent down some photographs of the office, and when one was developed we discovered that the District Commissioner's dog was in the foreground, and I think the expression on the face of that dog was an eloquent appeal for better conditions for its master.

THE HON. THE DIRECTOR OF MEDICAL AND SANITARY SERVICES (DR. J. L. GILKS): Your Excellency, mention was made just now of the siting of the Medical Store. It is now many years ago that this cry arose in this country, and I

venture to say it began before I or my predecessor was here. It was originally decided that there must be a Medical Store in Nairobi and that it was desirable that it should be somewhere in the vicinity of the Railway Yard. The matter was discussed and agreement was reached between various people and the then Acting General Manager that the existing site was a good one. Everybody was convinced. I will say that the substantive General Manager on his return was very eloquent on the subject: it was quite clear he thought it was quite wrong. In the course of time the Railway has developed, and I believe now it is absolutely essential that the land on which the present Medical Store stands should be given over. The end of this year has been mentioned as the very latest date to which extensions can be deferred—extensions to the Railway that is. That disposes of the question of site.

With regard to the necessity for extra accommodation, Your Excellency, last year, as a result of representations made by myself to Government in regard to conditions at the Medical Store, the recommendation was accepted that there should be a general enquiry into the position down there. I may say that no representations departmentally in any way in regard to staff were made by myself, nor did the committee find that the staff was to blame in any way.

One of the recommendations of the committee was this: "The most important point is that the present accommodation is both inadequate and unsuitable." The requirements which were considered necessary were put up for consideration. It was thought that a very large increase was necessary, but the matter has been discussed and discussed and the requirements have been amended until at the present time they are something less than half of what we thought originally would be required for an efficient Store. I think, Your Excellency, the necessity for the building of a new store has been made perfectly clear; also that the present accommodation must be increased.

LIEUT.-COL. THE HON. C. G. DURHAM: Your Excellency, arising out of that reply, may I ask what the buildings are made of?

THE HON. THE COLONIAL SECRETARY: On a point of order. Your Excellency, the hon. Member has already addressed the House on this motion.

HIS EXCELLENCY: I understood he rose on a point of personal explanation.

THE HON. THE COLONIAL SECRETARY: I understand he is asking another question.

HIS EXCELLENCY: He is not entitled to do so: he must ask one of his colleagues to do so on his behalf.

CAPTAIN THE HON. E. M. V. KENNELLY: Your Excellency, there are two points I wish to elucidate in the form of information. In regard to the second item, Medical Store, is the decision to spend this fairly large sum of money on a Medical Store in any way bound up with the decision of Government in regard to adopting a policy of grouped or separate hospitals? If Government has decided on the policy I suppose Government can substantiate the wisdom of its decision, whatever it is, but I should like to know if Government has decided on grouped or separate hospitals.

I should like to ask the question that my hon. left-handed friend (the hon. Member for Kikuyu) failed to ask and that was if the Government is going to get anything for the debris that results when this other Medical Store is pulled down.

CAPTAIN THE HON. H. E. SCHWARTZ: Your Excellency, I intend to support both the items in this Schedule.

With regard to conditions at Kisumu, I think it only right to point out in reply to the Senior Commissioner of the Nyanza Province that the example he gives with regard to interruptions in the course of divine justice are not peculiar to Kisumu. Even when the Court sat in that most splendid building, the Indian Institute; in the years gone by, I myself have seen a monkey jump in at the window and seize the wig from off the judge's head. (Laughter.)

LIEUT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I am prepared to support the first item.

With regard to the second, I should like to know where this new store is going to be, and also on what authority this very large sum (£17,250) for a store has been arrived at; it does seem very excessive.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS (BRIG. GEN. G. D. RHODES): Your Excellency, there are two points on which perhaps I can say a little in connection with the Medical Store. The urgency of the matter lies in the fact that our old stores in the Railway have been crowded out from their present position by the expansion of the traffic yard and the growth of the necessary facilities that have to be provided in that area. For the last three or four years we have had a gradual programme of transferring the stores over to a larger area opposite, and the present site of the Medical Store is in the middle of that site

that we shall have to occupy. It has been accepted by Government, in view of the previous history of this case, that that site should be vacated, and opportunity is being taken, when a new store for the Medical Service is required, to vacate that site.

With regard to the question of compensation for the building that is to be moved, Sir, I should have to have notice of the matter because I do not know whether it has actually come up for consideration. Actually it is a building that is unsuitable, I understand, for medical purposes. It is already too small, and in any case they would have to pull it down and re-erect a building even on the same site. I don't think the question of compensation arises.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I do not think it is necessary for me to refer to the Administrative Offices, Kisumu, as I gather from the trend of the debate that there is general agreement on the subject.

One or two points have been raised as regards the Medical Store, Nairobi, and I will give such further information as I can. First, as to the matter of expense: the figure is a very large one, but I should like to assure hon. Members that that figure has only been arrived at after a most painful and protracted period of whittling down, and I trust that, when I tell them that the first figure put up by my hon. friend, the Director of Medical and Sanitary Services, was no less a sum than £50,000 (laughter) and that I have now, as a result of much official and acrimonious correspondence, reduced that sum to £17,250, hon. Members will be satisfied that the Government have been jealous of their interests. I would further like to give the Noble Lord the assurance that if this vote is passed the plans will in the ordinary way come up before the Loan Works Committee and receive their very careful consideration.

The final point, Sir, asked by the Noble Lord, was the question of site for the new buildings; that, I am afraid, I am not in a position to give him. I know that the hon. the Director of Medical and Sanitary Services is actively engaged on the matter, but I have not yet received his official recommendations on the subject. I can, however, give the hon. Member for Kenya the assurance that the building of this store will have no effect on whatever policy may be adopted in the matter of grouped hospitals in Nairobi, and, as Your Excellency has already stated, Your Excellency intends to make a statement on that subject to-morrow.

I think I can give the assurance that, with the encouragement I have received from them in the matter, I will make it my business to endeavour to extract the last cent from the General Manager if a case can be substantiated therefor.

HIS EXCELLENCY: The question is:—

"Be it resolved that this Council hereby approves the expenditure of a sum of £20,850 upon the purposes specified in the Schedule hereto as a charge against Loan Account and further approves provision being made therefor by re-allocation of the amount from the sum already approved for—

A—Public Buildings.

(1) Housing for Government Servants, Nairobi.

SCHEDULE.

<i>Other Buildings.</i>	£
Administrative Office, Kisumu ...	3,600
Medical Store, Nairobi	17,250."

The question was put and carried.

OVERSTOCKING IN NATIVE RESERVES.

CAPTAIN THE HON. E. M. V. KENEALY: Your Excellency, I beg to move:—

"That overstocking in Native Reserves should be the subject of immediate action by Government and that a policy be adopted."

Now, Sir, in considering this motion Government may adopt two points of view. Either Government may accept this motion as endeavouring to expedite and endeavouring to further its aims in giving effect to a theory which we hope Government has accepted, or Government may view it in the light of a motion of censure inasmuch as they have failed to carry out what presumably were their intentions in the past.

Now, Sir, I hope Government will accept the motion, because a refusal to accept the motion would demonstrate that Government considered it a motion of censure and that Government, at the same time that it came to that decision, admitted that a motion of censure was justified and could be substantiated from this side.

Now, Sir, I do not think there is any necessity for me to demonstrate that there is an overstocking in certain Native Reserves. That can be accepted. If you require the evidence I merely ask Your Excellency and hon. Members to read the

various reports that have been presented in this matter. I shall not go into it. The evidence is there. It is not contradicted.

The next point that arises, Sir, is the question as to whether a means for dealing with this subject can be arrived at. Now, Sir, the means has been—several means have been suggested, and Government is in no difficulty in accepting one or other of the means suggested because Elected Members have consistently for several years now urged Government to take action on certain lines. Government is not in a position to quote indecision on this side of the House, nor is Government in a position to quote indecision on the other side of the House. We were unanimous in desiring that there should be some method adopted of reducing the overstocking that exists. Government has the responsibility. Overstocking is there, and whether there is a temporary injury done to an individual or not does not matter. Government has accepted responsibility for controlling Native Reserves and for controlling stocking—the quantity of stock in any area. Legislation was passed a year or two ago dealing with that; that legislation has not been utilised, and it has not been utilised because Government apparently doubted its capacity administratively to give effect to the meaning of that legislation. That is a very undignified attitude for Government, if that be the inference, to be forced into, and I trust that Government will cease to be swayed by a policy which is entirely founded upon doubt of their capacity. There is a superabundance of stock—that is accepted—and the type of stock is uneconomic. It is useless from the point of view of producing revenue. It is not only useless but it is harmful. If the Agricultural Stock Improvement Ordinance (or something like that) dealt with limitation not only in the numbers but also in the types of stock employed, in giving effect to this legislation, there would be no need to move this motion, but it is not so. The type of stock which is possessed by the natives—I am referring now chiefly to the Ukamba Reserve, where the position is most accentuated—is the type of stock which has little or no economic value. An extension of the policy of allowing natives to own unlimited numbers would merely result in a larger and larger area of that Reserve being reduced to a state of partial or entire desolation. Government has either got to face the issue now and deal with the matter, or accept the responsibility for permitting a form of distress in this pastoral tribe which it will be very difficult to explain and which it will be impossible to excuse.

Now, Sir, is this a good time to apply some form of limitation? Possibly fencing will be required to give effect to this, and the partial or whole rest of certain portions of that

Reserve will have to be adopted. This is a particularly good time to give effect to it because we have had copious rains and we are likely to have rain for a considerable time longer. The only point that arises where a difference of opinion might occur is whether Government shows itself capable of giving effect to the legislation behind it and adopting a policy which will result in apparent injury to a small number of persons but to the ultimate good of the whole of the tribe concerned. A Native Reserve is comparable to a commonage, and there are measures for giving effect to the limitation of numbers and also the limitation of the type of stock. That principle has been accepted by the civilised world and it should be applied to the Native Reserves.

It has been suggested that one of the easiest ways of dealing with the problem would be by the erection and the working of a meat factory which would create any such portion of the carcasses as were capable of being rendered edible, into food, and such portions of the carcasses as cannot be utilised in that way for purposes such as the making of fertilisers, and that the money that was paid for each individual carcass should go back to the producer. That seems a rational thing to do and the only difficulty that occurs now is whether the whole country should be required to accept the responsibility for the provision of this money or only the native tribe concerned or the general Native Trust Fund.

I think, Sir, that we on this side of the House are prepared to take a very generous view of this matter and agree that the money should be provided for meeting a local condition amongst a certain section of the community out of general revenue, but whether it should come out of revenue or loan does not matter because ultimately loans are financed out of general revenue.

That, Sir, has been agreed by this side of the House. In the Budget Committee's Report of last year certain recommendations were made, and why Government has failed to act on those recommendations I cannot understand. I suppose some reasons will be adduced but I feel that the major factor which faces Government is its own inability administratively to apply the law which it at present has. I do not think there is any need to elaborate this matter further, Sir. I hope Government will accept the motion for the reasons given. I beg to move.

LIEUT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I beg leave to second the motion. I hope, Sir, that it is a redundant motion: I hope the Government are already doing this. Presumably they decided to adopt the

policy some years ago when they introduced the Bill to enable them to limit the amount of stock in any area. Sir, this is a very, very serious question and especially so in that part of the country which I have the honour to represent, where all round Machakos and the Ukamba Reserve the question has got so acute that all responsible people who have gone into the question whose opinion is worth much say that to restore that Reserve to anything like good grazing property means the culling of about seventy per cent of the stock there. I do not know if my hon. friend, the Senior Commissioner, Ukamba, will bear me out, but I believe that is his opinion.

Now, Sir, many years ago, when we were discussing the currency of this country, a certain gentleman got up—I do not think it was in this House, Sir; I think it was outside—and said it was not a serious question whether we had a rupee or a shilling, but the demonitisation of the goat. And that really is at the bottom of this trouble. We have to teach the natives to understand other values than the value of the goat and the value of a very bad beast. We have got to teach them, Sir, that it pays them to have good stock and not ruin their pastures with bad stock. It is one of the most important questions which the Government has to face in this country on behalf of the welfare of the native people.

With regard to the meat factory, I hope that steps will be taken to erect something on those lines, Sir, but it must be realised, when that is done, and it must be impressed on the natives that when they are culling out these bad worthless beasts, that they cannot expect to get much money for them. I beg to second the motion.

HIS EXCELLENCY: The question is:—

“That overstocking in Native Reserves should be the subject of immediate action by Government and that a policy be adopted.”

THE HON. THE DIRECTOR OF AGRICULTURE (MR. A. HOLST): Your Excellency, nothing has been said by either the hon. Member who moved the motion or by the Noble Lord who seconded the motion which is inconsistent with the action and the policy of Government in connection with this matter. In the comparatively short time at my disposal, I do not propose to traverse the whole field of this very complicated problem, but I would however say to the House that the problem of overstocking is one that is not confined to Kenya, nor is it confined to East Africa. It is one which is commonly found in different parts of Africa wherever one finds that the currency of pastoral tribes for all practical purposes takes the form of livestock.

I propose, Sir, to demonstrate to the House that the terms of the motion as to action and policy are entirely unnecessary, and I will take this opportunity of giving information to the House with regard to the steps that have been taken by Government in regard to this matter. About eighteen months ago Government was in a position to bring under review the recommendations of the committee appointed by Your Excellency to review the whole question. Just prior to that, Rules had been promulgated under the Crops and Livestock Protection Ordinance at the time when an attempt was to be made considerably to reduce the number of stock in the Wakamba Reserve. I do not intend to enter into details in regard to those Rules, but the reasons why the Government was unable successfully to operate them were—and I think, if necessary, my hon. friend, the Senior Commissioner, Ukamba, will support me in this statement—that it was found that those Rules could not be specifically administered in the absence of a definite assurance that certain markets were available for surplus stock. It is true that markets of a kind were available, in the opinion of the committee to which I refer, but I suggest to the House that the mere transference of stock from the Wakamba Reserve to another Reserve did not properly deal with the position—it meant simply that you were thereby accentuating the problem in another Reserve by transferring the stock from the Wakamba Reserve. In connexion, however, with the stock in the Reserve itself, my opinion is that during the past year very considerable reductions have been made, not only in cattle but in goats. The Wakamba people themselves consumed a considerable number of them during this period.

One of the recommendations of the committee to which I have referred, Sir, was that a meat factory should be established. Government took steps immediately to procure the necessary information in regard to it. Such information, for example, as canning plant, capital costs, revenue likely to be derived, and operating costs were essential before Government could come to a decision in the matter. The Crown Agents for the Colonies, over a period of some months, collected that information and sent it to Your Excellency's Government.

At about this time the Agricultural Commission brought the matter under review and made a valuable contribution towards the elucidation of the problem, and also recommended that a meat factory should be established. Concurrently, a survey was made of the livestock in the Wakamba Reserve. That was considered again to be an essential feature in connexion with any administrative measures that were to be put into operation before they could be successfully administered.

Government has decided in principle that a meat factory should be built and during the last two or three months close consideration has been given to its establishment. It would appear that there are three methods whereby such a meat factory might be managed and operated. It might be an enterprise solely and wholly under State control and management; or it might be one conducted entirely by private enterprise; or it might, thirdly, be one whereby Government employed some experienced agency to act on its behalf.

I will not go into the details or the merits of each of these three methods. Suffice it to say that Government is of opinion that State control and management is not the best method. It will be very difficult indeed to conduct a commercial enterprise of this kind efficiently under Government regulations to which those connected with it have to conform. Then again, with regard to private enterprise, it would undoubtedly be said in different quarters that the natives would be, or would be likely to be exploited by private enterprise for the benefit of that enterprise and that they would not get the returns from the factory which they would expect to be entitled to. Government rather favours the other method of running this meat factory: that is to say, a method whereby use would perhaps be made of an agency experienced in running an enterprise of this kind, an agency that would act on behalf of Government—as managers and as selling agents.

In any case, it is clear that whatever method might be adopted, the price that would be returned by such a meat factory would be comparatively small. The establishment of a meat factory is considered to be pre-requisite to achieve the ends of reducing this overstocking in pastoral areas, but there is every reason to believe that in the circumstances drastic measures will have to be adopted and that compulsory powers for the reduction will have to be exercised, not only to carry out the legislation but to save these native stock owners from themselves. In giving effect to these measures means will be adopted to cull the worthless and unsatisfactory animals for breeding purposes. If the effect of these measures will be to encourage the natives themselves to consume this surplus stock then the objects will be equally achieved and great benefit will be derived by the natives themselves because of the improvement in the nutritive value of their food.

I would not care to say, Sir, that, standing alone, a meat factory will provide a complete solution of the problem, but it appears to be an essential need at this stage, and it is to be hoped that the results which will be achieved will inculcate into the minds of these native stock-owners the belief that

after all it will be to their advantage to keep smaller numbers of stock—to keep stock of greater size and greater production capacity, with greater birth rate, smaller loss from poverty and greater economic value. It may be that as a result the bride price will suffer in reduction of number of cattle, but that again will be no disadvantage either to the bride or to the tribe.

Sir, in your opening address to this Council at the present session you informed the House that you had communicated with the Secretary of State and submitted that the meat factory should be considered as a project under the Colonial Development Fund. The Secretary of State has indicated in general terms his agreement in principle with the proposal and there is reason to believe that such a project will find acceptance by those controlling the Colonial Development Fund. In this connexion, there is under course of preparation a detailed statement for such an application, when and if finally made.

I should perhaps take this opportunity of informing the House that the capital expenditure on a meat factory is in the neighbourhood of £35,000 to £40,000, and that the working capital is in the neighbourhood of £20,000 to £25,000. With regard to the Colonial Development Fund, Sir, it is too early to say on what terms, if the application is finally made, money might be obtained, but it is the desire of Government, without bolstering up the price in any way, that the greatest return possible should be secured for the culled cattle sent to the factory in order to encourage the natives in this country to dispose of them in that manner, and, if cheap money or free money can be obtained, then the factory will be in a better position to pay a more satisfactory price.

I would further add, for the information of the House, that some discussions have taken place within the agency to which I have referred, and there is reason to believe that satisfactory terms, both in the interests of Government and the native stock-owners and the agency itself, will be arrived at. Further, Sir, the scheme has so far advanced that an examination of alternative sites for the factory has been made, and for grazing grounds to carry the stock supplied to the factory.

As to the policy of Government, I hope I have given the House sufficient indication of the policy which Government intends to pursue. I agree with the Noble Lord that the time is opportune to give effect to it now that we appear to have emerged from those conditions of drought. That being the case, and if there are favourable grazing conditions, the natives will be more disposed to get rid of their surplus stock.

Sir, as to the wisdom of Government accepting the motion or otherwise, I should like to say to the hon. and gallant mover of the motion that Government is not disposed to accept the motion. If Government did so, it would be tantamount to an admission by Government that proper action had not been taken and that Government had no policy in the matter. I hope that, having given such information as I can in the time at my disposal, the hon. Member will be disposed to withdraw his motion.

In conclusion, I should like to give him the assurance that Government will continue to give this matter constant and serious attention and to expedite the work as far as possible.

CAPTAIN THE HON. E. M. V. KENEALY: Your Excellency, there are a few points on which a reply is indicated.

Firstly, Sir, it has been suggested that Government has demonstrated its policy and justified its activities. In fact, it has shown some activities. Well, Sir, I must differ from that expression of opinion. We have had no policy stated and we have had no action of any value whatever to the country taken. It has been suggested that overstocking is not limited to this country. This sort of thing, Sir, occurs where incompetence and lack of control occur and nowhere else.

With regard to the steps taken, Sir, we have been told that steps have been taken by Government. Well, Sir, all the time that these steps have been taken the situation has been getting worse and worse. It could not be the duty of Elected Members continually to stand behind the elephantine stern of the ship of State and goad it into activity. It is distressing that that responsibility is continually being thrust upon us by Government's inactivity. It is suggested that the Rules that have been provided are insufficient to enable the situation to be met. Well, Sir, let Government accept the old and fundamental law of commerce that a thing is worth what it will fetch. That is the true value of a thing. That is the value the natives of this country will ultimately be forced to accept for their stock. I do not want the natives to get a big price for this stock. The illogicality of suggesting that they should be given a big price to make it easy for the Administration to administer this idea is an appeal to commonsense. We want to give them a low price and educate them from doing the wrong thing. We do not want to censure them unduly for having done it in the past, but we do not want to make it profitable for them to continue in a policy which is retrogressive and injurious to the whole of the native tribes of this country.

The transfer of stock from one Native Reserve to another was mentioned, Sir. The transfer of stock from one Native Reserve to another was never urged nor approved by anyone on this side of the House; that was possibly Government policy.

One fact that has been manifestly brought out to-day is that Government's policy has been based on the feminine tradition of being unable to make up its mind to a policy. We have told them several ways of meeting this situation and we have been told that Government has not adopted one. That is the reason I have put in this motion, because I raised this matter some time ago and I was promised that I should be given further information which would enable me and encourage me to withdraw the motion. Well, Sir, I was not satisfied with the information I had then and I am not satisfied with it now, and I trust that the other Members on this side of the House are also extremely dissatisfied and will press this matter to a division.

We have heard the Colonial Development Fund mentioned, but that raises an issue which should not be thought of in a matter of this kind where we are unanimously of an opinion; the use of a fund such as that should not be used on an issue of this kind.

HIS EXCELLENCY: The question is —

“ That overstocking in Native Reserves should be the subject of immediate action by Government and that a policy be adopted.”

The question was put and lost by seven votes to twenty-two.

Ayes: Messrs. Bemister, Cobb, Lieut.-Col. Durham, Mr. Conway Harvey, Capt. Kenealy, Major Robertson-Eustace, Lord Francis Scott.

Noes: Major Brassey-Edwards, Messrs. Campbell, Dobbs, Doran, Fitzgerald, Dr. Gilks, Messrs. Holm, Horne, Lieut.-Col. Kirkwood, Canon Leakey, Messrs. Lynde, MacGregor, Malik, Martin, Maxwell, Montgomery, Moore, Brig.-Gen. Rhodes, Messrs. Rushton, Scott, Walsh, Col. Wilkinson.

Declined to vote: Capt. Schwartz, Col. Tucker.

*Council adjourned till 10 a.m. on Thursday,
17th April, 1930.*

THURSDAY, 17th APRIL, 1930.

