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COLONY AND PROTECTORATE OF KENYA



LEGISLATIVE COUNCIL
DEBATES, 1934

VOLUME I

NAIROBI
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1934

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List of Members of Legislative Council, 12th February, 1934

President:

HIS EXCELLENCY THE GOVERNOR, BRIGADIER-GENERAL SIR JOSEPH
ALOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.

Ex-officio Members:

COLONIAL SECRETARY (Hon. H. M.-M. Moore, C.M.G.).
ATTORNEY GENERAL (Hon. W. Harragin).
TREASURER (Hon. G. R. Sandford, O.B.E.) (Acting).
CHIEF NATIVE COMMISSIONER (Hon. S. H. La Fontaine, O.B.E., D.S.O.,
M.C.) (Acting).
COMMISSIONER OF LOCAL GOVERNMENT, LANDS, SETTLEMENT AND
MINES (Hon. F. B. Hosking, O.B.E.) (Acting).
DIRECTOR OF MEDICAL SERVICES (Hon. Dr. A. R. Paterson).
DIRECTOR OF AGRICULTURE (Hon. H. B. Waters).
DIRECTOR OF EDUCATION (Hon. H. S. Scott).
GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS
(Brig.-Gen. the Hon. G. D. Rhodes, C.B.E., D.S.O.).
DIRECTOR OF PUBLIC WORKS (Hon. H. L. Sikes).
COMMISSIONER OF CUSTOMS (Hon. E. G. Bale.) (Acting).

Nominated Official Members:

HON. T. FITZGERALD, O.B.E. (Postmaster-General).
HON. T. D. H. BRUCE (Solicitor General).
COL. THE HON. R. WILKINSON, D.S.O. (Officer Commanding, Northern
Brigade).
HON. H. R. MONTGOMERY (Provincial Commissioner, Nyanza).
HON. E. B. HORNE, O.B.E. (Provincial Commissioner, Central Province).
MAJOR THE HON. H. H. BRASSEY-EDWARDS (Deputy Director (Animal
Industry) and Chief Veterinary Officer).
HON. H. E. WELBY (a) (Provincial Commissioner, Rift Valley).
HON. S. H. FAZAN, O.B.E. (b) (Provincial Commissioner, Coast).
CAPT. THE HON. A. T. A. RITCHIE, M.C. (c) (Game Warden).

European Elected Members:

LT.-COL. THE HON. LORD FRANCIS SCOTT, D.S.O. (Rift Valley).
CAPTAIN THE HON. H. E. SCHWARTZ (Nairobi South).
HON. CONWAY HARVEY (Nyanza).
HON. T. J. O'SHEA (Uasin Gishu).
MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE, D.S.O. (Coast).
LT.-COL. THE HON. C. G. DURHAM, D.S.O. (Kyambu).
LT.-COL. THE HON. J. G. KIRKWOOD, C.M.G., D.S.O. (Trans-Nzola).
THE HON. F. A. BEMISTER (Mombasa).
CAPT. THE HON. J. L. COTTER, M.C. (Aberdare).
MAJOR THE HON. J. O. K. DELAP, D.S.O. (Ukamba).
LT.-COL. THE HON. W. K. TUCKER, C.B.E. (Nairobi North).

(a) Temporary Member, in place of Lt. Col. O. F. Watkins, C.M.G., C.B.E., D.S.O.

(b) " " " " Mr. L. A. Field-Jones, nominated to represent
interests of Arab Community.

(c) " " " " Mr. S. F. Deck.

LIST OF MEMBERS OF LEGISLATIVE COUNCIL—(Contd.)

Indian Elected Members:

HON. HAKIM SINGH.
HON. DHANWANT SINGH.
HON. ABDUL WAHID.
HON. C. M. PATEL.
HON. N. S. MANGAT.

Arab Elected Member:

HON. SHERIFF ABDULLA BIN SALIM.

Nominated Member Representing the Interests of the African Community:
THE REV. CANON THE HON. G. BURNS, O.B.E.

Acting Clerk of the Legislative Council:

MR. J. F. G. TROUGHTON.

ABSENTEES FROM LEGISLATIVE COUNCIL MEETINGS

12th February, 1934.

HON. E. B. HORNE, O.B.E.
HON. T. FITZGERALD, O.B.E.
COLONEL THE HON. R. WILKINSON, D.S.O.
HON. S. H. FAZAN, O.B.E.

13th February, 1934.

HON. E. B. HORNE, O.B.E.
HON. T. FITZGERALD, O.B.E.
HON. CONWAY HARVEY.

15th February, 1934.

HON. ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT.

HON. T. FITZGERALD, O.B.E.
HON. H. R. MONTGOMERY.
CAPTAIN THE HON. J. L. COTTER, M.C.
HON. DHANWANT SINGH.

24th April, 1934.

COLONEL THE HON. R. WILKINSON, D.S.O.

25th April, 1934.

HON. THE COMMISSIONER OF CUSTOMS.
COLONEL THE HON. R. WILKINSON, D.S.O.

26th April, 1934.

HIS EXCELLENCY THE GOVERNOR.
HON. THE COMMISSIONER OF CUSTOMS.
COLONEL THE HON. R. WILKINSON, D.S.O.

27th April, 1934.

HIS EXCELLENCY THE GOVERNOR.
COLONEL THE HON. R. WILKINSON, D.S.O.
THE HON. SIR ALI BIN SALIM, K.B.E.

9th May, 1934.

HON. THE COMMISSIONER OF CUSTOMS.
HON. G. H. C. BOULDERSON.
HON. SIR ALI BIN SALIM, K.B.E.

10th May, 1934.

HON. THE COMMISSIONER OF CUSTOMS.
HON. G. H. C. BOULDERSON.
HON. SIR ALI BIN SALIM, K.B.E.

11th May, 1934.

HON. THE DIRECTOR OF MEDICAL SERVICES.
HON. THE COMMISSIONER OF CUSTOMS.
HON. G. H. C. BOULDERSON.
MAJOR THE HON. H. H. BRASSEY-EDWARDS.
HON. SIR ALI BIN SALIM, K.B.E.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

1934

FIRST SESSION

MONDAY, 12th FEBRUARY, 1934

The Council assembled at 11 a.m. at the Memorial Hall, Nairobi, on Monday, 12th February, 1934, His Excellency THE GOVERNOR (BRIGADIER-GENERAL SIR JOSEPH ALOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.), 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:

SYDNEY HUBERT LA FONTAINE, Acting Chief Native Commissioner.

Acting European Member:

WILLIAM KINGTON TUCKER, Acting Member for the Nairobi North Electoral Area.

COMMUNICATION FROM THE CHAIR.

HONOURABLE MEMBERS OF LEGISLATIVE COUNCIL.

It is only a few weeks since we were last in Session and there is therefore but little of interest for me to include in this address. The visit and unfortunate illness of the Secretary of State has of course been the outstanding event, and I am sure you will all join with me in expressing to Sir Philip and Lady Cunliffe our thankfulness and relief at his recovery. Notwithstanding his disappointment, and ours at the upset of his plans, I believe he will carry away with him recollections of a kindly and sympathetic people who are proud of their country and justifiably hopeful as to its future. I

believe also that the insight he has gained into our conditions and problems will make him always our friend—more friendly still towards Kenya.