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Thursday, 17th April, 1930, His Excellency the Governor (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer.

COMMUNICATION FROM THE CHAIR.

HIS EXCELLENCY: Order, order. I undertook at the opening of the session to make a statement upon the appointment of the Board of Agriculture, and also upon Government's policy in regard to the question of Nairobi hospitals.

With regard to the hospital question, the Government has decided, after full consideration, that the needs of the different communities in the capital will best be met by a system of separate hospitals for the European, Indian and African communities. The construction of a new Indian hospital is regarded by Government as a matter of urgency. I understand that negotiations are well forward in regard to the matter of site, and representations are being made to the Secretary of State regarding the necessary financial provision.

With regard to the Board of Agriculture, I wish to announce that the following is the constitution of the Board, based closely upon the recommendations of the Agricultural Commission:—

Mr. J. F. H. Harper, Chairman;
The Chief Native Commissioner;
Mr. W. F. G. Campbell, Senior Commissioner,
Ukamba;
Lord Delamere;
Mr. E. Powys Cobb;
Mr. C. K. Archer;
Colonel M. Maxwell;
Mr. W. Tyson;
Mr. H. Lillywhite;
Mr. Abdul Wahid.

Mr. Harper has definitely undertaken the chairmanship, and I hope we shall hear without delay that all the other gentlemen named are prepared to serve, but in cases of absence I should explain that Government is prepared to arrange for a system of deputies, as it is inevitable that some of the members of the Board should at times be absent.

Hon. Members will remember that in my speech to Council at the opening of this session I expressed Government's concern about the difficulties brought upon farmers in the Colony by the general fall in the prices of agricultural produce, and undertook to give immediate consideration to any practical suggestions which hon. Members might submit for helping the Colony through these, I hope, temporary difficulties.

I am afraid that rate reductions and other expedients of that kind are impracticable, but the situation undoubtedly emphasises and reinforces the recommendation of the Agricultural Commission on page 20 of its Report that the provision of further credit facilities on a safe and economic basis should be investigated with despatch. Material on this subject has already been collected by Government and a project has been outlined by Elected Members of this Council. I propose to ask the Board of Agriculture to deal with this material as a matter of urgency, and to report at the earliest possible moment—I hope, before the end of the month. It is probable that a sound and self-supporting system of short-term intermediate credits may prove desirable. Government will give immediate consideration to the Board's report when presented, and will consult this Council upon it without delay.

I think I have also to announce the constitution of a committee for dealing with the case of Mathew Wellington, which, I think, was originally raised in this Council by the hon. Member for Kikuyu, and to which I made some reference in my opening speech to Council. I suggest a committee be appointed as follows:—

The Treasurer, Chairman;
The Chief Native Commissioner;
The Provincial Commissioner, Coast;
Lord Francis Scott;
The Hon. Member for the Coast;
The Hon. Member for Kikuyu;
Canon Leakey.

CAPT. THE HON. H. E. SCHWARTZ: On a point of order, Your Excellency, I believe that earlier in the session a resolution was passed to appoint another Select Committee, but I cannot for the life of me remember at the moment what it was on; but the personnel has not been announced yet. I cannot for the life of me remember, but I think it was in answer to a motion of my own.

HIS EXCELLENCY: If the hon. and learned Member will let Government look into the matter we will give him an answer before the end of this meeting.

MINUTES.

The minutes of the meeting of the 16th April, 1930, were confirmed.

ORAL ANSWERS TO QUESTIONS.

COMMUNIST PROPAGANDA.

LT.-COL. THE HON. LORD FRANCOIS SCOTT asked:—

"(1) Have Government received documentary evidence that a Communist organisation with headquarters at Berlin is communicating direct with the Kikuyu Central Association?"

(2) Is Government taking steps to protect these natives from such dangerous and misleading propaganda?"

(3) Have Government sufficient legal powers to prevent subversive agitations engineered by communist or other agencies?"

(4) If not, will Government introduce legislation on the lines recently found necessary in other parts of the British Empire?"

THE HON. THE COLONIAL SECRETARY (MR. H. M.-M. MOORE): (1) Government is aware that a circular contained in an envelope bearing a German stamp and purporting to emanate from a Communist organisation in Berlin was addressed to the Kikuyu Central Association.

(2) The answer to the second part of the question is in the affirmative.

(3) The new Penal Code, which it is proposed to bring into force on 1st July, gives ample powers to prevent the spread of such propaganda.

(4) In view of the answer to the third part of the question, Government does not contemplate further legislation.

INSURANCE CONTRACTS.

THE HON. F. A. BEMISTER asked:—

"In view of the fact that there are no actual deposited funds in the hands of Government securing the carrying out of insurance contracts, what are Government's intentions regarding the introduction of legislation at an early date to provide for such deposits?"

THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR, K.C.): Government will consider the advisability of introducing legislation on the lines mentioned.

PAPERS LAID ON THE TABLE.

HIS EXCELLENCY: If hon. Members will allow me to revert on the Order Paper, I see there are some papers which should have been laid which I have overlooked.

The following papers were laid on the table:—

BY THE HON. THE DIRECTOR OF MEDICAL AND SANITARY SERVICES (DR. J. L. GILKS):

Report of Committee on Grants-in-Aid to African Hospitals.

BY THE HON. THE COMMISSIONER OF CUSTOMS (MR. G. WALSH):

A Bill to Consolidate and Amend the Law relating to Customs Tariffs.

Tariff Revision Bill, 1930: Table of items in Schedule to the Bill, showing corresponding items in the 1923 Tariff and reasons for alterations suggested.

Report of Committee appointed to consider a revision of the Customs Tariff of Kenya, Uganda and Tanganyika Territory.

NOTICE OF MOTION.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I wish to give notice of motion in the following terms:—

“That a Select Committee be appointed to revise and extend Standing Rules and Orders.”

SUSPENSION OF STANDING ORDERS.

THE HON. THE ATTORNEY GENERAL: Your Excellency, with your leave, I beg to move that Standing Rules and Orders be suspended in order to enable a Bill to Consolidate and Amend the Law relating to Customs Tariffs to be taken through all its stages without due notice.

THE HON. THE COMMISSIONER OF CUSTOMS: Your Excellency, I beg to second the motion.

The question was put and carried.

BILL.

FIRST READING.

CUSTOMS TARIFF BILL.

On motion of the hon. the Commissioner of Customs, the Customs Tariff Bill was read a first time.

SECOND READING.

CUSTOMS TARIFF BILL.

THE HON. THE COMMISSIONER OF CUSTOMS: Your Excellency, I beg to move the second reading of a Bill to Consolidate and Amend the Law relating to Customs Tariffs.

This Bill is designed to give effect to the decisions reached at the Governors' Conference in January last and to the unanimous recommendations of the Inter-Colonial Committee appointed by that Conference to consider a revision of the existing Tariff, 1923, which has been in operation virtually unamended for more than six years.

The Report of the Tariff Revision Committee which has been laid on the table, and the Objects and Reasons appended to the Bill as printed, explain in considerable detail the principles underlying this measure, but there are certain points which may require further elucidation.

In the first place, it will be understood that the position with regard to unrestricted trade between the three mainland territories which a short time ago had become somewhat insecure has again been strengthened by the agreement on the part of each Government to accept a practically identical basic Tariff and Tariff Ordinance. By co-ordinated action, arrangements to enact the agreed Tariff simultaneously in the three territories have been made, and Bills similar to that now before the House are being submitted to-day to the Legislatures of Uganda and Tanganyika Territory.

Hon. Members will be fully aware of the formidable difficulties which have been encountered in regard to the Protective duties, and of the conflicting views held in the various territories on this vexed subject. As a result of the most exhaustive discussions, it is hoped that a mutually agreeable solution has been found by the introduction of the principle of Suspended Duties into the Common Tariff.

Suspended duties, which are applied in certain other countries, do not interfere with the main principle of the Common Tariff, but allow of a defined margin of elasticity in each territory in the matter of imposition on specified articles of suspended duties as distinct from basic duties.

Clause 3 of the Bill provides that the Governor, with the approval of Legislative Council, may by proclamation impose either in part or in full a duty referred to in the Schedule as a suspended duty. A similar provision naturally exists in the Bills now before the Legislatures of Uganda and Tanganyika Territory, the effect being that each Government has the right to vary suspended duties up to the amount specified in the Tariff, but as Your Excellency has stated an undertaking

has been given that removals of any of the suspended duties will only take place after prior consultation with the other Governments concerned. A motion in regard to the imposition of suspended duties in Kenya appears on the Order Paper of the Day.

Clauses 6 and 7 of the Bill authorise adjustments when the rates imposed vary as between the territories, and incorporate the provisions of section 2 of the Customs Tariff Ordinance, 1927, which is now being repealed. A somewhat similar provision already exists in regard to the consumption taxes imposed in Kenya.

Clause 1 brings the Ordinance into operation with effect from to-day.

Clause 2 calls for no special comment as it is identical in effect with section 2 of the 1923 Ordinance.

Clauses 4 and 5 amplify the existing provisions in regard to the definition of value for Customs purposes, and bring the East African laws into conformity with the practice followed in many other countries. The clause as redrafted also allows of the acceptance of certificates of value endorsed on invoices in the stereotyped form approved by the Imperial Customs Conference of 1921, and follows generally the recommendations of that Conference.

In the existing Ordinance the value for Customs purposes is defined as the value at the port of shipment together with all charges up to the time of deposit of goods in Customs premises at the place of importation.

The wording of this section is unusual and has become difficult to operate since the new handling and wharfage charges at Mombasa have been introduced. The clause as redrafted fixes the value as the value "ex ships' slings," a more logical definition which eliminates present obscurities so far as interpretation is concerned.

As regards the Schedule to the Bill, Members will observe that the Tariff has been entirely reconstructed, the existing system of classification by rates being abandoned in favour of classification by commodities. Reasons for this change are given in the Report of the Tariff Revision Committee, and I am personally satisfied that the alteration will prove of benefit to all concerned.

The introduction of Tariff measures is always attended with difficulty by reason of the fact that proposed changes cannot be published beforehand. These difficulties are accentuated in the present instance on account of the alteration in the form of the Tariff. In order therefore to place Members

in possession of all the facts and to enable them to follow clearly the changes proposed, a comparative statement, giving cross references as between the new and the old Tariff and the reasons for alterations, has been prepared and circulated.

Appendix II of the Report also explains the position in some detail, working from the old schedules to the new, and opportunity for further verbal explanation will be given if necessary when the Committee stage is reached. Hon. Members may, however, rest assured that each individual item has been most carefully reviewed, and they may perhaps agree that the Report of the Tariff Revision Committee is evidence of this fact.

The basic principles underlying the Tariff as a whole remain undisturbed, but these principles have been applied and extended to meet present needs and conditions, which have altered very materially since the 1923 Tariff was framed.

So far as its technical form is concerned, the Tariff now before this House aims at being scientific in the sense that it is logical in its application, and the various classifications have been drafted with the greatest care in order as far as possible to eliminate obscurities and to reduce to a minimum the need for interpretation by Heads of the Customs Departments as to what the Tariff is intended to mean. In this connexion I should like to pay a tribute to the ready assistance on technical matters afforded me at all times by the Union of South Africa Customs Authorities, both as regards the literature supplied by them and their readiness to help by their advice in every way possible.

As regards ratings for duty purposes, hon. Members will notice that the tendency is definitely downwards; important reductions being recommended in the duties chargeable on grey sheetings, cement, rice, and sundry other items mentioned in paragraph 14 of the Report. Other important reductions or remissions are indicated in paragraph 27 of the Report; these include reductions on infants' food, mechanics and artisans' tools, and an entire removal of the duty chargeable on nets used in the fishing industry, refrigerators and filters, specified articles imported for the use of municipalities, rennet and annato, and certain chemicals used in manufactures of soap, sugar and matches. Proprietary medicines are also transferred to the Free List, in accordance with the recommendations in paragraphs 24 to 26 of the Report.

The duty chargeable on imported vehicles and parts has also been most carefully examined, and it is now proposed that the duty on motor cars, motor cycles, and parts and accessories of vehicles shall be 10 per cent *ad valorem*, all tyres and tubes being charged on a specific basis. These

charges are equivalent to an average reduction in duty per car of £7, and a 50 per cent reduction on parts and accessories, including tyres and tubes for passenger vehicles. Reductions of this nature should have a marked effect on the initial and running costs of such vehicles, which have now become almost essential to life in East Africa. Motor lorries of a carrying capacity of 30 cwt. and over continue to be allowed free admission, but all parts and accessories, including tyres and tubes, become chargeable with a low rate of duty, that is to say, 20 to 10 per cent, and non-interchangeable parts are placed on the same footing. The duty on pedal cycles has been reduced from 20 per cent to 15 per cent.

As stated in paragraph 27 of the Tariff Revision Committee's Report, the item governing passengers' baggage has been amplified and an additional item (No. 163a), removing from the operation of the Tariff goods imported by the Governor for his use, has been inserted with retrospective effect from 12th October, 1927. This brings the Kenya law into conformity with the laws of Tanganyika Territory and Uganda, and is inserted in accordance with instructions of the Secretary of State.

Small increases are recommended in respect of the duty on imported beer (6d. per gallon), cigarettes and tobacco (40 cents per lb. or 12½ per cent *ad valorem* additional), and exposed cinematograph films (Sh. 1 per 500 linear feet). Reasons for these recommendations are given in paragraphs 39 to 34 of the Report.

As stated earlier in my remarks, a schedule had been agreed to by the three Governments. Perhaps I should amplify that statement by saying that the tariffs of Kenya and Uganda are absolutely identical, but that an eleventh-hour difficulty has arisen in Tanganyika in regard to one small item only, that is in the matter of duty on soap. Attempts to secure agreement on this difference have been made by telegram, but the position is not yet absolutely clear. In any event, it will be adjusted in due course.

On the basis of 1928 import figures, the total financial result of the various alterations proposed is a loss to Kenya of £26,000, to Uganda of £1,250, and to Tanganyika Territory of £10,500. Other less important alterations are indicated in Appendix II of the Report. These theoretical losses, however, are likely to be very considerably lessened or entirely removed by the virtual certainty of increased importations following relief from taxation of articles of necessity and a more equitable distribution of the burden of taxation through the medium of Customs duties which amounts in the aggregate to more than two million pounds sterling per annum divided between the three territories.

In conclusion, Sir, I should like to stress the point that the Customs Tariff now before the House sets out to be a properly balanced instrument designed fairly to meet the circumstances of some eight or nine millions of people of all classes and scattered over a very wide area which embraces three territories. Conditions differ materially not only in each of the three territories, but also in different districts of the territories themselves, and among the various classes of the population. All these varying factors have been given due weight in drafting the Tariff, and any alteration in the Bill at this stage would have the effect of upsetting the balance and destroying the initial unanimity which has been reached only after long and difficult negotiations. If my personal opinion is likely to be of any value, I can state unequivocally that in my view the Tariff as now drafted is suitable to the existing circumstances and requirements of the two Governments to which I am responsible. I believe it to be equally suitable for Tanganyika Territory.

Your Excellency, I commend the draft Tariff to the favourable consideration of the House and beg to move the second reading of the Bill.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to second the second reading of this Bill, and in doing so, Sir, I should just like to refer to one item in the Tariff to which the hon. the Commissioner of Customs has not directed specific attention himself—that is, under the item of "free goods." If hon. Members will turn to the Schedule, Class XIII, Miscellaneous, item 163a, it will be observed that a new provision has been included providing that goods imported by the Governor for his use, with retrospective effect from 12th October, 1927, will be imported free. I am authorised by you, Sir, to state that this amendment was introduced on the instructions of the Secretary of State in order to establish the same rate for all three territories. Your Excellency, however, has directed me to inform Council that he has no desire to have this new rule applied during his own tenure of office, in view particularly of the fact that fuller provision was made for the duties of the post just before Your Excellency was appointed to the Governorship of this Colony. The Commissioner of Customs therefore will move the deletion of this provision when the relevant schedule is reached in Committee. The question of principle can then come up for discussion, if desired, in connexion with Closer Union proposals or at the conclusion of Your Excellency's present tenure of office.

HIS EXCELLENCY: Before I put the question, I should like to say a word upon the order of the debate. I think the convenience of the Council will be met on the second reading

if hon. Members will confine themselves to the general principles of the Tariff, illustrating general principles but not going into details of the provisions. If they wish to deal with any specific provision or any particular duty at length, the proper time to do that will be when the provision comes up in Committee on the Schedule containing that particular duty, or on the resolution for the suspended duty concerned.

The question is that the Customs Tariff Bill be read a second time.

THE HON. CONWAY HARVEY: Your Excellency, in view of the announcement by the hon. the Colonial Secretary that that most objectionable clause will be deleted from page 16, there is not very much to cavil at in the principles of this measure; more especially, Your Excellency, as the changes are very largely based on the recommendations of the Kenya Tariff Committee, which were arrived at after very detailed discussion and close examination of all the interests involved.

It is inevitable, Sir, that as time passes Customs adjustments are necessary, and it is obvious too that certain changes must be necessary in order to meet the divergent views of the three Colonies. A spirit of compromise is surely desirable in such matters in order to achieve that very great desirability—a Customs Union of the three Territories.

An important new principle which appears to be introduced this morning, Your Excellency, is that of suspended duties, and, if I may do so with respect, I should like to take this opportunity of congratulating most heartily those who participated in the Governors' Conference for this very brilliant solution of what was an extremely difficult problem.

It is very gratifying to me and to the whole country that the main reductions in Customs tariffs refer to items of common use and common necessity, and it will be very pleasant to the taxpayers to know that no less a sum than £26,000 will be saved to them by reason of these Customs adjustments. The detailed items, Sir, I will leave till we go into Committee; I quite agree with Your Excellency that I think that would be the better place in which to raise detailed issues.

In conclusion, Sir, if I may do so, I should like to offer my warmest congratulations to the Tariff Committee, made up of representatives of the three Territories, who are responsible for this admirable piece of work, even though they lacked the advantage of the assistance of unofficial representation.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, there is one aspect of this legislation, Sir, which I think must be brought to notice and the importance of which should be

accentuated at this stage, and that is, although it is not mentioned in this Report, we are not asked to accept the Report, but are dealing with the legislation itself. It must be remembered that this Tariff is based upon a prevailing policy, and, I hope, upon an extended application of that policy of country produce rates on the Railway. From this side of the House it is important to maintain and insist upon that aspect of the matter. Although there is no mention in the matter we are dealing with to-day, the fact that it is not mentioned does not prevent it from being true, and because it is true I feel it is time that we on this side of the House should mention it.

COL. THE HON. W. K. TUCKER: Your Excellency, I should like to join with my hon. friend the Member for the Lake in very heartily congratulating the hon. the Commissioner of Customs for the result which he has just announced. I do not think a discordant note will be struck this morning, and even if it were contemplated, I think the manner in which the hon. Member has presented his report disarms any form of criticism. I emphasise that in the belief that the same atmosphere is pervading the other two Assemblies in which this measure is being simultaneously considered to-day.

Now and then, Sir, a word of disapproval of Government comes from this side of the House, and I therefore think it all the more desirable that on an occasion of this kind we should make mention of the manner in which Government, from top to bottom, has interpreted the overwhelming wishes of the country over a very long period in pioneering this measure. I do not think that one must accept that it is entirely satisfactory to all parties—I think in two directions there has been a very commendable measure of give and take; on the one hand, within this country between the producers and the consumers, and on the other hand between the representatives of the different countries concerned.

The only other point I want to make, Sir, is that the producers of this country will no doubt take heed of this controversy from beginning to end, and I believe—and I know them fairly well—that both in quality and in quantity they will endeavour to deserve in the future the efforts that have been put forward on their behalf.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I have much pleasure in subscribing to the views expressed by my hon. colleagues on this side of the House, but I should like to draw attention to the one point that, though this is what may be called at the moment a happy solution of the political evolution that this Colony has been going through, it is not a final solution. It is at least a solution for the

moment, but it only demonstrates the necessity for a Central Authority to deal with matters such as tariffs and Customs. I hope it also demonstrates our willingness to meet the adjoining Colonies when there is a difference of opinion. We have always been prepared to meet them, and I am certain in my own mind that had we come together—and the Tariff Committee endeavoured to get them together—this solution would have been found before to-day.

I do not agree *in toto* with the hon. Member for the Lake when he infers that the Commissioner of Customs has not had unofficial assistance. If I remember rightly—I speak subject to correction—the terms of reference referred to the Tariff Committee's Report, on which unofficials were largely represented.

THE HON. F. A. BEMISTER: Your Excellency, I only want to congratulate the gentlemen who formed this tariff on behalf of the people who live under municipalities. So far as I can trace, this is the first time that Customs advantage has been gained for the people living under municipalities, and now they can claim that they have not lost their nationality.

HIS EXCELLENCY: The question is that the Customs Tariff Bill be read a second time.

The question was put and carried.

THE HON. THE COMMISSIONER OF CUSTOMS: Your Excellency, I beg to move that this Council resolve itself into a Committee of the whole Council to consider further the provisions of the Customs Tariff Bill.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that this Council resolve itself into a Committee of the whole Council to consider the Customs Tariff Bill clause by clause.

The question was put and carried.

The Council went into Committee.

In Committee:

THE CUSTOMS TARIFF BILL.

The Bill was considered clause by clause.

Schedule, Class I.—Animals, Agricultural and Pastoral Products, Foodstuffs.

CAPT. THE HON. E. M. V. KENNELY: Your Excellency, since there is a possibility of establishing the salt industry in this country, and I believe there appears the superficial advantage in having stock salt from overseas imported here, I feel that this is a matter which does require and demand and deserve further consideration. Although the

industry, the salt industry, has not yet been established in Kenya, much to the regret of the farmers and the natives generally, apparently it has been in Tanganyika. I do not know the position in Uganda, Sir; but I feel that this is a matter which should receive consideration by, I hope, a Board, although the appointment of such a Board has not been recommended.

THE HON. THE COMMISSIONER OF CUSTOMS: Your Excellency, the position is that in Tanganyika an excise tax of, I think, 1 cent a lb. is imposed on imported salt, and, I believe, on salt locally sold. I think that still operates. If the salt industry were established here it would be possible to examine the question of the application of the Tanganyika law to Kenya, or alternatively to amend the duty so that protection could be afforded, but at the present time a cent a lb. does represent a considerable amount of protection.

CAPT. THE HON. H. E. SCHWARTZ: Could I ask the hon. the Commissioner of Customs, as a matter of interest—and I apologise for my ignorance—what "n.e.c." means?

THE HON. THE COMMISSIONER OF CUSTOMS: It is explained in the general notes at the end of the Schedule; it means "not elsewhere enumerated."

COL. THE HON. W. K. TUCKER: Without any desire to see this Tariff altered, I should like to have an assurance from the hon. the Commissioner of Customs that it really was necessary to reduce the duty on tea at this juncture. It does seem to be very unfortunate that just as yet another local industry is getting on its legs and is supplying a large percentage of the needs of the country the duty should be put down even slightly.

THE HON. THE COMMISSIONER OF CUSTOMS: With regard to that, the Inter-Colonial Committee was instructed to review specific items in relation to present prices as compared with those ruling in 1923, and ten is not specially protected in making that provision of 20 per cent *ad valorem*, but so far as competition with local tea goes, of course, that is an average value. Tea imported in bulk would be charged with duty an equivalent of a great deal more than 20 cent per lb., because the bulk imported is good quality tea imported in tins.

HIS EXCELLENCY: The question is that Class I of the Schedule stand part of the Bill.

The question was put and carried.
Schedule, Class V.—Metals, Metal Manufactures, Machinery and Vehicles.

CAPT. THE HON. E. M. V. KENNELY: Your Excellency, I see that anti-skid chains for our execrable roads are not free. I think that requires further attention. Uganda, Sir, has, through its natural disability of bad soil—I withdraw that, but there it is—but good road-making material, an advantage over Kenya in this matter. I think Kenya's disability in regard to our magnificent soil but poor road-making material should receive favourable consideration at the hands of such a Board.

THE HON. THE COMMISSIONER OF CUSTOMS: Those have been reduced by 50 per cent.

THE HON. E. POWYS COBE: Your Excellency, I was going to draw attention to the same point that the hon. and gallant Member has done, together with the exceptions in item 44 and also to item 63, all of which are closely related to one another, and the last part of item 62. I do not quite understand the justification for those exemptions. It seems to me very inconsistent. If the desire is to permit motor and steam lorries and other machinery of that type to come into the country free, presumably the idea is to encourage the use and reduce the cost of those kinds of machines. Why, therefore, should there be a special duty levied on the necessary replacements for those machines?

THE HON. THE COMMISSIONER OF CUSTOMS: That particular point is provided for in the Customs Management Ordinance; section D3 roads as follows:—

"Warehoused goods may be permitted to be taken out of the warehouse without payment of duty for the purpose of public exhibition or any similar purpose for such convenient time and in such suitable quantities as may be prescribed by the Commissioner, subject to security for the return of the goods or for payment of the duty."

That amply provides that they would be "warehouse pro forma," and released under that section.

HIS EXCELLENCY: The question is that Class XIII of the Schedule, as amended, stand part of the Bill.

The question was put and carried.
Schedule, Class XIV.—General.

REV. CANON THE HON. H. LEAKY: I should like to ask the hon. the Commissioner of Customs whether typewriters are included in item 174?

THE HON. THE COMMISSIONER OF CUSTOMS: Typewriters are chargeable for duty at 20 per cent *ad valorem*, on the same basis as other office requisites. Portable typewriters imported with baggage are now allowed free admission, the baggage section being amplified accordingly.

REV. CANON THE HON. H. LEAKY: I was somewhat surprised that typewriters for business purposes should be subject to this duty when I found that scooters for children and such things are only 10 per cent. I should have thought a time-saving and utility article would have been less than 20 per cent.

THE HON. THE COMMISSIONER OF CUSTOMS: It seemed to the Committee that if typewriters were allowed at a reduced rate of duty, duplicators, pens and pencils, stationery and all that sort of thing would have to be placed on the same footing. In regard to typewriters, the life of a typewriter is a long one, and an initial charge of 20 per cent certainly did not seem to us to be exorbitant.

LT.-COL. THE HON. J. G. KIRKWOOD: May I ask the hon. the Commissioner of Customs whether any provision was made in this Ordinance for importation free of toys to be given away as free gifts, say, on Christmas trees, to children? I think I have raised that question once before.

THE HON. THE COMMISSIONER OF CUSTOMS: The only section under which that item possibly might come would be, "Samples and miscellaneous articles, not imported as merchandise, which the Commissioner of Customs shall decide to be of no commercial value. If the toys were of no commercial value, they would be allowed free admission. If they are of commercial value, they would be charged 10 per cent."

LT.-COL. THE HON. J. G. KIRKWOOD: It is not quite clear to me. I take it that a toy costing Sh. 5 has a commercial value of Sh. 5, and if given away as a free gift it would still have to pay duty on the amount fixed by the Commissioner of Customs. Am I to take it that you would consider a genuine application for remission of duty under the circumstances which I have described?

CAPT. THE HON. H. E. SCHWARTZ: Would not the position be that if anyone who required to import Christmas presents to give away to children could get them in free, it would immediately operate very harshly on the vendors of toys in the country, who would not be able to get them in free?

CAPT. THE HON. E. M. V. KENNEL: They could give them away, too.

THE HON. THE COMMISSIONER OF CUSTOMS: You might extend the principle if someone were to give a motor car.

LT.-COL. THE HON. LORD FRANCIS SCOTT: I should like to ask the hon. the Commissioner of Customs whether boots and shoes come under item 174?—I do not think they are mentioned anywhere else.

THE HON. THE COMMISSIONER OF CUSTOMS: That is so.

LT.-COL. THE HON. J. G. KIRKWOOD: I am still rather dense, I am afraid, Sir. (Laughter.) It has been suggested by the hon. Member for Nairobi South that giving toys away free would be competing with the local vendors; but I am specifically referring to an organised Christmas tree, which is really a public event, in which everything is given away free, not just one article.

THE HON. THE COMMISSIONER OF CUSTOMS: I am afraid, Sir, it would be impossible to legislate for such functions in the Customs Tariff.

THE HON. E. POWYS COBB: May I be allowed to refer back for a moment to the answer which the hon. the Commissioner of Customs gave in respect of item 173, the question of the importation of pictures by private owners? He then said the duty . . .

HIS EXCELLENCY: The hon. Member is out of order. That clause has been passed; he could raise it on the vote for reporting.

CAPT. THE HON. H. E. SCHWARTZ: Might I ask the hon. the Commissioner of Customs whether consideration was given to the possibility of reducing the duty on boots and shoes, which are a very large expense to people with families in this Colony?

THE HON. THE COMMISSIONER OF CUSTOMS: Yes, Sir, consideration was given to it, but the Committee was bound to maintain the Tariff at its more or less present figure. Boots and shoes, of course, are not so lucrative from the Customs point of view as provisions and so on. I imagine that the running stores of the household are much more seriously affected than other things, such as boots and shoes.

HIS EXCELLENCY: The question is that Class XIV of the Schedule stand part of the Bill.

The question was put and carried.

THE HON. THE COMMISSIONER OF CUSTOMS: Your Excellency, I beg to move that the Bill be reported to Council as amended.

CAPT. THE HON. H. E. SCHWARTZ: There is, I think, a small slip. When the hon. the Commissioner of Customs moved the deletion of clause 163 (a), I think the motion was put by Your Excellency by saying, "To delete all the words after the letter 'a')." There is no numbering arranged for; we shall have a blank "(a)."

HIS EXCELLENCY: That is intended.

CAPT. THE HON. H. E. SCHWARTZ: I beg your pardon.

HIS EXCELLENCY: Mr. Cobb, I think you wished to raise a point.

THE HON. E. POWYS COBB: I think I have found the answer to it now, Sir; it was under a most misleading head.

HIS EXCELLENCY: The question is that the Customs Tariff Bill be reported to Council with one amendment.

The question was put and carried.

On resuming:

HIS EXCELLENCY: Order, order. I have to report that a Bill entitled a Bill to consolidate and amend the Law relating to Customs Tariffs has been considered in Committee of the whole Council and reported to Council with one amendment.

THIRD READING.

THE HON. THE COMMISSIONER OF CUSTOMS: Your Excellency, I beg to move the third reading and passing of a Bill to consolidate and amend the Law relating to Customs Tariffs.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second.

HIS EXCELLENCY: Before putting the vote for the question of the third reading, I should like, as I have been closely connected with these tariff negotiations, to congratulate the Kenya Tariff Committee and the expert Committee, and more particularly the hon. the Commissioner of Customs, the chairman of the expert Committee, on the admirable work which they have done in this business of Customs revision. I am quite certain that Council agrees with that.

HON. MEMBERS: Hear, hear.

HIS EXCELLENCY: I should also like to make a very genuine expression of gratitude to the unofficial Committee which assembled in Kenya at the time of the Governors' Conference, and which consisted of unofficial representatives from Tanganyika as well as from Kenya, which, under the chairmanship of Lord Delamere, also did a most admirable and helpful work.

The question is that the Bill be read a third time and passed.

The question was put and carried.

The Bill was read a third time and passed.

SUSPENSION OF STANDING ORDERS.

THE HON. THE COMMISSIONER OF CUSTOMS: Your Excellency, I beg to move the suspension of Standing Rules and Orders in order to enable the motion standing in my name to be taken without notice.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that Standing Rules and Orders be suspended in order to enable a motion standing in the name of the hon. the Commissioner of Customs to be taken without delay.

The question was put and carried.

MOTION.**APPLICATION OF SUSPENDED DUTIES.**

THE HON. THE COMMISSIONER OF CUSTOMS: Your Excellency, I beg to move the motion standing in my name on the Order Paper to-day.

This motion refers to the imposition of suspended duties in this Colony under section 3 of the Customs Tariff Ordinance which has just been passed into law, the actual ratings having been fixed at the Governors' Conference. With the exception of the suspended duty on maize and maize meal, the maximum suspended duties mentioned in the Schedule to the Ordinance are being imposed in Kenya. I have already detailed, Sir, the method of operation of the suspended duties, and it will therefore suffice if I confine myself to the rates of duty which we have imposed.

The question of duties to be charged on the articles now under consideration were exhaustively examined by the Kenya Tariff Committee, which reported to Government in May, 1929, all Elected Members being members of that Committee. The recommendations of the Kenya Tariff Committee have been generally followed in the application of the combined basic and suspended duties.

As regards the various items, Sir—the first, bacon and ham: the present duty is Sh. 8 per 100 lb.; the new duty is a basic duty of 20 per cent, and a suspended duty of 10 per cent. The Kenya Tariff Committee recommended that the duty should be 50 cents per lb. or 30 per cent *ad valorem*; and that bacon and ham imported in tins should come under this heading. It is not convenient to combine a suspended duty with a basic duty and for that reason it is proposed that the basic duty should be 20 per cent and the suspended duty 10 per cent.

Butter: The duty is at present Sh. 1 a lb. The Kenya Tariff Committee recommended that that should be reduced to 50 cents a lb. or 30 per cent *ad valorem*. The proposal now before the House is that the suspended duty should be 10 per cent, the basic duty passed this morning being 20 per cent.

Cheese is on the same footing.

Wheat Flour : The Kenya Tariff Committee recommended that the duty should be reduced from Sh. 6 to Sh. 4 per 100 lb., and effect to that is being given.

Ghee : The Kenya Tariff Committee recommended it should be 50 cents a lb., or 30 per cent *ad valorem*, the duty under the 1923 Ordinance being Sh. 1 a lb. The suggestion as to the suspended duty is 15 cents a lb., the basic duty being 30 cents a lb., a specific duty being preferable in this case; the combined basic and suspended duties is equal to 30 per cent *ad valorem*.

Sugar, Jaggery and Refined : The Kenya Tariff Committee suggested that if agreement could not otherwise be reached, a reduction to Sh. 8 per 100 lb. might be agreed to. Since that time the price of imported sugar has gone down very considerably. The world price with regard to sugar is quite artificial. Sugar at the present time is being imported from Java at not more than £13 a ton, and in the opinion of Government it is proper that the suspended duty should be Sh. 6 per 100 lb., which is the maximum duty under the Ordinance, making a total of Sh. 12 per 100 lb., which is the present duty.

Joinery : It was the suggestion of the Kenya Tariff Committee that builders' mouldings should be included under timber, but it was felt that the timber industry was only inadequately safeguarded by extending this suspended duty to doors, lintels, and builders' mouldings imported in a manufactured state, otherwise, of course, the doors and so on would come in on the building material rate of 10 per cent, and the other at 30 per cent, thereby putting local joiners at a disadvantage.

Wood and Timber : In regard to these, the tariff provides that teak in the log should be 20 per cent and that other unmanufactured timber should be 10 per cent, with a suspended duty of 20 per cent. It is now suggested that the full suspended duty should operate.

That covers the Schedule, Sir, and as the motion now under discussion is in such close conformity with the recommendations of the Kenya Tariff Committee, I feel confident that it will meet with the general approval of the House.

Your Excellency, I beg to move.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I beg to second.

HIS EXCELLENCY : The question is:—

“That this Council approves the following duties, referred to as suspended duties in the Schedule to the Customs Tariff Ordinance, 1930, being brought into operation as from the 17th day of April, 1930, namely:—

Article.	Suspended Duty.
Bacon and Ham	10 per cent <i>ad valorem</i> .
Butter	10 per cent <i>ad valorem</i> .
Cheese -	10 per cent <i>ad valorem</i> .
Wheat, ground or otherwise prepared	Sh. 1/50 per 100 lb.
Ghee	Cts. 15 per lb.
Sugar, Jaggery	Sh. 6/- per 100 lb.
Sugar, Refined, imported in packages of more than 28 lb. net, but not including candy, cube, loaf, castor or icing sugar	Sh. 6/- per 100 lb.
Joinery : Wooden framework of houses, window frames, sashes, casements, doors, lintels, and builders' mouldings	20 per cent <i>ad valorem</i> .
Wood and Timber, unmanufactured —(b) Other, not elsewhere enumerated, including planed, smoothed, grooved or tongued.	20 per cent <i>ad valorem</i> .”

THE HON. F. A. BRISTON : Your Excellency, I should like to move an amendment, that the application of the suspended duties on sugar be deferred pending the production of a reasonably good quality article.

It does seem to me, Sir, that advantage is being taken of the protection given to this article, to refined sugar especially, to sell in the markets here a very low quality sugar.

HIS EXCELLENCY : Will the hon. Member let me see that amendment before he speaks to it?

The hon. Member is in fact moving a direct negative in regard to this particular duty. That, I am afraid, is not in order, but what he can do is to move a reduction in the duty. He cannot move a direct negative according to Standing Rules and Orders.

THE HON. F. A. BRISTON : May I move that it should be Sh. 4 per lb?

I only want to call attention to the style of stuff which is being put on the market here, Sir, which I believe is detrimental absolutely to the health of the people.

I beg to move as an amendment :—

"That the suspended duty on refined sugar be reduced to Sh. 4 per 100 lb. pending the production of a reasonably good quality article."

LT.-COL. THE HON. J. G. KIRWOOD : Your Excellency, I beg to second that.

CAPT. THE HON. H. E. SCHWARTZE : On a point of procedure, are we speaking to the amendment only?

HIS EXCELLENCY : To the amendment now.

The question is :—

"That the suspended duty on refined sugar be reduced to Sh. 4 per 100 lb. pending the production of a reasonably good quality article."

The question was put and lost.

CAPT. THE HON. H. E. SCHWARTZE : Your Excellency, could I ask the hon. the Commissioner of Customs why this suspended duty only applies to importation in packages of more than 28 lb. and does not include loaf or castor sugar? I do not know whether I shall be right to treat this as a question, as I have a little difficulty in speaking until I know the answer; but I had better go on as it is more in order.

The point is, Sir, that if people import packages of 14 2 lb. tins of loaf sugar or 14 2 lb. tins of castor sugar, it would appear that they would not be subject to this suspended duty, as long as they came in in total packages of not more than 28 lb. I think that a very large number of people may, if I am right in my surmise, import loaf and castor sugar and not use the local article at all.

THE HON. THE COMMISSIONER OF CUSTOMS : Your Excellency, the position is that under the 1923 Ordinance a duty of Sh. 12 was imposed on sugar imported in bulk and jaggery imported in bulk, but that did not apply to packages of less than 28 lb., or icing sugar, which is always imported in small packages. Therefore the position now is precisely the same as it has been from 1923 onwards, and in my experience no advantage has been taken of that fact. The sugar imported is that way is generally a sort of mixed importation including, perhaps, two or three tins of sugar; that is about all that is imported in that manner.

HIS EXCELLENCY : The hon. the Commissioner of Customs is using his right of reply; is there any other point he wishes to deal with?

THE HON. THE COMMISSIONER OF CUSTOMS : No, Sir.

HIS EXCELLENCY : The question is :—

"That this Council approves the following duties, referred to as suspended duties in the Schedule to the Customs Tariff Ordinance, 1930, being brought into operation as from the 17th day of April, 1930, namely :—

Article.	Suspended Duty.
Bacon and Ham	10 per cent <i>ad valorem</i> .
Butter	10 per cent <i>ad valorem</i> .
Cheese -	10 per cent <i>ad valorem</i> .
Wheat, ground or otherwise prepared	Sh. 1/50 per 100 lb.
Ghee	Cts. 15 per lb.
Sugar, Jaggery	Sh. 6/- per 100 lb.
Sugar, Refined, imported in packages of more than 28 lb. net, but not including candy, cube, loaf, castor or icing sugar	Sh. 6/- per 100 lb.
Joinery : Wooden framework of houses, window frames, sashes, casements, doors, lintels, and builders' mouldings	20 per cent <i>ad valorem</i> .
Wood and Timber, unmanufactured —(b) Other, not elsewhere enumerated, including planed, smoothed, grooved or tongued	20 per cent <i>ad valorem</i> .

The question was put and carried.

BILLS.

RECOMMITTAL.

THE ELECTRIC POWER (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I have it in command from Your Excellency to move that the Electric Power (Amendment) Bill, which passed its third reading three days ago, and which Your Excellency has recommended to Council under No. 88 of the Standing Rules and Orders, be recommitted to Council for consideration of a small amendment in clause 3 of that Bill.

I deeply regret that it has been necessary to do this, Sir. Ill-fate has dogged this measure. Its genesis was a printing error, and another has crept in now, Sir. It is not quite so bad as the original chaos, but certainly it is not satisfactory. The words "application to the Governor in" have been repeated, as hon. Members will see, and the object of recommitment is to enable those words to be deleted.

THE HON. T. FITZGERALD (POSTMASTER GENERAL): Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that the Electric Power (Amendment) Bill be recommitted.

The question was put and carried.

Council went into Committee.

In Committee:

Clause 2.—Amendment of section 19 of the Principal Ordinance.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that in this clause the words "application to the Governor in" in the second line of the suggested amendment be deleted.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Bill as amended be reported to Council.

The question was put and carried.

Council resumed its sitting.

On resuming.

HIS EXCELLENCY: I have to report that a Bill entitled a Bill to amend the Electric Power Ordinance has been considered on recommitment in Committee of the whole Council and reported with one amendment to Council.

THIRD READINGS.

THE ELECTRIC POWER (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Electric Power (Amendment) Bill be read a third time and passed.

THE HON. T. FITZGERALD: Your Excellency, I beg to second the motion.

The question was put and carried.

The Bill was read a third time and passed.

THE LEGISLATION BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that a Bill relating to Children born out of Wedlock be read a third time.

Hon. Members will recollect that on the suggestion of the hon. and gallant Member for Nairobi-South, the third reading of this Bill was postponed in order that I might satisfy myself that the amendment which was made at the instance of the hon. Member to clause 3 of the Bill did not entail any other consequential amendments. I have gone very carefully through the provisions of the Bill, Sir, and I am happy to say—and the hon. Member for Nairobi South is in agreement with me—that no further amendment is required. That being so, I beg formally to move that the Bill be read a third time and passed.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I beg to second the motion.

The question was put and carried.

The Bill was read a third time and passed.

SECOND READING.

THE LOCAL GOVERNMENT (RATING) (AMENDMENT) BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. H. T. MARTIN): Your Excellency, I beg to move the second reading of the Local Government (Rating) (Amendment) Bill.

This small Bill is concerned largely with putting into effect the provisions of the Principal Ordinance. There are one or two clauses I think largely in drafting which require amendment to enable the machinery of the Bill to work. The first is in connexion with the Valuation Roll—taxation and Principal Ordinance two alternative methods—taxation and rating—are provided. One is a tax on the unimproved value of the land, and the other is on the value of improvements. It is possible to use both, but the intention of the Principal Ordinance is to make it possible to use one and not both. It is to provide for that defect in drafting that this proviso is inserted in clause 2 of this Bill.

A further question of drafting arises in the next clause of the Bill, and that is to add the words, "or tenants in common" to "joint owners." The object was to cover both classes of ratepayers, and I imagine, by an oversight, the one was left out and the other one only included.

There is a further small amendment which better defines the class of magistrate having jurisdiction. It is now provided that the magistrate having jurisdiction should be a magistrate of the first class.

Sir, I beg to move the second reading of the Local Government (Rating) (Amendment) Bill, 1928.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

CAPT. THE HON. E. M. V. KENEALY: There seems to be a principle raised in the fourth clause proposed to be amended inasmuch as it appears—I do not know if I am right; I hope I am not—to enable the authority to collect from one individual the total rates from one or two or more tenants in common, and the initiation of proceedings for the recovery by that one from the others will or might fall on the one who has paid a proportion of the rates. I hope I am not right—I hope I am wrong—but from the reading of the clause that appears to be so.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I am glad to be able to assure the hon. Member who has just spoken that he is quite right, but there is no new principle involved here at all, Sir. If the hon. Member will look at the Principal Ordinance, he will see that the present provisions relating to the collection of rates which are claimable primarily from the owner of the property—the collection of those rates by the tenant is provided with exactly the same safeguard. The provision here, Sir, is an impossible one unless some provision such as this is made. No one knows exactly how many tenants in common there are on any piece of land. All that the municipal office can reasonably be expected to know is that the land is in the actual use or occupation of one or more of those tenants. Now, Sir, if we do not make the amendment which this Bill purports to make—if we do not set up this simple machinery for the reimbursement of the tenant in occupation—one of two things must happen: either rating in its application, particularly to Mombasa, becomes a dead letter, or else great and grievous hardship is done to the tenant who happens to be in occupation. The municipal authorities cannot be expected to find out how many tenants are jointly and severally interested in any particular piece of land, but they can say there are a certain number of people liable for rates on this particular piece of land: so-and-so is in occupation, ergo he must pay the rates. But we do enable him to invoke the system of the law to recover the proportion of his rates from the other tenants in common. If they call for his title deeds they will be told that they have no right to them. The provision, so far from being an inequitable one, is highly equitable and highly necessary in the interests of the tenants in common themselves.

THE HON. F. A. BEMISTER: I would just like to ask if the provision of a first class magistrate gets over the real difficulty in Mombasa. The position there seems to be that

a very large amount of rates were in arrear and the Ordinance originally said they were to be recoverable in the magistrates' courts. That amount being over the specified amount, the magistrate could not deal with the matter himself. It was then referred to the judge, and he said he could not do it. I understand this is to amend that.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: I suggest that the hon. Member asks a question in Committee. It is a point of detail, and as a matter of fact I think he is under a misapprehension.

HIS EXCELLENCY: The question is that the Bill be read a second time.

The question was put and carried.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to move that this Council resolve itself into a Committee of the whole Council to consider the provisions of a Bill to amend the Local Government (Rating) Ordinance, 1928.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

The question was put and carried.
Council went into Committee.

In Committee:

LOCAL GOVERNMENT (RATING) (AMENDMENT) BILL.

The Bill was considered clause by clause.
Clause 4.

CAPT. THE HON. E. M. V. KENEALY: The wording in the third and fourth lines seems to be rather involved. What does it mean? Does it mean after the date when the rate is legally due? Do all those words merely mean that? If so, I suggest that is how it should be expressed, Sir.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I wish it could have been so simply expressed. The rate, as a rate, is not legally due on any particular date. The rating authority strikes a rate, and thereafter fixes a date for payment. That is why it is necessary to use this particular form of phraseology.

CAPT. THE HON. E. M. V. KENEALY: Surely the words "legally due" would meet the situation?

THE HON. THE ATTORNEY GENERAL: I am afraid they would not. Let me repeat: they are not legally due on any particular date at all. They are made due by an executive act on the part of the rating authority.

CAPT. THE HON. E. M. V. KENEALY: May I speak to the other point that I raised before in regard to recovery? It is a matter of detail, Sir, I think. I agree entirely with what the hon. the Attorney General has said with regard to the desirability of providing machinery for collecting from tenants in common when only

one is in occupation, but he has not considered the case where both tenants in common may be also both tenants in occupation. According to this clause, Sir—I trust I am continuing to be right as I have started—the liability falls upon one, and it can be arbitrarily decided by the authority from which one they can collect if they are both in occupation. That being so, Sir, the responsibility for collecting the rates leviable by the authority devolves upon one of the tenants in common who happens to be also one of the two or more tenants in occupation. I think that is not a proper responsibility to be thrust upon such a tenant. This clause does require amendment because it does not envisage such a situation arising as two or more tenants in common being also tenants in occupation.

THE HON. THE ATTORNEY GENERAL: I must apologise for not making my position sufficiently clear the last time on which I taxed the patience of the House on this point. If we take the case that the hon. and gallant Member has envisaged, Sir, there will be two tenants in common, both tenants in occupation. But it is not sufficient, Sir, to levy 50 per cent of the rate on each of the tenants in occupation. You might be doing a far graver injustice by so doing because there may be a dozen tenants in common. One of them may be liable under their tenancy in common for much more than his proportion of the rates. The only way in which the matter can be equitably treated is by holding one of those responsible and enable him, then, with the inner knowledge that he has, to invoke the assistance of the courts in getting due recovery in the proper proportions from each of his fellow tenants in common. It is not sufficient to levy the rate by merely counting the heads and dividing the total amount. Their tenant rights may be extremely involved, and vary considerably, and in a manner which the local authority cannot possibly ascertain.

CAPT. THE HON. E. M. V. KENEALY: In reply to that, Sir, is it suggested that a fair way of dealing with such a situation is for the rating authority to collect the full amount from any one of these individuals—far more than he can afford to pay? I must protest against the breach of principle involved.

THE HON. THE ATTORNEY GENERAL: It is, Sir.

THE HON. F. A. BEMISTER: I only want that explanation, Sir, with regard to Mombasa. I happen to know a lawyer who decided that he could get through this, and I want to be very careful about it. The position I have in my mind, Sir, is that of a magistrate who cannot deal with a claim over, I think, £150, whereas the arrears come to very much more than that. If you could possibly clear that up I should be glad.

THE HON. THE ATTORNEY GENERAL: May I first say that lawyers do not give decisions.

The curious position has arisen, Sir, that the use of those simple words, "magistrate having jurisdiction" has led to a complete impasse. The Resident Magistrate at Mombasa says, "That does not mean me, because under the Civil Procedure Ordinance I only have certain limited powers." He would appear to overlook the fact that if it does not mean the Resident Magistrate, it cannot mean any other magistrate, as he is the only magistrate in the district and the words are meaningless. Then recourse was had to the Judge at the Supreme Court, stationed at Mombasa, and he took the other view. The object of the amendment, Sir, is to make it clear that by the use of the words "magistrate having jurisdiction" is intended the Resident Magistrate or any other first class magistrate having territorial jurisdiction in the area covered by the Municipality, and of course it will be retrospective, Sir, in the case of all actions which have not yet been taken before the court.

HIS EXCELLENCY: The question is that the clause stand part of the Bill.

The question was put and carried.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to move that the Local Government (Rating) (Amendment) Bill be reported to Council without amendment.

The question was put and carried.
Council resumed its sitting.

On resuming:

HIS EXCELLENCY: I have to report that the Local Government (Rating) (Amendment) Bill has been considered in Committee of the whole Council and has been reported to Council without amendment.

THIRD READING.

THE LOCAL GOVERNMENT (RATING) (AMENDMENT) BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to move that the Local Government (Rating) (Amendment) Bill be read a third time and passed.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

The question was put and carried.

The Bill was read a third time and passed.

MOTIONS.

ROADS AND BRIDGES.

HIS EXCELLENCY: I understand that the hon. Member for the Rift Valley does not wish to move his motion to-day?

THE HON. E. POWYS COBB: I should be pleased, Sir, if it might be held over till next session. At this late hour I should be very much obliged if that might be done.

ALTERATION OF STANDING RULES AND ORDERS.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I beg to move:—

"That Standing Rules and Orders be amended by the addition of the following words after the word 'Council' in line 5 of Clause 83:—

'Provided that no alterations except those of which notice has been previously given shall be discussed, and further provided that any amendment to a proposed alteration may be discussed without notice.'

Your Excellency, since tabling this motion, which I did as a result of the ruling given by Your Excellency on the recommittal of the Native Lands Trust Bill, I have given to

the best of my ability further consideration to the views I then expressed, and Your Excellency will, I am sure, completely acquit me of any want of respect if I say that those conclusions have led me to the view that that ruling was not a true interpretation of the meaning of clause 89. Although it is clear that no clauses other than those for which the Bill was recommitted can be altered.

HIS EXCELLENCY: Order, order. The hon. and learned Member is entitled to argue that the clause should be amended but not that my interpretation is not the true interpretation because that interpretation is final.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I think if Your Excellency will give me perhaps forty-five seconds' latitude, Your Excellency will see that I said that because of an action I am taking on this motion in a moment.

May I say, Sir, briefly that I respectfully agree that on recommittal no clauses other than those for which the Bill was recommitted can be discussed.

I hold the view, rightly or wrongly—you say wrongly, Sir (laughter)—we will say wrongly theoretically, Sir—I hold the view that I have expressed, but I am going to ask the leave of this House to withdraw this motion in the hope that Your Excellency, before the next session, will give further consideration to the point I raised and that, as a result of that consideration, an impish and unwanted child may perish. In the belief, and the very confident belief, that if Your Excellency feels unable, either from natural love and affection or for any other cause, to decree the demise of this Frankenstein of your own reason, nevertheless the day will eventually come—I hope for all reasons except this one it will be long delayed—when the parental protection at present surrounding this child having been withdrawn it will sicken and die and pass away unsung and unhonoured.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I hope before permission is given to

HIS EXCELLENCY: Is the hon. Member rising to second the motion?

CAPT. THE HON. H. E. SCHWARTZ: I have withdrawn it.

CAPT. THE HON. E. M. V. KENEALY: I am seconding the motion.

THE HON. CONWAY HARVEY: On a point of order, I think this motion, until it has been seconded, has no status, and cannot be withdrawn even with the permission of the House. Am I correct, Sir?

HIS EXCELLENCY: It can be withdrawn if it is seconded.

CAPT. THE HON. E. M. V. KENEALY: Surely it has no status until it has been seconded, and I wish to second it to prevent its withdrawal.

HIS EXCELLENCY: It is impossible for the hon. Member to second a motion which has been withdrawn by its mover.

CAPT. THE HON. E. M. V. KENEALY: On a point of order, I suggest that this motion has no status; it has no being if it has been withdrawn.

HIS EXCELLENCY: That is quite true. The hon. and gallant Member who put it down on the Paper said he does not desire to move the motion, and that is the end of it.

CAPT. THE HON. E. M. V. KENEALY: That is the end of it?

HIS EXCELLENCY: The hon. and learned Member asked me to consider a point, but I failed completely, I am afraid, to understand from his speech what that point was. Do I understand him to argue—this is a matter of some importance—that no clauses except those which are mentioned in the recommittal motion can be discussed, or that no amendments except those mentioned in the recommittal motion can be discussed?

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, my view is, the point I am asking you to reconsider is: I am in perfect agreement with Your Excellency's ruling that on a recommittal only those clauses which are mentioned in the recommittal can be discussed; no others can be motion for recommittal can be discussed—that any amendments to amendments of which notice has been given or any further amendments with regard to the clauses for the discussion of which the Bill has been recommitted can be discussed without notice.

HIS EXCELLENCY: I can answer the hon. and learned Member at once. There is no possibility whatever of my reinterpreting the clause in the manner such as he desires, because it is to my mind quite clear that the intention of the rule applying to recommittal is that the recommittal proceedings should deal only with the amendments for which the recommittal has been moved. If any formal amendments are required, purely formal ones, they are covered very fully by Standing Rules and Orders 33 and 35, and it was under those Standing Rules and Orders that I allowed formal amendments to amendments being made, but it is quite clear to me

that if anything but formal amendments to the amendments down on the recommittal motion are allowed, and if, that is to say, hon. Members can move other amendments to the clauses which are under discussion, you do reopen the Committee stage to a very large extent, and that is not, I believe, the intention of the Standing Order dealing with recommittal.

CAPT. THE HON. H. E. SCHWARTZ : I do, however, ask Your Excellency, before next session, at all events to give a reconsideration, because I think that the matter may possibly give food for thought.

CAPT. THE HON. E. M. V. KENEALY : On a point of order, Sir, can the House be informed, Sir, what the question is before the House at the moment if the motion has been withdrawn?

HIS EXCELLENCY : The hon. and gallant Member must really pay some deference to the Chair. The Chair is entitled to make a statement to the House at any time, and that is what I was doing.

Before Council adjourns I should like to answer the question which was put to me by the hon. and learned Member for Nairobi South at the beginning of these proceedings when he asked whether at least one Select Committee had not been overlooked. I think it was the Committee which Government promised for inquiry into the system of alienation of Crown Lands which was dealt with in a motion he had on the Order Paper. The following Select Committee is suggested for dealing with that :—

- The Hon. the Attorney General (Chairman);
- The Hon. the Treasurer;
- The Hon. the Commissioner for Local Government,
Lands and Settlement;
- The Hon. Member for the Lake;
- The Hon. Member for Nairobi North;
- The Hon. Member for Nairobi South.

I hope that will be convenient to the House.

Before Council adjourns I think I should also inform it that the Governor in Council has decided to appoint Lord Delamere and Colonel Tucker to be Kenya unofficial members of the Railway Advisory Council, and I hope that both those gentlemen will consent to serve.

I think it may be to the advantage of Council to know that the following two suspended duties are being imposed in Uganda and Tanganyika—

Bacon and Ham : Full duty,

Wheat and Flour : Full duty;

but no other suspended duties at all.

The Report of the Committee which was required to deal with capital grants for African hospitals has been laid on the Table to-day, and if hon. Members, before they disperse, would give me the names of those they would suggest for serving on that Committee I could appoint it immediately.

Council adjourned sine die.



COLONY AND PROTECTORATE OF KENYA.

LEGISLATIVE COUNCIL DEBATES,

1930

SECOND SESSION.

FRIDAY, 30th MAY, 1930.

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Friday, 30th May, 1930, His Excellency the Governor (LIEUTENANT-COLONEL SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer.

The Proclamation summoning the Council was read.

ADMINISTRATION OF THE OATH.

The Oath of Allegiance was administered to—

Ex Officio Members :

Harold Edwin Goodship, Acting General Manager, Kenya and Uganda Railways and Harbours.

Edgar, George Bale, Acting Commissioner of Customs.

MINUTES.

The minutes of the meeting of 17th April, 1930, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table :—

BY THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR, K.C.) :

Report of Select Committee on the Native Liquor (Amendment) Bill.

Report of Select Committee on the King's African Rifles Bill.

Rules of Court (Advocates' Remuneration and Taxation of Costs Amendment) No. 4 of 1930.

Judicial Department Annual Report, 1929.

By THE HON. THE CHIEF NATIVE COMMISSIONER (MR. G. V. MAXWELL) :

Report of Committee on Native Land Tenure in the Kikuyu Province.

By THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. H. T. MARTIN) :

The Crown Lands Ordinance—Return of Land Grants, etc., 1st January to 31st March, 1930.

By THE HON. THE DIRECTOR OF MEDICAL AND SANITARY SERVICES (DR. J. L. GILKS) :

Report by Lt.-Col. S. P. James, M.D., on a visit to Kenya and Uganda to advise on anti-malarial measures.

By THE HON. THE ACTING GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS (MR. H. E. GOODSHIP) :

Report of the General Manager on the Administration of the Railways and Harbours.

By THE HON. THE ACTING COMMISSIONER OF CUSTOMS (MR. E. G. BALE) :

Annual Trade Report of Kenya and Uganda for the year ended 31st December, 1929.

SUSPENSION OF STANDING ORDERS.

THE HON. THE ATTORNEY GENERAL: Your Excellency, with your leave, Sir, I beg to move that Standing Rules and Orders be suspended to enable the Agricultural Advances Bill and the Chattels Transfer Bill to be introduced and carried through all their stages without due notice, and further to enable a motion regarding agricultural advances and a motion regarding flood damage to roads and bridges to be taken without due notice.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that Standing Rules and Orders be suspended to enable the Agricultural Advances Bill and the Chattels Transfer Bill to be introduced and carried through all their stages without due notice, and further to enable a motion regarding agricultural advances and a motion regarding flood damage to roads and bridges to be taken without due notice.

The question was put and carried.

BILLS.

FIRST READINGS.

THE AGRICULTURAL ADVANCES BILL.

On motion of the hon. the Attorney General, the Agricultural Advances Bill was read a first time.

THE CHATTELS TRANSFER BILL.

On motion of the hon. the Attorney General, the Chattels Transfer Bill was read a first time.

SECOND READING.

THE AGRICULTURAL ADVANCES BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that a Bill to authorise the Governor to make Advances to Farmers be read a second time.

Your Excellency, in your communication from the Chair on the 16th April last, in announcing the appointment of the Board of Agriculture, recommended that the Board should deal immediately with the material collected by Government on the subject of short-term credits for agriculture with a view to devising some scheme for the provision of additional credit facilities for agriculture on a safe and economic basis; along the lines of a project which had been outlined and submitted to Your Excellency by Elected Members. The Board met immediately, and issued a report recommending the appointment of a Board of Management with control of a fund for short-term credits, but they added that such scheme should not compete with existing credit facilities but rather should supplement and strengthen them. Immediately on receipt of that report, Sir, Your Excellency appointed a Committee to go into the details of the scheme recommended. That Committee, Sir, has been, and still is, in almost continuous session. It has taken evidence from a number of witnesses representative of all interests and it has prepared a detailed scheme which has now met with Your Excellency's approval. The results of its deliberations, Sir, are embodied in the Bill which is now in the hands of hon. Members. I think that consideration of the

detailed scheme can be most advantageously undertaken by a reference to the relevant clauses of the Bill, but before I invite hon. Members to consider those provisions with me, I should like to take this opportunity of saying a few words on the general question. On the causes that have led to the summoning of this emergency meeting of Council, I need say nothing. They are only too well known to every Member of this House. Of the urgency of the need with which we are faced there is no question.

But I would like to stress one point, Sir, one all important point. The conditions which unfortunately obtain in Kenya to-day are not confined to Kenya, they are of world-wide application. They obtain equally in every agricultural community, and there is no Government to-day, Sir, which is not faced with the necessity of considering means of dealing with a similar problem, which is not considering them with the same care and anxious thought that Your Excellency and your advisers have given to the local Kenya problem during the last weeks. But, Sir, there is nothing wrong with agriculture in Kenya. In the legislation which is now before hon. Members there is nothing—and in the principles which underlie it there is nothing—like an attempt to bolster up an effete and dying industry. Not only would any such attempt be futile, Sir, but in the interest of other sections of the community it would be quite unjustifiable. On the contrary, Sir, the agricultural industry, upon which the Colony primarily depends and upon which, so far as we can see, it always must primarily depend, for its stability and progress, is essentially sound. There is no one present here to-day, Sir, who does not look to the future of that industry with every confidence.

This Bill, Sir, is an emergency and possibly a temporary measure; it is designed to meet the pressing needs of farmers, who, owing to the drop in world prices and to the unduly long lag between the production and the realisation of their products, have exhausted existing sources of credit and are in difficulties which we all hope are of a temporary nature only, and whom it is in the real interest of the Colony that we should keep upon the land.

Now, Sir, I would ask hon. Members to follow me through a very brief exposition of the principles of the Bill. That, as I have already said, is the simplest way of putting the details of the scheme which we propose succinctly and lucidly before this House.

There is set up, Sir, by clause 3 of the Bill, a Central Agricultural Advances Board, with an office here in Nairobi. The constitution of that Board, Sir, is three official and two

unofficial members. The funds at the disposal of the Board are public moneys of the Colony, and therefore, Sir, it is only right, as all hon. Members will agree, that there should on that Board be an official majority. I have Your Excellency's authority for stating that Mr. W. C. Mitchell has accepted nomination as an unofficial member of the Board, and that Mr. Woolryche Whitmore has also been invited to join the Board.

Subordinate to the Central Board are local boards, which Your Excellency may establish in any province or district where their services are required. Hon. Members will find the provisions relating to such local boards in clause 4 of the Bill. The constitution of such boards, as hon. Members will observe, has a degree of elasticity which, I think, is essential in the varying conditions of the different provinces and districts. Provisional arrangements have been made—those arrangements are, of course, contingent on the adoption of this legislation by Council—for the establishment of local boards in the Provinces of Kikuyu, Nzoia, Nyanza, Rift Valley, Naivasha, Ukamba and the Coast. In the Kikuyu and Nzoia Provinces there will be two Boards, at Nyeri and Nairobi, and at Kitale and Eldoret respectively, the boards at Nairobi and Kitale being presided over, in the absence of the Provincial Commissioner, by the District Commissioner. For the purposes of each board there will be established two unofficial panels. One panel will consist of three suitable men with farming and business experience, and the other of the local bank managers with whom the applicants bank. The local board will normally thus be constituted by one member selected from each panel, but the applicant's bank manager will invariably be a member. The Provincial Commissioner or another senior Administrative Officer will be in the chair. If, however, in any district circumstances warrant either an enlarged or a differently constituted local board, the necessary arrangements will be made and can be made under the legislative provision. Such modifications have already, Sir, been approved in the case of Eldoret and Kitale, where a change from the normal procedure was necessitated chiefly by the presence of a large number of Dutch and German settlers in those districts. In most, if not all, of the provinces the local boards have already been constituted, and if this Bill becomes law, Sir, the boards will be able to get into harness at once and proceed forthwith to deal with applications.

Clause 5, Sir, deals with the necessary evil of staff. Unfortunately, additional staff will have to be employed, both at headquarters and in some of the districts, but it is a strict instruction to the Central Board that no expenditure is to be undertaken on staff unless it is absolutely unavoidable, and the

Registrar of Titles, and again recorded against the title affected, and by that simple act the charge is extinguished. No priority of any sort over prior existing encumbrances is given to the advances under this Bill. They will take priority in the ordinary course, Sir, from the moment at which they are made. No charges or fees are payable in respect of either of the notifications to the Registrar of Titles. Hon. Members will appreciate, I think, Sir, that, unless we initiate some such scheme of automatic statutory charge as is embodied in these clauses, the consequences will be disastrous. We must get the best available security, and the Central Board, in the interests of the taxpayer—and in the absence of any such provision as this—would be forced to take either a mortgage deed on the land and the crops thereon, or a bill of sale on the live stock and other chattels—and in very many cases, Sir, they would probably be forced to take both. The consequences would be prolonged searches, the preparation of mortgage deeds, the preparation of elaborate schedules to bills of sale and registration formalities. Fees would mount up, time would pass—and delay is the one thing, Sir, which we are all most anxious to avoid at all costs in this matter. This is a matter of urgency, and delay would be fatal. The costs involved would, in many cases, be so great, Sir, as to render the advances practically useless. Furthermore, Sir, there is not much incentive to repay an advance when you know that the repayment entails the further costly formality of the preparation, either of a release and the registration thereof, with the contingent fees, or the preparation and registration of a memorandum of satisfaction. Under the provisions of this Bill, the out-of-pocket expenses of the applicant need not exceed the sum of Sh. 2 for a stamp on the declaration. At the moment he can put the advance in his pocket, he can go, and it has cost him practically nothing except that Sh. 2.

We now come to clause 12. I can only express the hope that its assistance will never have to be invoked; but I think it is a necessary provision to make. Advances are made for specific purposes. They ought to be used for those purposes and those purposes alone, and I submit it is in the interests of the Colony, which is footing the bill, that a farmer who deliberately misapplies an advance should suffer for so doing.

Clause 12, Sir—no, 13—also introduces a novel and an important principle. It empowers the Board, when making an advance in respect of any crops, which are not at the time of application for an advance subject to contract, to declare that such crops are to be disposed of in a certain way. As a necessary corollary to that, Sir, the clause further provides that defiance of any such direction is a penal offence.

The subject of a wheat pool, Sir, has been exercising the minds of all of us during the last few weeks. Government, as at present advised, sees no necessity for legislation to establish such a pool before September next at the earliest, but I would point out to hon. Members that the provisions of sub-clause (1) of clause 13 will enable the Board, in its discretion, to go a long way towards establishing a pool, and, further, towards testing the advantages of a pool system. It will enable them to dispose, for instance, of wheat which is not the subject-matter of an existing contract through one sole buying and distributing agency. The experience gained from that will, I hope, be valuable, Sir. The provision, furthermore, is a reasonable one, and cannot but beneficially affect the farmer, as well as giving some additional security to the Board, which, as hon. Members will see from the provisions of the Bill, is empowered to direct that a part of the proceeds of any produce so disposed of may be paid to the Board in partial reduction of the amount of the advance outstanding. I would emphasise again, Sir, that no such direction may be given in respect of any crops which are, at the time of application for the advance, the subject-matter of any existing contract. If a farmer has already contracted to sell his crops, the produce of his crops is normally protected. Even the Board has no right to interfere with the sanctity of that contract.

Again, Sir, when we come to clause 14, I am afraid that it is necessary. There are—and I am afraid there always will be—creditors who are essentially selfish. If advances are to be applied to the best possible purpose, the purpose for which they are asked, the purpose for which they are sanctioned, it is not unreasonable to provide that such advances are not to be liable to levy or attachment in satisfaction of a judgment debt.

Clauses 15 and 16 are stereotyped provisions, Sir, conferring the power of entry, which is extremely important if we are to verify the statements made by an applicant; and, again, as a corollary, making it a punishable offence to obstruct any legitimate entry.

And that, Sir, brings me to the end of the Bill. I am afraid I have rather unduly taxed both the patience and the indulgence of the House, but for that the importance of the subject must be my justification. But I would like to say in subject must be my justification. In this measure, Sir, conclusion, Sir, just a few words more. Members a conscientious Government has put before hon. Members a conscientious attempt to deal with a particularly difficult and complex subject—to bring relief to all farmers, without discrimination of race or colour, who, from circumstances which we all know are beyond their control, find themselves in temporary straits and in need of temporary assistance. The provisions of that

scheme, Sir, have been embodied in this Bill. The measure has necessarily been very hastily drafted, because, I would repeat, time has been an essential factor in the situation. For the imperfections of the measure, Sir, I take full responsibility, but I would implore hon. Members not to allow my linguistic and verbal shortcomings to impede the passage of a measure which every one of us in his heart of hearts believes is essential to the well-being of the Colony—a measure which I very confidently commend to every Member of this House.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that a Bill to authorise the Governor to make Advances to Farmers be read a second time.

THE HON. CONWAY HARVEY: Your Excellency, I have been quite unable to discover any linguistic or verbal imperfections in my learned friend's presentation of this measure.

In supporting the second reading, Sir, first of all I have been asked to comment on the somewhat unusual procedure that has been adopted in connexion with the Bill. All reasonable folk, nevertheless, will agree that the Bill is a wise one, taken generally, and will undoubtedly be supported. I refer, Sir, to the fact that for the first time in the history of this Colony evidence has been taken *in camera*, in connexion with impending legislation, by a sub-committee of Executive Council, instead of the more usual form of appointing an *ad hoc* committee, the members of which were not bound by an oath of secrecy. Although I consider the procedure followed in this case to be as inadvisable as it is unusual, it may have been justified by the circumstances, and I do not cavil at the result which, in my opinion, is eminently satisfactory. I should like to take this opportunity to congratulate all of those who have been concerned in any way in the production of this Bill in the form in which it appears. This Bill, Sir, will undoubtedly exert an important and beneficent influence on agricultural production. I think, Sir, it is very important indeed to emphasise that the Bill is merely a contribution towards remedying a definite difficulty in the economic life of Kenya, which is first and foremost an agricultural country. The question of credit for farmers has occupied the attention of most governments and the majority of countries. Other countries, Sir, have other forms of agricultural credit; they have their land banks and many other forms of credit facilities which we are totally lacking at the moment in Kenya. I believe that the farmers of Kenya, now that the long and

expensive experimental process has passed, can hold their own with all other countries in the production of coffee, maize, sisal, timber, wheat, copra, dairy produce, tea and many other commodities; but, as Your Excellency announced a few days ago, the country is suffering—temporarily we believe—in common with the rest of the agricultural world, as the learned Mover mentioned—and I think it should be emphasised—from the heavy fall in world prices of primary products. The position has been seriously accentuated in Kenya by the abnormal weather conditions, which have delayed the delivery of local produce to oversea markets, with a consequent delay in credit facilities. The Agricultural Commission, which sat last year, recommended that the provision of further credit facilities on a safe and economic basis should be investigated. This Bill, Sir, appears to be very largely the result of such an investigation by Elected Members and the Board of Agricultural Development.

Now, Sir, I wish to make a few brief comments on the Bill itself, which I hope will be referred to a Select Committee.

My first reference, Sir, is to clause 3, the personnel of the Central Board, which comprises three official members and two unofficial members. I suggest, Sir, that alternatives should at the same time be appointed for the two unofficial members. We do regard unofficial representation on this Committee as of very great importance, and we consider that all possible steps should be taken to obviate the possibility, through sickness or absence from other causes, that the unofficial community will not be represented in this very important executive work.

As the learned Mover mentioned, Sir, clause 7 (3), providing 8 per cent rate of interest, does require some explanation, because there is no doubt about it a very large number of farmers who are very much up against it were hoping that some cheaper form of money would be provided; but I quite agree, Sir, with those bodies who have recommended that 8 per cent shall be the figure. Other reasons, additional to those mentioned by the hon. and learned Mover, are the importance of providing a reserve for loss from bad debts, for there will be some bad debts, and it is idle to pretend there will not be, and also to cover administration charges, because all the costs of administering this fund must be charged to the fund itself, and every cent of administrative cost will naturally represent so much less money in the relief of those whom the measure is intended to serve.

Now, Sir, clause 8 appears to me to be too grasping and comprehensive, inasmuch as however small the temporary loan may be, the borrower is asked to pledge the whole sum total

of his available assets, both land and crops. I do suggest, Sir, for consideration by the Select Committee, which I trust will be appointed, that consideration will be given to the more reasonable, to my mind, suggestion that the security demanded should be more closely related to the amount of credit required, so that there will still be a margin if still additional arrangements are necessary at a later date.

Now, Sir, clause 12: I quite agree, Sir, that the farmer, like other people, should be taught that the way of the transgressor is hard, but it does seem unduly hard, Your Excellency, that the unfortunate offender under this Bill shall be sentenced to imprisonment without the option. I know it will be stated that he has no money to pay a fine, but, although his friends may not be prepared to finance his farming, they would probably send the hat round to keep him out of jail. We shall welcome an assurance from my learned *vis-à-vis* that that will be considered by the Select Committee, Sir, and it is just possible that imprisonment can be done away with if a fine is imposed.

In conclusion, Sir, we should welcome a statement from the hon. Treasurer or someone else as to the exact position of the Surplus Balances which are to be raided to the extent of £100,000. We do think, Sir, that there is a grave danger that our reserves may be

HIS EXCELLENCY: Order, order. The hon. Member must raise that point on the money resolution.

THE HON. CONWAY HARVEY: Very well, Sir; that was my concluding remark.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I support this Bill, but, Sir, the suggestion that this Bill provides only for a temporary disability cannot be sustained. This Bill inaugurates, I hope, a policy of furnishing intermediate credit on a permanent basis, and not merely to meet a temporary situation, because the need of intermediate credits in this country is a permanent one. The greatest disability that we have recognised is the limited approval of Government for this measure, because Government's approval of this measure must be gauged by the monetary provision, and, Sir, we are told that the monetary provision is to be £100,000. I feel, Sir, that we should ask for, at this stage, half a million pounds; the source of that half-million could be discussed at a later stage no doubt, Sir, and we could decide where the money should come from, but the sum should be half a million.

HIS EXCELLENCY: I hope the hon. and gallant Member will observe my ruling and reserve a discussion of the financial side of the scheme to the money resolution.

CAPT. THE HON. E. M. V. KENEALY: Yes, Sir; I suggested it should be done at a later date.

HIS EXCELLENCY: The hon. and gallant Member is, nevertheless, continuing his discussion.

CAPT. THE HON. E. M. V. KENEALY: In regard to the activities of the Central Board, Sir, I feel that we should have a statement from Government in regard to the instructions to that body, because presumably that body is going to have instructions. I am concerned with the home-maker and resident farmer in this country; I trust that he will be the individual who will receive first consideration, and that companies, possibly with alien shareholders, will receive later, and possibly less sympathetic, consideration.

I feel, also, that it is essential that we should know that instructions to this Central Board will be to give small amounts to many people to see them through, rather than large amounts to a few people. That, Sir, is an essential element in the construction of this measure, and I trust that Government will agree that its intentions are to give such instructions to the Central Board.

In regard to the security for these advances, I agree with the hon. Member for the Lake when he said that in most cases the sum could be adequately secured on the crop or on the stock, and it is entirely unnecessary, and therefore entirely improper, to provide for its security against the land.

Since, in the resolution dealing with the suspension of Standing Rules and Orders, we were told that Government intended to pass or introduce a Chattels Mortgage Bill, I feel, Sir, that I am in order—I trust I am, Sir—in commenting on the Chattels Mortgage Bill at this stage in relationship to these agricultural advances.

HIS EXCELLENCY: I hope the hon. and gallant Member will reserve his comments on that Bill until the second reading of the Bill which will come on at a later stage this morning.

CAPT. THE HON. E. M. V. KENEALY: As I cannot express it in that way, I will say this: that it is essential that we should retain the Agricultural Advances Bill entirely separate and on an entirely different basis from any other alternative form of finance for the farmer, because if we confuse this

emergency legislation with the necessity for an established and a permanent intermediate credit scheme, then it will mean we shall not have enough money to provide for this. The Government will say that money can be found from other sources, from other funds, and this particular credit, this particular advance, will be starved. That is my fear. It is a real one.

I support the measure on the whole, Sir, but in Committee there are several minor points that I think are deserving of consideration. There is no definite statement

HIS EXCELLENCY : I hope the hon. and gallant Member will reserve Committee points for the Committee stage.

CAPT. THE HON. E. M. V. KENEALY : I am dealing now with general principles. One is that the purposes for which this money is to be advanced to the individual have not been stated. I feel that there should be some statement of these purposes.

HIS EXCELLENCY : Those are not principles; they are Committee points. I hope the hon. and gallant Member will confine himself to principles.

CAPT. THE HON. E. M. V. KENEALY : One principle, Sir, in dealing with the utilisation of public money, is the period of time to be occupied during which that money can be so utilised. I think there should be a limit stated, or a limit implied, during which advances under this scheme are applicable.

I support the measure.

THE HON. T. J. O'SHEA : Your Excellency, I share in the general approval of the introduction of this measure, the necessity for which has been so admirably outlined by the hon. the mover, but I must say also that I support the view of the hon. Member on my left (the hon. Member for Kenya) when he says that although it has been introduced to meet an emergency, it should not be regarded as a temporary measure. Whether we like it or not, Sir, I think we must recognise that in the present state of the agricultural industry throughout the world it has become necessary for the State to more actively participate in the working of that industry.

CAPT. THE HON. E. M. V. KENEALY : Hear, hear.

THE HON. T. J. O'SHEA : Not so many years ago it would have been regarded as a great extension of governmental principles to take the action we are taking to-day,

but I think people looking to the future now recognise that in a pre-eminently agricultural country it has become necessary for the State to take a more active part in the promotion of that industry's welfare, and I take a deep interest in the introduction of this measure because I regard it as the first of many steps in the participation of the State in the agricultural industry of the future. So, Sir, from that point of view, I regard it rather seriously.

I am immensely pleased to see that the Government has recognised the necessity of elasticity in the constitution of the local advisory bodies, because I believe that on the functioning of those local bodies will depend very largely indeed the success of the scheme; and it behoves Government therefore to consult them with the greatest possible care and give them every possible assistance in the performance of their arduous work.

In clause 7 the rate of interest is maintained—is placed at the present high rate in this country of 8 per cent. Now, Sir, there are many who think that this opportunity might have been availed of to make some effort to bring down the rate of interest in this country, but I think it will be recognised on reflection that the circumstances under which this Bill is being introduced make it practically impossible to do anything in that way, and this is certainly not the kind of measure that should be employed towards that end. Credit is a very sensitive thing indeed and it would be a grave error I believe on the part of Government to make any effort in this measure to interfere with the prevailing rate of interest. That does not mean, however, Sir, that it is not possible for Government to do something in the near future towards that end, and when it comes to the passing of a Bill which I regard as a corollary to this one, I do hope that some effort will be made.

Clause 13, Sir, dealing with the machinery for securing these advances, is admirable in its simplicity. Might I congratulate the framers of the Bill on the very simple and very inexpensive provisions they have made; but I would support the view already expressed on this side of the House that it is very far-reaching and is unnecessarily embracing of practically all that the average farmer in this country possesses; and it will have to be modified to permit of some less extensive security being given for comparatively small advances. Otherwise, instead of this measure being a real help to a large number of farmers, it will be a burden upon them, because I believe a good many will have to avail themselves of its provisions during the course of the next few months, and, if they are to tie up their property in the way contemplated in the Bill, they will have difficulty in securing further credit later on in the year.

Clause 14 makes a very necessary provision in protecting the advances made against court attachments in satisfaction of other debts. That, I agree, Sir, is very necessary indeed, but I do hope that the Central Board will be at all times acutely aware of the necessity of not sanctioning advances to people who have not got their affairs in such order as will protect them against court attachments. To put it more concretely, Sir, I have heard it said that Government, under this scheme, merely contemplates the advancing of small sums of money to people to enable them to cover their living expenses and the costs of running their farms until the next harvest. Now, Sir, if that is Government's idea, it shows a lamentable misunderstanding of the position and a complete lack of knowledge of the position of the average farmer in this country. It will, I think, be absolutely necessary in the giving of these advantages to take into consideration a man's present unsecured debts, and unless that is done, and unless that is contemplated, then the scheme will have a very limited scope of usefulness indeed. I am not suggesting that the scheme should contemplate the covering of the average farmer's outstanding debts, but I would emphasize that, unless advances are limited to those people who are successful in making arrangements with their unsecured creditors, there will be great danger to the advances which will otherwise be made. I have great pleasure indeed, Your Excellency, in supporting this motion.

COL. THE HON. W. K. TUCKER: Your Excellency, my general view of this Bill can best be expressed by seizing on to a phrase of the hon. the Attorney General when he claimed that this Bill was a "conscientious attempt." I venture to suggest, Sir, that in the view of the people I represent it is a conscientious achievement.

The first point I want to make, Sir, has reference to the vagueness of the principal parts of the Bill, and I desire to say, Sir, that I regard it as commendable vagueness, because I believe that the Central Board will be able to operate all the better if they are not tied down in the directions in which they can act. That vagueness, however, Sir, does seem to require that at least one or two general views of the community should be expressed at this stage; and the first one—and I am speaking now from the point of view of a great organisation with which I am associated—the great feeling they have is that the spirit should be recognised, the spirit which has actuated the country in supporting this legislation, a determination to keep the men on the land who are on that land, in the belief that the land thoroughly justifies its cultivation and that we shall never get better men if once we lose the present ones.

CAPT. THE HON. E. M. V. KENRALY: Hear, hear.

COL. THE HON. W. K. TUCKER: Then, arising out of that vagueness again, Sir, the people whom I represent, the commercial people in Nairobi, do desire it stated that in the course of their operations they take it for granted that this Central Board will give equal consideration to trade debts that exist equally with the money for other debts of other characters and natures in this country. They merely desire it stated in the firm belief, Sir, that they will get fairness.

That is all I wish to say about the Bill, as such, Sir, because I know other friends have other points to raise. But I want to say one word in regard to the hon. the Attorney General's reference to the wheat pool, because the construction he placed upon such of the evidence as I have heard is not precisely the view taken in the country. That is to say, he says that there is no object in dealing with this until September; or rather, that is what I gathered, Sir, although I quite agree that he followed it up by saying that in this very Bill certain factors will necessarily come under review. The feeling of the people mainly concerned with this wheat pool, Sir—as I understand it—is that it is impossible to apply any legislation, or rules or orders or anything else, until September, having regard to the age of the crop, and the position and the period of the seasonal trade. But my friends do take the view, Sir, that if an immediate—if an early statement is not made by Government as to its intentions next September it will very greatly affect the situation between now and September. In other words, the people most affected, Sir, will have an opportunity of educating themselves and others as to what is going to happen in September, which will, to a very considerable extent, remedy our difficulties to-day and the difficulties we are going to experience between now and that time.

One final word, Sir. During these few days, when the wheat pool has been under so much discussion, we have been led to hope that the unlimited importation of foreign flour at this stage might have had some consideration during this emergency session of Council. I am not going to say anything more about it, Sir, other than make the observation, because I am quite certain that throughout the country there is a very strong desire that that issue shall have place and a strong belief that we are going to say something about it at this present session.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I welcome this Bill, and, Sir, I welcome it particularly as showing the sympathetic attitude of the Government of

this country towards our basic industry—agriculture—and as showing that the Government appreciates that it is all-important for the welfare of this country to keep the people on the land and to keep the production going steadily ahead. If I may do so, Sir, I should like to pay a tribute to Your Excellency in that you set the ball rolling in the statement you made in your speech early in April.

The chief cause for some measure of this sort is the great fall in the prices of all produce. This measure is to use the country's money, public money, for this purpose; it is therefore, Sir, very necessary that we should do everything which is possible to ensure that the money so expended shall be profitably expended and that the country shall not lose through bad debts. To do this, Sir, it is very necessary that all industries should get down to their working costs and should reduce their costs in any way they can, so that the articles they are producing may be sold at a profit. At the present moment, Sir, two of our biggest industries—sisal and coffee—have been very hardly hit by the great reduction in prices. In the past, up till now, there has been a big margin of profit and, quite rightly, they have had to pay very high freights on the Railway. Now, Sir, take sisal at £29 a ton—I am informed by a representative of practical sisal growers that at the moment they cannot sell their sisal at all, and that when they do sell it, if it is at that price, it will not be a paying price. To get their sisal home it costs them about a quarter of the price they are likely to get now, and it would be a great help to both those industries if the Railway Council could see its way, temporarily anyhow, to reducing the freights on the Railway. I do not know that there is any question that the Railway make big profits out of the transport of these articles, because up to date they have been over-valued; the same applies to both these things. That I hold out in the hope that it may be gone into.

The other question is the question of labour costs. In the cost of production of these two things the labour costs about a third. Both the coffee planters and the sisal growers have found that they have had to get down to it and they have had to reduce their labour costs, and that has necessitated a slight reduction in the wages paid to labour, and they hope that the two big labour employing Departments—the Public Works Department and the Railway—will, in any way they can, co-operate with them and try and not let the wage bill keep soaring up, because those two Departments do really set the standard of what the wages should be.

Those are practical things which all help to the actual success of any such scheme.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I am very pleased to be able to approve of the principle of the measure now before the House, and I should also like to take this opportunity of congratulating Government on the sympathetic manner in which they have for many weeks past dealt with this matter which has been brought to a head to-day. I remember some three months ago I produced a microbe, but I did not pay sufficient attention to its nurture and it did not pass the Government experts; but it has grown and been nurtured, both by the assistance of Elected Members and by Your Excellency, and it will be put into a practical form in the next twenty-four hours.

There are two items of what I consider principle that I should like to draw attention to.

Clause 3 (c): I do not think it is fair on the Director of Agriculture to put him on to this Board, in other words, add more extraneous duties to those he is already performing. Of his ability to perform this duty nobody has any doubt, but I do suggest, in view of the recommendations that have been passed in other directions and of the general opinion that is held that fifty per cent of time should be put in by the Director of Agriculture on the primary industry of this Colony, it is not fair either to the industry or to the Director.

In Clause 8, Sir, it is laid down, as I read it, that where a loan is advanced by Government it not only covers the land but it covers the growing crops and future crops. I maintain that is a matter of principle and I hope it will be altered in Committee, and that advances will be restricted to land and not spread to the heading of crops. I would point out that it is going to stultify to an extent the Chatters Transfer Bill, inasmuch as it is a handicap on the farmer, because under this Bill he will pay 8 per cent for money advanced by Government, and I maintain, with all sincerity and experience, that the farmer will get his money on crops at less than 8 per cent. That could be altered, as I suggest, at a later stage in Committee.

There are several other points, Sir, but I am perfectly certain they can be adequately dealt with on the next stage of this Bill.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE: Your Excellency, I wish to support this Bill wholeheartedly and to congratulate Government on having introduced it. I understand from this that this is a purely relief measure to enable a number of farmers to obtain funds to carry on with for a comparatively short period of time. The problem of agriculture in this country, however, depends largely not upon emergency measures of this nature but on the availability of money

at a reasonably low rate of interest, and spread over a long period. The loan of such money by Government would naturally be on first class security, and Government must be prepared to give the lowest rate of interest which would cover its liabilities in respect of protection and repayment. In this connection, I think the experience of France and Italy is extraordinarily instructive—the way they have helped their agricultural people. Had agriculture been treated in a similar way to the industries of commerce, trade, banking, etc.—all these things are able to raise loans—I do not think it would have been in the parlous condition it is to-day. Agriculture finds itself to-day at grips with conditions entirely different from those of earlier days, and in such a struggle it can have no prospect of success except by arming itself accordingly in the fashion of the day. We want machinery and many other things our fathers never dreamt of; we want fertilisers and more potent ones. It is a recognised fact that the poorest land, if properly cultivated, will turn into one of the most productive ones. This Colony depends almost wholly on agriculture, and I believe it is the only Colony in the British Empire that does so. We have no industries, we have no industrial towns—our population therefore must stay on the land. Every help therefore must be given to agriculture, and I sincerely hope that this present measure is only a preliminary one to giving advances on a large scale to enable farmers to purchase machinery, fertilisers, etc., by which means a far greater return would be received from the land and far greater security obtained for the repayment of loans.

I therefore wish to support the motion.

THE HON. A. H. MALIK: Your Excellency, I appreciate the general principles of the Bill. My only grouse is Clause 3—the constitution of the Board. A considerable Indian farming community exists in the country, and I think it is unfair not to provide for an Indian member of a board of this nature. Looking through the statement that was laid this morning on the Table, giving out the return of land grants for the first quarter, you will find, Your Excellency, if you turn to Table 4, the farms sold up till March, 1930, that Indians bought 2,100 acres at a total price of £26,000, and that European farmers bought 58,208 acres at a price of £33,000. That means, Sir, that the Indian has paid Sh. 250 average per acre and the European Sh. 11. If those are the sort of prices paid, Sir, by the two communities, I think, Sir, although the Indian community may have considerably smaller holdings in the Colony, the value of such holdings is, according to these figures, about twenty times that of European holders. I do consider, Sir, and request the Government to consider this clause and to alter it in such a way as to retain the official majority, and make it compulsory that there shall be

an Indian member also besides the two European members. It may be feared that no Indian member may be forthcoming to sit on this Board, but in the recent appointment of the Agricultural Board, as a result of whose deliberations is this Bill, Your Excellency appointed an Indian to that Board; I understand that he has attended all the meetings, giving full attendance, and I know personally, Sir, he is very enthusiastic about it and he has no intention whatever not to co-operate or not to sit on that Board. I can assure the Government that if an Indian member is appointed also to such a Board, the Indian member thus appointed will be giving his full time and take a proper interest.

I trust, Your Excellency, that the Government and the unofficial Members will see the importance of the point and its reasonableness and, when I move an amendment to clause 3 (d), that they will support me.

LT.-COL. THE HON. C. G. DURHAM: Your Excellency, I had not intended to speak. I support the Bill, but I should like to point out to the last speaker that as the Indians, as a community, have got such an enormous amount of money that they can afford to pay a lot more than the Europeans, therefore they will not want a seat on the Board because they do not require assistance.

THE HON. A. H. MALIK: On a point of order, Your Excellency, it is not that; it is because the amount of land available for the Indian community is so limited that the demand is very great, and they have got to pay much higher prices.

THE HON. THE ATTORNEY GENERAL: Your Excellency, there are a few points on which I welcome this opportunity of replying.

Firstly, Your Excellency, I would say that the opening gambit of my hon. *vis-à-vis* took me completely by surprise. I hope that the hon. Member now realises that he is rather hoist with his own petard, because I would remind him, Sir, that he himself was a member of this star-chamber Committee which dealt in its early stages with this matter.

THE HON. CONWAY HARVEY: On a point of explanation, Your Excellency, I prefaced my remarks by saying, "I have been asked to state."

THE HON. THE ATTORNEY GENERAL: I accept the explanation, Sir, but I want to stress this point; it is just the element of secrecy that has made the deliberations of that Committee of any practical use whatever. A great deal of information

has to be garnered on matters of this sort from people who will not speak openly and without reserve unless they are assured that what they are going to say will be treated in confidence. It is the fact of that knowledge in the mind of every witness who appeared before that Committee, every member of which was bound by an oath of secrecy, that enabled the Committee with certitude and assurance to rely on the evidence which was given before them. Had Your Excellency appointed an open Committee, then I am afraid that, however able the personnel of that Committee, they would, perforce, in the very nature of things, not have been able to get as useful and valuable information in as short a time as the sub-committee of Executive Council did manage to procure.

Now, Sir, I turn to the vexed question of clause 8, the question of security.

On that clause, as on every other one—the details of that clause—naturally the Government has an open mind, but I would remind hon. Members of two factors in the case. There is, firstly, the prime necessity of getting security, and there is, secondly, the equally important factor that advances must be made at as small a cost to the applicant as possible. Now, Sir, we are dealing with all classes of people. There may be an applicant who has a valuable farm, good crops, with a considerable amount of stock on it, and who is not mortgaged. In such a case it does, I willingly concede, seem rather ridiculous to take a charge on the whole of that; but, on the other hand, Sir, there is the man who has a first, and possibly a second mortgage on his farm, and who has sold his crops forward, or got advances on them, and who has little or nothing left to offer in the way of security. In that case, even if the security on the land takes the form of a third mortgage, it is better that Government should take that rather than take nothing at all. If we attempt to differentiate, Sir, sooner or later we shall find a case which does not fall within either of the categories we have provided for. It does not really matter, Sir, whether a first mortgage is given as security for an advance such as this, and that that first mortgage goes completely over crops and future crops, and chattel security over the stock. After all, the great criterion is the extent to which the farmer is encumbered, and it will not, I submit, interfere very severely with him when he is getting further advances from other sources if he says, "I have got something in the nature of a first mortgage of only a couple of hundred pounds." It is for the reason that we want to get things done as speedily as possible, as cheaply as possible, and at the same time get all possible security, that this embracing and sweeping security has been made; but after hearing this explanation, if hon. Members do wish to alter it, then an opportunity will be given at a later stage.

We do not propose to put farmers necessarily into prison. The Penal Code contains a provision that wherever, in any section of any law, the punishment of imprisonment is imposed, there may be imposed in lieu of imprisonment a fine, and I have no doubt this provision will be taken advantage of by every court, if a case is brought into court, and the offence will be punished by means of a fine.

The hon. Member for West Kenya, Sir, may rest assured that the points he has raised have been fully considered and fully dealt with. Instructions exactly on the lines he has indicated have been communicated to the Central Board. The same remark applies, Sir, to the hon. Member for Nairobi North. All forms of debt will be treated alike—preference will not be given to any other class of creditor at the expense of the commercial creditor.

The hon. Member for Plateau South, Sir, expressed the hope that the Central Board, in dealing with applications, will give preference to those who have put their houses in order against their unsecured creditors. That they most assuredly will do, Sir; that we have contemplated from the very moment that the idea of such a Board was first mooted, and that is provided for in clause 14. Whatever may be the state of an applicant at the time he gets his first advance—assuming he gets it in the form of a monthly sum—we must be in a position to make his fifth, sixth, seventh and nth instalment as secure as we did his first. The provision can do no harm, Sir, so far as the Board is concerned, and there is no likelihood we hope, of its having to be used.

The hon. the Indian Member has made a suggestion that an Indian member should be added to the Board. I would suggest to him, Sir, in all seriousness, that if there is any necessity for Indian advice in this matter, that necessity can only arise in the event of Indians making applications. The proper place for such a member is the local board, where, in the event of such a member being required he can be added to it—someone who knows the personal affairs and the financial condition of the applicant. Such a member on the Central Board would be able to do no good at all. The provisions of the Bill are sufficiently elastic to enable such an appointment to be made in any province.

In conclusion, I am authorised by Your Excellency to state, in reply to the point raised by the hon. Member for Nairobi North, that a full statement of the Government's intentions with regard to the wheat pool will be made at an early date.

HIS EXCELLENCY: The question is that the Agricultural Advances Bill be read a second time.

The question was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that a Bill to authorise the Governor to make Advances to Farmers be referred to a Select Committee of this Council, consisting of—

The Hon. the Treasurer,

The Hon. the Commissioner for Local Government, Lands and Settlement,

The Hon. the Director of Agriculture,

The Hon. Member for the Rift Valley,

The Hon. Member for West Kenya,

The Hon. Member for Nairobi North.

The Hon. Member for Kikuyu,

The Hon. Member for Plateau North,

The Hon. Member for the Lake,

and myself as Chairman.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to second the motion.

The question was put and carried.

HIS EXCELLENCY: I think, as all the legislation on the Order Paper is urgent, hon. Members will all of them consent to go on with the business this morning without the usual interval. If that is so, I call upon the hon. the Treasurer to move the motion standing in his name.

MOTIONS.

ALLOCATION OF FUNDS FOR AGRICULTURAL ADVANCES.

THE HON. THE TREASURER (Mr. H. H. RUSHTON): Your Excellency, I beg to move

"That this Council approves of the appropriation of a sum of £100,000 for the purpose of making advances and meeting expenses under the Agricultural Advances Ordinance, 1930, such sum to be a charge against the Surplus Balances of the Colony."

The figure of £100,000, Sir, I ought to say, is more or less a token figure, and we have been able to form no very definite idea of what amount will be required, but on the

information before the sub-committee of Executive Council it was thought that £100,000 would be sufficient to carry on with until the end of the year.

The proposal is to take the money from Surplus Balances, as we have no other funds, and it is, I think, fortunate that the Colony has such balances with which to meet an emergency such as this. I think, Sir, that it is perfectly legitimate that the funds to meet this emergency should be taken from Surplus Balances.

A question was asked whether I would make a statement as to the position of the Colony's Surplus Balances. I have just got out an estimate of the probable position at the end of the year, which shows that the Surplus Balances will amount to about £598,000, but the whole of that sum will not be available. Working capital is required for cash and unallocated stores. The cash requirements in financing district offices and the Treasury amount to £100,000, and for unallocated stores, £110,000. Then it has been agreed that the Government Servants' Housing Schemes should be financed from Surplus Balances. The sum provided at present for that purpose is about £44,000, but I estimate that by the end of next year probably £100,000 will be needed there. Those funds are, of course, recoverable. Then again, the sum of £25,000 has been set apart for short-term advances to local authorities. That also is recoverable. Now we want £100,000 for these agricultural credits, and that will leave an unapplied amount of £210,000.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is:—

"That this Council approves of the appropriation of a sum of £100,000 for the purpose of making advances and meeting expenses under the Agricultural Advances Ordinance, 1930, such sum to be a charge against the Surplus Balances of the Colony."

The question was put and carried.

FLOOD DAMAGE TO ROADS AND BRIDGES.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to move:—

"That this Council approves the expenditure of a sum of £40,000 upon the purpose specified in the Schedule hereto as a charge against Surplus Balances of the Colony."

Schedule.

Repairing flood damage to roads and bridges £40,000."

I feel, Sir, that I need not detain the Council long in asking their support to this motion. Hon. Members are more well aware than I am, from personal experience, the extent of the damage which has been done by the recent abnormal rains. As soon as the position could at all be ascertained a memorandum was forwarded to the Central Roads Board by the Road Engineer and considered, and as a result of that, Sir, we have asked that this sum of £40,000 should be set aside for very definite and emergency purposes. Time has been too short for an accurate estimate to be obtained of the actual requirement to be met from this vote. In order to be sure that no delay was caused through lack of funds, the Director of Public Works authorised his officers immediately to carry out all necessary and urgent work from his recurrent votes, and that has been done. This money, when voted, will be available, therefore, to supplement ordinary recurrent expenditure which has been utilised in this emergency manner. Up to date—the Director, who is seconding this motion, Sir, will be able to give more detailed information than I can if the House desires it—but, up to date, it is estimated that for immediate allocation the sum of some £15,530 is required to meet the cost of work which has actually been done to repair flood damage. As the position is more fully known, the expenditure will be carefully watched, and I can assure hon. Members that no money will be spent on work which is not really urgently required.

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS : Your Excellency, I beg to second the motion.

THE HON. CONWAY HARVEY : Your Excellency, I do consider that we should be furnished with some more details than we have been given by the hon. the mover. I think Government is wise, Sir, in anticipating still further demands for repairing flood damage than have so far come in, but I do think, Sir, that this is an opportune moment for the hon. the Director of Public Works to give the country some indication of the general road policy of the Colony. It is a long time, Sir, since . . .

HIS EXCELLENCY : I am afraid I cannot allow the Director of Public Works to make a statement of that kind on this resolution.

THE HON. CONWAY HARVEY : Well, Sir, I consider myself—and a great many taxpayers are associated with me in the view—that, although the road system of the Colony has very

greatly improved during recent years as a result of the enormous sums of money which have been voted by this House, that money is not invariably spent to the best advantage. If it was so spent, these constant applications for repairs such as this would not come in so frequently. I do think, Sir, it is very important indeed that the whole method of expenditure on roads and the whole system should be entirely overhauled.

It is high time, Sir, that we had a definite policy which embraces certain bad sections of road being put into all-weather condition, and that would obviate a constant drain on the finances of the Colony for annual repairs. Once a permanent job is made of a road, the cost of maintenance is almost trifling. I suggest, Sir, that the work on which this money is spent should be properly maintained; that is a very definite defect in the road system of this Colony—the complete absence of permanent maintenance gangs on the roads. Enormous sums of capital are expended periodically in the construction of really good earth roads, but no arrangements whatever are made, in the majority of cases, for the maintenance of those roads.

HIS EXCELLENCY : Order, order. The hon. Member is really travelling very far outside the boundaries of this resolution. There are plenty of opportunities of discussing road policy questions. Legislative Council will be meeting again soon, and he can move a motion at any time. The debate on this resolution is confined to the terms of the resolution, and that is the special emergency vote for repairing flood damage to roads and bridges.

THE HON. CONWAY HARVEY : In all the circumstances, Your Excellency, I do support the motion.

THE HON. T. J. O'SHEA : Your Excellency, in view of the circumstances, I feel compelled to oppose the motion. The circumstances to which I particularly refer, Your Excellency, are that we are asked to give Government a comparatively large sum of money without being told in any detail whatsoever how it is going to be expended. I quite appreciate that the abnormal rains we have had necessitate Government's making some further demand upon the finances of the Colony to meet the damage done, but I think, Sir, it is only due to this House, and to the public who eventually have to pay for the repair of this damage, that some statement should be put forward by the Government as to how the money is going to be spent.

In the first place, I should like to ask whether in this sum of £40,000 there is any proportion for expenditure by the district councils, and, if so, how much. I think it rather

surprising, Sir, that that very important matter was entirely overlooked by the hon. Mover, and I think it is very regrettable indeed that no statement was laid before the House to give them an opportunity of considering the matter.

I appreciate that the occasion is not one on which we should raise the question of the road policy of the country, but, in extenuation of my attitude upon this vote, may I say that there is at the present time an enormous amount of criticism of the cost of our road construction and our road maintenance, and, that being the case, it is all the more necessary that Members on this side of the House should be given sufficient information to satisfy them that such money as they do vote will be spent in a reasonably economic and efficient manner.

I reserve the right to vote for or against the motion according to such information as may be laid before the House.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I hope Government will reconsider its decision in regard to the amount of information that it intends to give to the House. After all, Sir, this monetary provision which is suggested is based upon the recommendations of the Central Roads Board, and that Board had laid before it certain information, and acting on that information it made certain recommendations. Well, Sir, I feel that this House is entitled to have the information on which that Central Roads Board gave its advice to Your Excellency in this matter, of which this particular sum is the outcome. I feel that we on this side, although we may in the past have been members of that Board, and may have agreed to that allocation in the beginning, yet Government, in introducing this measure in this particular manner, has prevented our knowing whether our advice is being accepted. We do not know what proportions, as my hon. friend on the right (the hon. Member for Plateau South) said, are to be devoted towards ameliorating the conditions under the control of local authorities, and what proportions are to be devoted towards the maintenance or repairing of roads directly under departmental control. I feel that this House is entitled to that information, and I trust, Your Excellency, you will agree to let us have that information.

LT.-COL. THE HON. C. G. DURHAM: Your Excellency, I welcome this motion, but when the hon. the Colonial Secretary states that the demand for the money is due to flood conditions, I beg to differ. I suggest, Sir, that if our original vote had not been cut, a large amount of the work we are

now called upon to repair would not have been necessary. It follows that if work half complete is suspended you are asking for trouble when the rain comes.

Your Excellency, I would ask Government to consider the possibility of providing out of this money free, or at a very low rate, road material at given points, such as stations, depots and quarries, to be handed over to the district councils, who would make every effort to cart that material free of charge, or very nearly so, by enticing settlers to come forward with their lorries and so on; and take this material to bad places on the roads; ultimately you might get all-weather roads with very little expense to Government.

Your Excellency, I trust the necessity for providing this money will be appreciated by those who cut our original vote. It merely emphasises the necessity for trusting the man on the spot. If they had been compelled to use our roads, I am convinced, Sir, that they would have felt exactly as I have felt many times. I would have strangled them with their own red tape, and put them into the holes that I fell into.

THE HON. E. POWYS CONN: Your Excellency, I recognise that damage has been done to roads by the recent floods, and I recognise that roads are so important that naturally I am inclined to vote in favour of this motion, but I am sorry to see the cavalier manner in which the hon. the Colonial Secretary has moved this motion, and the entire lack of any information as to the manner in which this money is going to be spent. The only piece of information he has given is that £15,000 has already been spent. I am very sorry, but I do not think it is a fair way to treat Members of this House to expect them to accept a vote in favour of a motion to spend £40,000 of public money without a detailed and proper explanation and an opportunity to consider that explanation. In this particular case, I think there is the fact which does uphold the main argument I am using, and that is that, in my humble opinion, if the roads had been constructed according to ordinary engineering standards that roads are generally made to in other countries, 90 per cent of the damage would not have taken place. So, Sir, unless more information can be forthcoming, I intend to vote against this motion.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, with the previous speakers, I regret that a schedule has not been supplied with this motion.

I would like to take the opportunity of congratulating the Public Works Department or the Road Engineer on the splendid improvement in roads in general. I do something like 1,500 miles a month more or less consistently, and I know

something about roads. I can say, Sir, that from Kitale to the top of the Escarpment, notwithstanding the excessive rains we have had, the roads have stood up wonderfully well. But I should like to ask for information as to whether any of this £40,000 is to be spent between the top of the Escarpment and Limuru, which, to my mind, is one of the most wretched stretches of road in the whole Colony. It is one of the biggest spring-breakers and sources of income to the garages in Nairobi of anything I can think of.

I am, in principle, in favour of money and more money being spent on roads, but I should like some details with regard to how this money that is asked for is to be spent.

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS : Your Excellency, I must apologise to the House for absence of details. I knew on Monday that this meeting of Council was to be called, but provisional details had been previously submitted to the Central Roads Board. As soon as I knew that the meeting of this Council was to be held, I telegraphed to all the executive engineers to send me at once full information so far as possible. I did not receive the whole of this information until yesterday afternoon, and so it has been rather short notice to provide a detailed statement. I can, however, Your Excellency, give the House certain information regarding the extent of the general damage throughout the country.

Taking in the first case, the Mombasa Division—I refer to the Public Works Department Division—the damage to roads in the actual Coast area has been negligible. They have not had the same amount of rain in that neighbourhood.

When we get up to Samburu and the district west of Samburu up to Voi, the rains have been very considerable and considerable damage has taken place. The Mombasa-Voi Road was severely damaged in the neighbourhood of Mackinnon Road, but the most serious damage in this neighbourhood occurred in the neighbourhood of Voi. As is well known, the Railway also suffered serious damage at Voi. On the Voi-Taveta Road, the suspension bridge over the Voi River was completely washed away. Floods occurred there on two occasions, but it has now been possible to erect a temporary wooden bridge of 40 ft. span over the Voi River on the Voi-Taveta Road, and to repair other sections of the road, and other bridges, and the road is now open.

With regard to the Nairobi Division, there is a fairly regular report of flood and impassable roads. I think perhaps the worst road in this division is that from Ngong to Kajiado; the country there appears to have been very much waterlogged and it has been very difficult to do anything very much.

THE HON. T. J. O'SHEA : On a point of order, Your Excellency, the hon. Member's statement is entirely unintelligible to me unless he makes it clear when, in speaking about divisions, he includes the district roads in the division outside the control of the Public Works Department.

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS : Your Excellency, in speaking about a division I include only roads under the control of the Public Works Department; naturally, I have not information about other roads.

LT.-COL. THE HON. C. G. DURHAM : Does that mean we are not entitled to ask whether any money has been allocated to district councils?

HIS EXCELLENCY : I think it will be better to let the hon. the Acting Director of Public Works make a short statement on the state of the roads, and the hon. the Colonial Secretary will then deal with the allocation of the fund which is now being voted.

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS : In the Nakuru Division, the roads have all been very badly washed out. The road from Naivasha to Gilgil had six miles completely washed away. That has been made good. On the Gilgil-Nakuru Road the Escarpment was badly damaged. Probably the worst washout in this district occurred on the Molo River-Ravine Road, which was flooded for many miles.

In the Eldoret Division the damage has not been so extensive.

In the Kisumu Division, I think the damage is the worst in the whole country. For some time the Kericho neighbourhood was completely cut off owing to bridges being washed away, and a large portion of the road was for a long time, and still is, under water.

In the Nyeri Division, the Naro Moru-Nanyuki-Meru Road was affected worst; many washouts occurred, but the bridges stood fairly well.

With regard, Your Excellency, to the money which has been spent, I authorised all executive engineers immediately to take such emergency steps as might be necessary to keep communications open, and this has been done; to-day, I think, communications are open, and this has been done; to-day, I think, communications are open. To do that it was necessary to dip very largely roads are open. To do that it was necessary to dip very largely into the ordinary maintenance funds, with the result that these funds will not be sufficient to last until the end of the year unless the money is paid back into them from another source.

I think probably the hon. the Colonial Secretary will finish this reply.

THE HON. THE COLONIAL SECRETARY: I must apologise to the House if, in moving the motion standing in my name, it was considered that I did not give as much information as the circumstances warranted. My main excuse for doing so is that, perhaps foolishly, I obtained my impression of public opinion from the local Press, and I gathered that whatever other vote might be debated in this House, a vote for extra money on roads would go through unchallenged; and as our deliberations have been long drawn out this morning, and we have other most important work to do, I desired to make my remarks as brief as possible. As, however, there is apparently some feeling that the Government are wishing to conceal something from hon. Members, I would like to dispel that bogey at once. As hon. Members who are members of the Central Roads Board—and who were able to attend that meeting—are aware, this figure of £40,000 now suggested is not a firm figure, and does not pretend to be a firm figure, of actual estimated cost, but at the same time it is not entirely a shot in the dark. It was based on figures given to the Central Roads Board by the Road Engineer, which he described himself, I think, as an intelligent anticipation of what he thought would be required in the different districts to make good bona fide flood damage on the information then at his disposal. The sum of £40,000 was arrived at as follows: He estimated that perhaps a sum of £4,000 would be required in the Kisumu Division; £3,000 in the Eldoret Division; £4,000 in the Nakuru Division; £5,000 in the Nyeri Division; £5,000 in the Mombasa Division; £5,000 in Nairobi; £2,100 for Reserves; and £2,900 for temporary works staff. That gives a total of £29,000, and as, at the time the Board was considering this matter, possible applications from district councils and for native reserve roads had not come in, it was considered desirable to add a round figure of £11,000, making a total of £40,000 as the sum which we should ask for. I should like, however, to make it perfectly clear that what we are asking now is the sanction of this Council to the expenditure of a sum not exceeding £40,000 at the moment to make good bona fide flood damage. But it is not the intention of the Director, or the Government, or the Roads Board, that the whole of that £40,000 should be spent unless we are satisfied that a real case has been made out for it; but we do not want to be held up for want of money later in the year by putting in a lesser sum at this stage. The Director, as he has explained, is really not able to give a close estimate, as he cannot give definite figures of allocation at this stage, as in some cases his engineers have been literally "cut off," and

it will be some time before definite information can be obtained from them. But as and when it is obtained, I can assure the House that the applications will all be carefully scrutinised and not sanctioned unless we are satisfied that a case has been made out. Furthermore, in order to ensure that the expenditure in this vote is separated from the normal expenditure on roads, it is proposed to open a separate sub-head in the schedule, Public Works Extraordinary—Miscellaneous, with this figure attached to it. In that way, it will be possible to keep distinct the ordinary recurrent expenditure on roads, normal additional money voted by this Council, and this emergency money, which is definitely intended to repair abnormal damage due to floods.

LT.-COL. THE HON. J. G. KIRKWOOD: Might I point out, Your Excellency, that I have had no answer to my request for information as to whether any portion of this money will be available for the Limuru-Escarpment road.

HIS EXCELLENCY: Perhaps the hon. Member will put down a question on that subject, which will be answered to-morrow.

LT.-COL. THE HON. J. G. KIRKWOOD: I will do so willingly, but I would point out, Your Excellency, that I asked for information during this debate, and I expected a reply.

HIS EXCELLENCY: I would remind hon. Members that it is not always possible to answer questions about the expenditure of money without having to consult the papers involved.

The hon. Member for Plateau South has given me notice of an amendment to the following effect:—

"That a schedule showing the expenditure entailed be laid on the Table at the next session of Council."

I hope the hon. Member will not think it necessary to press that, but I can assure him that full information will be given at the next session, though I cannot undertake that the information will show the whole expenditure—that will depend upon when the next meeting of Council takes place; but full information will be given.

THE HON. T. J. O'SHEA: Thank you, Sir.

HIS EXCELLENCY: The question is:—

"That this Council approves the expenditure of a sum of £40,000 upon the purpose specified in the schedule hereto as a charge against the Surplus Balances of the Colony."

Schedule.

Repairing flood damage to roads and bridges	£40,000.
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The question was put and carried.

BILLS.

SECOND READING.

THE CHATELLETS TRANSFER BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that a Bill to make provision relating to Chattel Securities and the Transfer of Chattels be read a second time.

A great deal of time has already been taken up this morning, Sir, with the consideration of the general question of providing facilities for short-term credits. Of that question, Sir, this is an integral part. It is complementary to the Bill which has already been accorded a second reading this morning, in so much that, while that Bill provides for credits from a State source, the confident hope of Government is that the provisions of this Bill will enable credit to flow more rapidly and in greater quantities than it does at present from the ordinary banking and commercial channels.

The Bill is a portentous-looking document, and I am afraid it is a dreadfully dull subject, but fortunately I do not need to say a great deal about it. The Bill can be divided quite easily into three quite separate parts. The first is that part represented by the first twenty-two clauses and clauses 35 to 49. These are necessitated, Sir, by the fact that we have no legislation in the Colony relating to bills of sale—no real legislation—and it is about time that we had. The English Acts of 1878 and 1882 are applied to the Colony, but this is manifestly unsatisfactory, Sir, because these Acts are not available to most of the people in the Colony. Furthermore, they have been amended from time to time, they are a little out-of-date now—we have them in the original form, without any subsequent amendment—and so it was thought that the time had come when, in place of these inaccessible and inadequate Acts, we should have legislation of our own in this Colony. These Acts are replaced by the clauses of this Bill to which I have drawn attention.

Then, Sir, we come to the second category, which is represented by clause 50 and the 6th Schedule. That relates to hire-purchase agreements, and for the life of me I do not see why it is there. The Schedule, furthermore, is completely out of date. The Schedule sets out a list of things which can be the subject of a hire-purchase agreement. You can get a

hire-purchase agreement for a gramophone, but not for a wireless set; you can get a hire-purchase agreement for a motor car, but not for an aeroplane. You cannot get—what would give effect to a recent English decision, which held that you could get a hire-purchase agreement for a race-horse—a hire-purchase agreement for a horse. That part of the Bill might conveniently and perfectly well be deleted.

Then, Sir, we come to the third, and, in the circumstances under which we have met here to-day, evidently the most important section of the Bill. These are clauses 23 to 32, and particularly, Sir, would I draw attention to clauses 23 and 24, 29 and 30. These deal respectively with live stock and with crops. The present position here, Sir, is that you can get a bill of sale over your live stock or over your growing crops, but the law is so restricted, and has in the past been so strictly interpreted against the grantor, that it is almost impossible to get a valid instrument in either of the categories. In the case of stock, you have to identify the actual animals over which you have a charge, by age, by sex, by colour, and, I am told, sometimes even by name. You can do nothing with the natural increase, and it is an entirely and utterly unsatisfactory way of trying to raise money.

When you come to crops, the position is the same. They are almost impossible of identification, and so these provisions are of extreme importance in that they provide for the giving of a valid instrument over live stock by a mere reference to the brand or earmark or other mark, and the land on which they are customarily depastured or kept, and that charge includes the natural increase of the stock. Similarly with crops, you can pledge the crops by reference to the type of crop and the land on which it is growing; and, Sir, you can go further and pledge a future crop, a crop which is not yet sown.

Those changes in the law, Sir, Government is confident will materially ease the present situation. They give the farmer of this Colony a security, a pledgeable security, which he had not got and has not got at this moment.

A great deal has been said in very recent times about the provisions of clause 30, and I should like to make my views on that as clear as I can. It will take me about a couple of minutes. Clause 30 does not establish any priority whatever. It merely provides—I am sure hon. Members will see it on careful reading—that this new security ranks with other securities, as every security ought to do, according to the date of its registration. It takes no priority over any security which in time precedes it. It does take priority over all securities which, in order of time, following it. That seems to me not to be any revolutionary principle—it is a principle as old as the

law—and the statement of it in a simple form here is only in the interests of farmers and to avoid protracted and costly litigation. It seemed very much better to put it in simple language than to leave it for the courts to consider in each case, and why it has raised or should raise opposition, Sir, I am quite at a loss to say.

I am authorised to state that Your Excellency's intention is to refer this Bill for an examination in detail to a Select Committee consisting of—

The Hon. the Treasurer,

The Hon. the Commissioner for Local Government,
Lands and Settlement,

The Hon. the Director of Agriculture,

The Hon. Member for the Rift Valley,

The Hon. Member for Plateau South,

The Hon. Member for Nairobi North,

with myself as Chairman.

I do hope that, particularly in view of the time, but without desiring in any way to burke discussion, a consideration of the details might be left until that Committee has an opportunity of meeting.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT,
LANDS AND SETTLEMENT: Your Excellency, I beg to second.

HIS EXCELLENCY: The question is that the Chattels Transfer Bill be read a second time.

THE HON. CONWAY HARVEY: Your Excellency, I feel that all normal people will approve of a measure the objects of which are to stimulate the flow of credit. It is undoubtedly somewhat unfortunate that it has not been found possible to give Elected Members more opportunity of digesting this somewhat lengthy Bill, but there is no doubt whatever, Sir, that when this measure is passed and completed it will automatically have the effect of reducing to a very great extent the demands which will be made on the Agricultural Advances Fund. To that extent I regard it as of very great importance.

We are very grateful, Sir, to my hon. and learned friend for his very clear explanation of clause 80, which was very clearly understood before. What we do require, though, Sir, if we can get it, is an assurance from Government that the passage of this clause in this Bill will not prejudice perfectly definite proposals that have been made under the Land Bank

Bill that Government loans for specific purposes should be given priority over existing mortgages. That was the difficult point, Sir, with regard to which we wanted an assurance, and we shall be very grateful if we can have it.

Farmers and commercial men, Sir, have for several years frequently urged the introduction of legislation on these lines, and it is very unfortunate indeed, Sir, that the progress of the Colony should have been so seriously impeded by the attitude of the Law Society in connexion with this matter.

THE HON. T. J. O'SHEA: Your Excellency, I think it is greatly to be regretted that this very important Bill should have had to be brought in as an emergency measure and that, in consequence, an opportunity has been denied to the public at large, and more particularly to those interests which are so particularly interested in this Bill, to criticise and examine it.

It is rather interesting to find that it is being introduced as an emergency measure because many of us who have been advocating the application of it for some years past have realised that sooner or later a state of affairs would arise in this country when the necessity for it would be very acutely recognised. It has always seemed to me a strange thing, Sir, that, while the law is very comprehensive indeed in regard to what you might call the hard cash side of our financial system, there should be practically no legislation existing in the Colony in regard to the credit side of our financial system, which to-day plays a greater part in the trade and commerce of the country than the actual hard cash side.

I think Government is to-day taking an action that will not only of necessity stimulate the flow of credit, because there are many of us who think that the flow of credit in this country is already at too rapid a rate, but it will perform a much more important function, a much more necessary one— at the present stage of our affairs it will control and safeguard the flow of that all-important credit. It is from that point of view that I think this measure is going to be of immense benefit to the country. There are some who doubt the wisdom of its introduction because they think that it will unduly stimulate the flow of credit and so bring about more unstable conditions even than those at present existing. I do not anticipate that danger, in the least, Sir; on the contrary, I think it is going to have a very good effect indeed on so regulating the flow of credit as to improve and to strengthen the stability of the country. There can be no doubt about it that, owing to the absence of such legislation as this, uncontrolled credit has done an immense amount of harm to the country.

and the situation that we have been dealing with to-day is very largely due, in my opinion, to the uncontrolled credit that has been rampant in the country over a period of years.

In common with probably every other Member of the House, I regret that more time has not been given us in which to study the details of this very important measure, and in giving my adherence to its passing without critical examination I do so in the belief that as it has been drafted on the lines of existing legislation in other countries, whose conditions are somewhat analogous to ours, it cannot be very unsound, and that the necessity for its immediate introduction justifies our passing it without the critical examination it should have had; also in the belief that if we do find, in its use during the next few months, that the necessity for immediate amendment is there, I feel certain that Your Excellency will approve of its being dealt with immediately.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, the major criticism I have to urge against this is the method of its presentation. I consider that it is entirely wrong that a measure of this kind should be introduced under the suspension of Standing Orders. Entirely because I have a game leg I was not able to get up in time to vote against the suspension of Standing Rules and Orders, and again, later on, I was prevented from getting up in time to speak against the £100,000.

HIS EXCELLENCY: The hon. and gallant Member is really making a statement which cannot be substantiated. I looked for some time towards that side of the House before putting the matter to the vote. He showed no sign of rising whatever. With regard to voting, he can do that from his position; he can call for a division or say "No."

CAPT. THE HON. E. M. V. KENEALY: I thought I should not rise in time.

HIS EXCELLENCY: That is another matter.

CAPT. THE HON. E. M. V. KENEALY: I am not suggesting that you deliberately prevented my speaking on those motions. I am merely saying that owing to the fact I referred to, through my slowness, we will say, in rising I was unable to record my disapproval of the methods adopted.

HIS EXCELLENCY: The hon. and gallant Member does not usually show much difficulty in rising. (Laughter).

CAPT. THE HON. E. M. V. KENEALY: I have not the degree of resilience which is based on the desires of my constituency. (Laughter).

Well, Sir, the greatest danger I see in this measure and in its method of presentation is this, that the Government thinks it essential to tie up the consideration of this problem with the problem of agricultural advances, and by so doing demonstrates its intention, and its intention obviously is this; that where sums of money are required by farmers to finance themselves, Government will say, "Why, you have alternative methods of raising money, you can raise money from private sources, and there is no need for you to rely on State resources to finance you; you have the ordinary mortgage, you have this chattels mortgage facility which is now forged, and therefore there will be no need to make advances under the Bill that we have taken to-day." I consider that that source of money, for the alleviation of the present situation, is the source which it is most proper to tap rather than to rely on extraneous and private sources at this stage.

Whether clause 30 appears to be innocuous, I consider it either should not be there or that it is a noxious clause; in as much as it does indicate that there may be some precedent created by its acceptance. After all, Sir, we cannot agree to the creation of a precedent which establishes the priority of a mortgage over finance which is necessary to ensure the control of disease, such as vaccination, inoculation, dipping and fencing. We cannot justify ourselves in any way in acquiescing in any such establishment of a precedent in that manner, and so I cannot help feeling that clause 30 is unnecessary. If we rely on the ordinary course of events and the established custom in regard to the application of priority in the monetary commitments, then I feel that clause 30 is unnecessary. We have not had time enough to deal with this matter. I deprecate its introduction in this manner, although probably the principles are the same, with the exception of this one principle embodied in clause 30.

THE HON. E. POWYS COBB: Your Excellency, I should like to make my position clear with regard to this Bill. I am entirely in favour of a Bill on these general lines. It is a thing the country has been asking for for a long time. It is a thing which the Agricultural Commission asked for some six months ago, and I am wholly in favour of the main idea of such a Bill, but I do regret that such a delay has taken place in its introduction that now it has to be rushed through this House. My chief fear of evil which may happen from this Bill is simply this, that whereas the Agricultural Advances Bill which we dealt with this morning can be regarded, and

should be I think properly regarded, as an interim measure, the present Bill is part of the permanent system, and it does involve the controversy which rages round that debatable clause 30. The hon. Member for the Lake has asked Government if it can give a certain assurance; I should be very glad if that assurance could be given in a slightly different way, namely, that clause 30 will not be taken as necessarily establishing a precedent which must be followed in further legislation which is part of the permanent structure that I hope to see built up on the system of agricultural finance.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I would just like to express my appreciation of this Bill being brought before the House, and I think it is an occasion upon which I might say that when Bills are brought in under the suspension of Standing Rules and Orders the case should be taken on its merits. I propose to take this Bill with that ideal in my mind. I have read the Bill but, as I understand it will be subjected to consideration by the Select Committee, there is no occasion to go into detail at the moment. But I would point out that the passing of this Bill would greatly facilitate financial assistance being given to the agricultural industry. At the moment a limited amount of money is lent on crops, and the security is very limited; if any case arises, it is really a civil action. Under this Bill there is security for the money advanced, and I submit that the rate of interest, once this Bill is passed, will drop to about 6 per cent. With that in mind—that it will assist agriculture and everybody else concerned—that it will assist the introduction of private capital in addition to the monetary assistance which Government proposes to give to the agricultural industry, I think it is a very wise measure to pass this Bill at the present time.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I very gladly give the assurance for which the hon. Members for the Lake, for Plateau North and for the Rift Valley have asked. I shall give it, Sir, in as wide and as clear phraseology as I can. The provisions of clause 30 of this Bill, Sir, which relate to the priority of advances from private sources, as against advances made to the same person from other sources, cannot possibly in any way affect the right which the Government has in other legislation dealing with advances from State funds for purposes of a public utility nature such as those specified—the right which the Government in those circumstances has to take a statutory priority. No provision in clause 30, as drafted, or in any similar clause or any other bill of this nature, can possibly have that effect, or in any way hamper the discretion that Government has in these matters in dealing with public moneys for public purposes.

HIS EXCELLENCY: The question is that a Bill to make provision relating to Chattel Securities and the Transfer of Chattels be read a second time.

The question was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Chattels Transfer Bill be referred to a Select Committee consisting of—

The Hon. the Treasurer,

The Hon. the Commissioner for Local Government,
Lands and Settlement,

The Hon. the Director of Agriculture,

The Hon. Member for the Rift Valley,

The Hon. Member for Plateau South,

The Hon. Member for Nairobi North,

and myself as Chairman.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT,
LANDS AND SETTLEMENT: Your Excellency, I beg to second the motion.

The question was put and carried.

Council adjourned till 12 noon on Saturday,
31st May, 1930.

SATURDAY, 31st MAY, 1930.

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Saturday, 31st May, 1930, His Excellency the GOVERNOR (LIEUT.-COLONEL SIR EDWARD WILLIAM MACLEAY GRIGG, K.C.M.G., K.C.V.O., D.S.O., M.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The Minutes of the meeting of the 30th May, 1930, were confirmed.

PAPERS LAID ON THE TABLE.

BY THE HON. THE ATTORNEY GENERAL (MR. A. D. A. MACGREGOR, K.C.):—

Report of Select Committee on the Agricultural Advances Bill.

Report of Select Committee on the Chattels Transfer Bill.

ORAL ANSWER TO QUESTION.

EMPIRE DAY DISTURBANCE AT INDIAN SECONDARY SCHOOL.

THE HON. CONWAY HARVEY asked:—

What action does Government propose to take in connexion with a disturbance which occurred at the Indian Secondary School, Nairobi, on Empire Day?

THE HON. THE DIRECTOR OF EDUCATION (MR. H. S. SCOTT): Government has already taken disciplinary action in regard to this matter and has also decided that the school should be closed for a week. Instructions to that effect have been given.

THE HON. CONWAY HARVEY: Arising out of that, Your Excellency, will Government take steps to protect law-abiding citizens of all races from intimidation and interference by political agitators?

THE HON. THE ATTORNEY GENERAL: Your Excellency, I can assure the hon. Member for the Lake that should necessity arise the Government will certainly do so.

CAPT. THE HON. E. M. V. KENZLY: Arising out of the answer to the first part of the question also has Government made any arrangements by which those loyal elements of the school will not be penalised by the shutting of the school on the basis of a communal punishment.

THE HON. THE DIRECTOR OF EDUCATION : No.

THE HON. A. H. MALIK : Arising out of that answer, Sir, was it not reasonable to expect that the school should take some steps to prevent the outside element entering into the school grounds?

THE HON. THE DIRECTOR OF EDUCATION : Your Excellency, under the particular circumstances of the school, I am afraid it was impossible for the authorities to foresee this intervention from outside.

SUSPENSION OF STANDING RULES AND ORDERS.

THE HON. THE ATTORNEY GENERAL : Your Excellency, with your leave, Sir, I beg to move that Standing Rules and Orders be suspended to enable two motions to be taken without due notice. These motions, Sir, are :—

That the Report of the Select Committee of this Council appointed to consider and report on the provisions of the Agricultural Advances Bill be adopted;

and secondly,

That the Report of the Select Committee of this Council on the provisions of a Bill relating to Chattel Securities and Transfer of Chattels be adopted.

THE HON. THE COLONIAL SECRETARY (MR. H. M. MOORE) : Your Excellency, I beg to second the motion.

The question was put and carried.

MOTIONS.

REPORT OF SELECT COMMITTEE ON THE AGRICULTURAL ADVANCES BILL.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I beg to move that the Report of the Select Committee of this Council on the provisions of the Agricultural Advances Bill be adopted.

I am happy to say, Sir, that the Bill survived the ordeal of Select Committee amazingly well, and the amendments which have been made are not only few in number, but are entirely non-contentious and relatively unimportant in nature. The only one to which I think attention need be drawn, Sir, is that the proviso to clause 8 has been amended on the recommendation of the Committee to make it quite clear just what the provision as to priority means. It will now provide that

any prior encumbrance or charge shall have priority over the charge thereby created. The Bill, as drafted, read : " That the charge hereby created shall not have priority."

In clause 12, Sir, to meet the expressed wish of the hon. Member for the Lake, the alternative of a fine—or the double punishment of fine and imprisonment—has been specifically inserted. Similarly, Sir, clause 13 has been made a little more explicit. Certain hon. Members expressed doubt as to just what the provisions of the Central Board's power to dispose of property—to direct how property is to be disposed of exactly—meant; and so the Committee recommend that there should be added certain words to that clause after the words " crops and produce " : " in respect of which a direction for disposal has been made by the Central Board," and that " in the absence of any such direction for disposal as aforesaid, all crops, produce and live stock as aforesaid may be dealt with and disposed of by the farmer as he may see fit." That is merely giving perhaps more obvious expression to what the intention of the draftsman was, and what the intention of everybody in this House was.

Sub-clause (3) of that clause, Sir, has been amended in the same way that clause 12 has been amended, by putting in a fine of £100 and provision for both fine and imprisonment.

Those, Sir, are the recommendations of the Select Committee as a whole. On the provisions of clause 3 there was a divergence of opinion. The three Elected Members who attended the meeting of the Committee pressed for further provision in that clause, Sir, empowering Your Excellency to appoint deputies or " alternatives " for the two unofficial members, the idea being, Sir, that these alternatives should be entitled to be present at all meetings of the Board though they could take no part in any discussion, nor could they vote on any question unless the appointed unofficial member for whom such alternative acted was absent.

The feeling of the majority of the Committee, Sir, was that continuity in this matter was essential; that all applications must be treated on their merits and exactly the same tests and criteria applied to all; that it was extremely important that the public should realise that that was the position; and that it was sincerely to be hoped that the unofficial members that it was appointed would make a point of attending every meeting; and that if deputies or alternatives were present at all these meetings it would automatically put up the cost very considerably—and hon. Members must bear in mind that these costs are a charge on the fund. In the opinion of the majority, Sir, it was infinitely preferable that we should appeal to the good

feelings of the unofficial members and get them to realise that their presence at every meeting was essential, rather than give them an opportunity of saying, "If I don't go to-day my deputy will carry on for me." Also it is very essential indeed that every penny that can possibly be set aside for the purpose of advances should be made available for that purpose, and that the costs of the administration of the fund should be kept down to the very lowest point. That, Sir, was the reason for the expressed opinion of the majority that there should be no alteration in the clause as drafted. I beg, Sir, to move that the Report be adopted.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. H. T. MARTIN): Your Excellency, I beg to second the motion.

HIS EXCELLENCY: Before I put the question, as I have not had an opportunity of considering the Report of the Select Committee until I entered this room, I should like to ask the hon. Attorney General what the position is as to a quorum.

THE HON. THE ATTORNEY GENERAL: There is no provision, Sir: the Board will be master of its own procedure.

HIS EXCELLENCY: The absence of any Member will not prevent the Board from functioning.

THE HON. THE ATTORNEY GENERAL: I sincerely hope that it will make procedure rules at its first meeting, Sir.

HIS EXCELLENCY: The question is that the Report of the Select Committee on the Agricultural Advances Bill be adopted.

THE HON. E. POWYS COBB: I beg leave to move the amendment which stands as the Minority Report in the Report of the Committee. In doing so I should like to emphasize that there is no difference of principle between the views of the majority and the minority. Both the majority and the minority are seeking to arrive at the preservation of the same principle, namely, the continuity of the work of the Central Board, and I think that for the reason that the composition of the Board, as set out in the Bill, meets with the complete approval of this House—I think for that very reason it must also meet with the acceptance of this House that if that principle is in any way impaired then the satisfactory nature of the Board itself is impaired; and it is to prevent any chance of the Board ever being short of any of its component parts that prompts myself and my colleagues to move this amendment. The position is this to my mind. It is obvious that

the Board will have a very stringent time in front of it—that its sessions will be of long duration. In order to provide for ordinary absences it is necessary I think that deputies should be able to take the place of the principal members of the Board. In the case of the official members, I have no doubt, should either or any of them have to be absent, that they will be represented by deputies chosen from their departments, who, no doubt, will have taken care to keep themselves fully aware of the views and policy of their principals, and I am asking that the same provision should take place in regard to absences of the two unofficial members. One of these members is a very busy man living in Nairobi. The other, I understand, is a member living at a distance. Now, while I fully agree with the hon. the Attorney General that those members should be appealed to—and I am perfectly certain they will answer to the appeal to attend on every possible occasion, yet there must—I think it must be admitted that there will be occasions when it will be impossible for them to attend. One of them, for example, may be ill. Now I think, if it is desirable, that the official members should be represented by deputies, it is equally desirable, I think, that the unofficial members should be represented by alternatives.

THE HON. THE ATTORNEY GENERAL: On a point of explanation, Sir, there is no suggestion that deputies should be allowed to act for the official members. The three officers mentioned must either attend themselves or there must be a vacant seat.

THE HON. E. POWYS COBB: In that case, Sir—it is a point which is rather new to me—I rather gathered from the proceedings of the Committee yesterday that the contrary was the case—but in that case I feel that the amendment should be extended to cover the official members as well as the unofficial members, and I think, Sir, that this principle has been applied with success to other statutory boards; and if that is so, I think it is an additional argument in favour of this amendment. I think the argument used by the hon. the Attorney General—that of expense—when weighed in the balance with the importance of continuity, is of lesser weight. After all, should the Board sit for 150 days in the year, it only means an increase of expense of about £900. It is perfectly true, as the hon. the Attorney General said, that every penny spent on the costs of administration will be a charge against the farming community, but I submit that continuity will be cheaply bought at such a figure, because I attach immense importance to continuity. On those grounds, Sir, I beg to move the amendment standing in my name and the names of those other Elected Members who sat on the Committee.

HIS EXCELLENCY: I think the hon. Member should move that the words "and the Minority Report" be added after the words "Majority Report." That is the only way of bringing it into this motion.

THE HON. E. POWYS COBB: I beg to move it in those terms, Sir.

COL. THE HON. W. K. TUCKER: I beg to second, Your Excellency.

HIS EXCELLENCY: The question is that the words "and the Minority Report" be added after the words "Majority Report."

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I only rise because I do not think it right to oppose an amendment moved by one of my colleagues without giving my reasons. I did not see this either until a few minutes before Your Excellency entered the room, and the reason I oppose the amendment is that it appears to me to create an entirely new principle whereby deputies sit round the table while their principals are also sitting there. If this amendment had been one which would have permitted alternatives to be appointed by Your Excellency, those alternatives only to attend in the unavoidable absence of their principals, I would have supported it, and I do not believe it would have hurt the very important need for continuity because the principal would presumably keep his alternative acquainted with the whole of the minutes of the meetings of the Board; and I would possibly hazard the guess that if the amendment had been put up in that way, simply appointing an alternative who would only attend in the unavoidable absence of his principal, Government might possibly have been prepared to consider and accept it, but to create a principle by which both member and deputy sit at meetings of boards and committees seems to me to be one which should not receive the support of this House.

THE HON. E. POWYS COBB: On a point of explanation, Your Excellency, may I be allowed to say that in the case of other statutory boards the alternatives for principal members do attend meetings, and therefore it is no new principle I am suggesting—for instance, the Land Board.

THE HON. T. J. O'SHEA: Your Excellency, I have much pleasure in supporting the amendment. I do so, Sir, because I think that this Board has been entrusted with very onerous work, and it seems to me hardly fair that the official members

should be left to carry on the burden of it in the event of illness arising among the two unofficial members, and I believe that they would be assisted in their work if they had the advantage of deputies to replace those gentlemen in the event of unavoidable absence. I presume, Sir, that the suggestion that those deputies should be allowed to attend all meetings at which their principals are present is solely for the purpose of ensuring continuity of policy. I see nothing wrong about that. I think the hon. mover is in order in saying that the principle is already recognised, and I see nothing vicious about it, at any rate. I believe, Sir, that the Board will be helped in its labours if deputies are appointed for the unofficial members. I have pleasure in supporting the amendment.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I have nothing to add to what I have already said in moving the adoption of the Majority Report, except to remind hon. Members that though the sum of £900 appears to be a very small one it is, for all practical purposes, 1 per cent. on the sum made available. The rate of interest was deliberately fixed at 8 per cent. largely because of the insecurity of any security the Board might get. If the rate is to be reduced to 7 per cent. in this way, Sir, by imposing on the overhead administration charges what practically amounts to another 1 per cent., then, Sir, we might just as well be honest and say the rate of interest shall be 9 per cent.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, cannot Government be persuaded, Sir, to accept the suggestion of my hon. friend the Member for Nairobi South, inasmuch as it will enable Government to appoint a substitute? That is all it amounts to, not that it will be essential for an individual substitute to attend all meetings, because I do not think that desirable, but Government might, I think, seriously recognise the necessity for having a substitute member and agree to an amendment embodying that principle.

LT.-COL. THE HON. J. G. KIRKWOOD: On a point of order, Your Excellency, may I ask if I am in order in moving an amendment to the amendment?

HIS EXCELLENCY: Yes.

LT.-COL. THE HON. J. G. KIRKWOOD: Then I move, Sir, that the amendment should read:—

"For each unofficial member the Governor may appoint a deputy."
I will leave it at that.

HIS EXCELLENCY: That is not an amendment to the amendment as it stands.

LT.-COL. THE HON. J. G. KIRKWOOD: I am simply taking it from the Minority Report, Sir—the first line.

HIS EXCELLENCY: I think if the hon. and gallant Member wishes to move that amendment he must allow the present amendment to be disposed of, and then move that as an amendment to the Minority Report, the Minority Report being adopted afterward in that form. He cannot bring it in as an amendment to the amendment.

LT.-COL. THE HON. C. G. DURHAM: On a point of information, Your Excellency, may I ask the hon. the Attorney General a question? Yesterday it was stated that the total cost of running this, including the salary of the secretary, would be 1 per cent, but now he tells us that by adding two members to the Committee it will still be 1 per cent.

THE HON. THE ATTORNEY GENERAL: May I say two things, Sir: I have no recollection that any of us made any such statement in the Committee yesterday. Hon. Members must appreciate that the provision of a secretary, with stenographer and typist, for the Central Board will alone amount to about 1 per cent, without taking into consideration the local boards at all.

On the second point, Sir, the figure which I took was the figure which was given to me by the hon. Member for the Rift Valley, who stated that the cost would be £300. I merely pointed out that that figure would amount to a further 1 per cent.

HIS EXCELLENCY: The question is that the words "and Minority Report" be entered after the words "Majority Report" in the motion.

The question was put and lost.

LT.-COL. THE HON. J. G. KIRKWOOD: I wish to move, Sir, that the motion should read:—

"For each unofficial member the Governor may appoint a deputy who shall hold office for so long as the unofficial member for whom he is appointed holds office."

HIS EXCELLENCY: What the hon. and gallant Member wishes to do is to delete the words after "deputy" at the bottom of page 2 down to "shall hold office for so long as"—that is what he wishes to do?

He wishes to delete all the words after "deputy" at the bottom of page 2 up to the word "deputy" in line 6 on the following page—is that the intention?

LT.-COL. THE HON. J. G. KIRKWOOD: That is my intention, Your Excellency.

HIS EXCELLENCY: The question is that in the Minority Report all the words after the word "deputy" in the second line of paragraph 2 of sub-clause 2 up to the word "deputy" in the first line of sub-clause (c) shall be deleted.

THE HON. THE ATTORNEY GENERAL: After the word "who" if I may intervene.

HIS EXCELLENCY: After the word "who," yes.

CAPT. THE HON. E. M. V. KENEALY: Your Excellency, I beg to second that amendment. It will involve an increase in efficiency—or no decrease in efficiency; it will involve no new expenditure. I think the Government will readily accept it.

HIS EXCELLENCY: This is a matter on which, perhaps, I had better say a word, because it leaves the appointment of a deputy entirely to my discretion. That will be the situation. I am prepared to accept the amendment on the understanding that I will not exercise that discretion unless it is shown that the existing unofficial members are unable to do the work. I say that because hon. Members must remember that very confidential information is going to be given to this Board, and it is not desirable to increase the numbers of the Board until it is absolutely necessary. The larger the number of members the more difficult in some ways will the work of the Board be, and for that reason I wish to keep it as small as possible. I think, moreover, that if either of the unofficial members found himself unable to serve owing to illness, it would be his duty to resign so as to allow me to appoint another substantive member in his place.

On the understanding therefore that I shall only appoint a deputy in the case of serious necessity, proved by the proceedings of the Board, I am prepared to accept that amendment.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I wish to move an alteration . . .

HIS EXCELLENCY: Order, order. The hon. Member has moved an amendment; he cannot speak again on his own amendment.

LT.-COL. THE HON. J. G. KIRKWOOD: I was going to move a different amendment to a different clause.

HIS EXCELLENCY: We must dispose of this amendment first.

The question is that the words after "a deputy who" in paragraph 2 (2) of the Minority Report up to the words "A deputy" in sub-clause (c) be deleted.

The question was put and carried.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I move that in clause 8, after the words "form of application" you delete the word "and" and substitute the words "and/or." In the first line on page 3.

HIS EXCELLENCY: Where is that?

CAPT. THE HON. H. E. SCHWARTZ: In the Bill, I think, Sir.

THE HON. CONWAY HARVEY: The reference is to the Bill, Sir—the top line on page 3.

HIS EXCELLENCY: Would the hon. and gallant Member give me the reference again?

LT.-COL. THE HON. J. G. KIRKWOOD: It is in the Bill, on page 3, clause 8. I propose that after the words "form of application" you delete the word "and" and substitute the words "and/or." The top line in page 3, Sir.

THE HON. THE ATTORNEY GENERAL: Permit me to point out, Your Excellency, that that will entail, I think, the same thing being done in two other places just below that: "and on the product or article to be cured" and "and upon all farm livestock." I take it that is the real wish of the hon. Member, Sir.

HIS EXCELLENCY: Is that necessary?

THE HON. THE ATTORNEY GENERAL: I personally should oppose it very strongly, Sir.

HIS EXCELLENCY: The question is that the following be added to the Majority Report of the Select Committee: In the Bill, clause 8, page 3, after the word "and" at the top of the page add the word "or"; after the word "and", page 3, line 2, add the word "or"; after the word "and", line 4, add the word "or."

MAJOR THE HON. R. W. B. ROBERTSON EUSTACE: Your Excellency, I beg to second that.

THE HON. THE ATTORNEY GENERAL: This point, Sir, was very carefully thrashed out at considerable length at the meeting of the Select Committee yesterday. That Committee, Sir, made no recommendation for any such amendment. The reasons, Sir, can be put quite simply. One of the primary objects of this legislation is to save expense, and the provisions of the Bill enable that to be done by providing for an automatic charge by a mere registration in the office of the Registrar of Titles against the title. That could not be done, Sir, in the case of live stock or any chattel. It has nothing whatever to do with the title, and, Sir, if the Board chose, in any particular case, to say, "We don't want to make this charge applicable to your land at all, we will take it on your severed crops or on your live stock," it would be necessary to prepare an instrument with an elaborate schedule, and at once there would be not only expense but delay. Those are the two things that we are all out to avoid in this measure. The whole of the Select Committee yesterday were at one on that, that it would be better to leave things as they are in the draft, being certain, as we are, that so long as the provisions remain as they are now there will be no expense beyond the irreducible minimum and no delay. I can hold out no hope that, if this amendment is accepted, there will not be considerable delay and inevitable expense.

HIS EXCELLENCY: Does the hon. and gallant Member wish to press the amendment?

LT.-COL. THE HON. J. G. KIRKWOOD: I should like to point out, Sir, that in my opinion clause 8 requires alteration. It lays down now that where an advance is made on the land it automatically covers a growing crop and a future crop. That, if it stands, will be a great disadvantage to the farming community whom you propose to assist inasmuch as it is going to considerably curtail commercial credits.

HIS EXCELLENCY: The hon. Member will understand that he is speaking by leave of Council. He has already spoken to his amendment. He should have said this before.

LT.-COL. THE HON. J. G. KIRKWOOD: In the report before us, in clause 13, that has been altered. A proviso has been put in there which reads:—

"In the absence of any such direction for disposal as aforesaid, all crops, produce and livestock as aforesaid may be dealt with and disposed of by the farmer as he may see fit."

HIS EXCELLENCY: Order, order. I think it will be desirable that the hon. and gallant Member should withdraw his amendment. If he wishes to speak on the demerits of clause 8 he can do that. He has not yet spoken on the main motion. He may do that, but he is not entitled to make two speeches on this amendment. Is the amendment withdrawn?

LT.-COL. THE HON. J. G. KIRKWOOD: Yes, Sir.

LT.-COL. THE HON. C. G. DURHAM: On a point of explanation, Your Excellency, he did not attend the meeting of the Select Committee although he was a member of it.

LT.-COL. THE HON. J. G. KIRKWOOD: On a point of explanation, Sir, I was told yesterday that the meeting of the Select Committee was to be held this morning. I inquired this morning on the telephone, and was told that it had already sat.

HIS EXCELLENCY: If the hon. Member wishes to deal with clause 8 he can do so now it is before Council.

LT.-COL. THE HON. J. G. KIRKWOOD: I would like to point out, Your Excellency, if I may, that clause 8 is in contradiction to the amendment proposed in clause 13. Clause 8 lays down that automatically there is a lien on the crops, provided money is lent on the land itself. In clause 13 it is laid down that that is only applicable if provided for by instruction of the Board.

THE HON. A. H. MALIK: Your Excellency, I want to move an amendment to clause 3 of the Bill, sub-clause (d). Is this the proper time to do that, Sir?

HIS EXCELLENCY: What is the amendment?

THE HON. THE ATTORNEY GENERAL: I have not yet got it, but the hon. Member asked whether he might put it at this moment.

HIS EXCELLENCY: He can move an amendment to the report. He cannot move an amendment actually to the Bill. He must move the amendment he desires in the Bill as an amendment to the report.

THE HON. A. H. MALIK: Yes, Sir. I beg to move that the Majority Report be amended by the insertion of the words: That in clause 3, sub-clause (d) the word "two" be deleted, and "three" inserted; and that after the word "members" the words "one of whom shall be an Indian delegate" be inserted.

In moving this amendment, Sir, as I explained yesterday, there is a considerable amount of Indian agricultural interest in the country, and, as I said yesterday also, Sir, the Indian farmer in the majority of cases, when he wants to purchase his farm, has to pay considerably more than the European farmer; and it seems to me, Sir, very unfair that a farmer who is compelled to pay nearly twenty-five times the price shall not be represented on a board which is appointed for the relief of the farmers. The hon. the Attorney General stated that representation could be accorded to the farmers on the district boards—local boards—and if a case was made out for the local boards, it would be considered by the Central Board; and he also added that no useful purpose would be served by the addition of an Indian member. I submit, Sir, that the same argument must hold good in the case of European members, because they could also be represented on local boards, and when the case is made out for the local board and an approved application submitted to the Central Board, it will be dealt with naturally by the European members. He has stated further this morning that only the two European unofficial members should be allowed to sit, and that it was not advisable that deputies should also be appointed to attend all these meetings. Well, Sir, I think, in view of all that, that the same argument can be adduced for the case for the appointment of an Indian member to this Board. I do not think that it needs any more argument or explanation. I sincerely trust, Sir, that the Government will accept this amendment, and that some sports Member will second it, Sir.

HIS EXCELLENCY: Does any hon. Member rise to second the amendment? The motion is therefore lost.

I think, if the hon. the Attorney General will now move that the words "and the Minority Report, as amended by this Council" be added after the words "Majority Report" in the motion.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Majority of the Select Committee of the Legislative Council, and the Report of the Minority, as amended in this Council this morning, be now adopted.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Majority Report of the Select Committee on this Bill, and the Minority Report, as amended by this Council, be adopted.

The question was put and carried.

REPORT OF SELECT COMMITTEE ON THE CHATELS TRANSFER BILL.

THE HON. THE ATTORNEY GENERAL: I beg to move the adoption of the Report of the Select Committee of this Council on the provisions of a Bill relating to Chattel Securities and the Transfer of Chattels.

Here, again, Sir, I am happy to say that, although the Report is a somewhat longer one than that which we have just discussed and considered, the contents of the Report call for very little comment indeed; so little, Sir, that I think I can quite fairly say there are only four points to which attention need be drawn. The first relates to the question of fees. The Bill, as introduced, provided for a fee of Sh. 10 for each step which was taken in connexion with the registration of an instrument or memorandum of satisfaction when the instrument had been discharged. The recommendation of the Committee, Sir, is that the fee should be halved—that the fee should be Sh. 5 only.

The other two points are important, Sir. The execution of a deed, when there is more than one grantor, is deemed to be effected when it is signed by the first of the grantors. As the period for registration is twenty-one days, and as one grantor may be here and another in England, it is manifestly impossible for such an instrument ever to be signed, executed and registered without having to go to the court. So we suggest that the execution should be effective as from the date on which the last of the grantors signs the instrument.

Then there is the point of the date from which the instrument shall be effective. The Bill, as printed, provides that the period shall be from the date of execution. The Committee felt very strongly, Sir, that that was a very unwise and unsafe provision. It would, for instance, enable a tradesman who feared the bankruptcy court and expected its intervention at practically any moment to execute an instrument over his chattels and then not to register it until the doors of the Divorce Court had closed behind him.

CAPT. THE HON. H. E. SCHWARTZ: Divorce? (Laughter.)

THE HON. THE ATTORNEY GENERAL: No, not quite such a dangerous place—the Bankruptcy Court. After full consideration, Sir, your Committee came to the conclusion that in the interests of commerce and trade in the Colony generally it was very much safer to say that an instrument should be effective from the date of registration and not from the date of execution.

There is one other point only, Sir, to which I need draw attention, and that is to amendments in the Third Schedule. The curious provision had slipped in there, Sir—both in section 5 and section 7—that the grantee could exercise his rights if a judgment against the grantor remained unsatisfied for ten days. On that I can only say that the person against whom judgment is given has got thirty days in which to appeal from it, and it seems rather ridiculous that he should be liable to penalty during this *locus penitentie*, and the Committee suggests that the provision should be, not that judgment has been delivered against him but that execution has been levied or has not been settled or satisfied within ten days.

These are the only changes which have been made: the others are largely clerical and consequential. I beg to move that the Report be adopted.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Report of the Select Committee on the Chattels Transfer Bill be adopted.

The question was put and carried.

BILLS.

THIRD READINGS.

AGRICULTURAL ADVANCES BILL.

CHATELS TRANSFER BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Agricultural Advances Bill and the Chattels Transfer Bill be now read a third time and passed.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to second the motion.

COLONEL THE HON. W. K. TUCKER: Your Excellency, in the course of Select Committee last night, it was agreed that one or two words might appropriately be said, either on the report stage or third reading, in explanation of the obvious reluctance on this side of the House yesterday to treat this measure as an emergency one: Have I your permission, Sir, in two or three words, to explain that reluctance?

HIS EXCELLENCY: It is perhaps just within the rules of order.

COL. THE HON. W. K. TUCKER: Well Sir, I am not going to take more than a minute or two, but we feel that to the people outside two or three words are necessary. Your Excellency, it is obvious that we did not regard the two Bills as being directly associated one with the other, and that is rather supported by the way in which the summons to this Council was worded, because we were asked to pass the Farmers Advances Bill and we were asked to consider the other one. Then, Sir, the moment you represented to us, Sir, that they stood or fell together, I think our subsequent action showed that the last thing we desired to do was to delay one or the other. But our instructions very briefly were as follows: The point was put up by the hon. Member for the Lake yesterday—we feared that the Land Bank Bill might be prejudicially affected. That, Sir, was quickly dispelled by the unqualified assurance of the hon. the Attorney General. A second practical point was this, Sir, that believing that the two were not associated, we had spent the whole of the day and most of the night of Thursday examining the other Bill, and faced with 52 clauses of new Bill, which we did not regard as urgent, we took up that attitude. The third point, Sir, was—and an important one—that two very important bodies were involved, particularly the Association of Chambers of Commerce. The President of that body made special representations that if possible the passing of the measures should be delayed until the next session of Council. The fourth consideration was the fact that Members on this side of the House had just been supplied with copies of legislation in New South Wales and South Africa bearing on this very important subject of priority. All I want to say now is that we do on this side of the House—and after all, we have supported this Bill once you made the explanation—think it is a thousand pities that for want of the determination, clear thinking and persuasive tongue of the hon. the Attorney General the country shall have had to wait five years for this measure. We believe at least that the need is felt badly to get into force such a piece of legislation, whose absence in the past has undoubtedly lost the country a considerable amount of advantage and money.

HIS EXCELLENCY: The question is that the Agricultural Advances Bill and the Chattels Transfer Bill be read a third time and passed.

The question was put and carried.

The Bills were read a third time and passed.

HIS EXCELLENCY: I may say that the Agricultural Advances Bill has now been signed and it therefore comes into effect from to-day.

It will be, I think, for the convenience of Members to know that it is proposed to hold the next session of this Council at Mombasa on July 10th. At that meeting it is proposed to deal with various bills that are still on the Order Paper, or about to be introduced, so as to make the Order Paper clear for the Estimates at the subsequent session of Council. I only make one reservation in regard to that meeting. It is just possible that it may be necessary for Government to summon another emergency meeting of Council before July 10th to deal with the question of the wheat pool, and if that does prove to be a necessity, I hope hon. Members will set aside their convenience and come. It is a very important matter.

Council adjourned sine die.

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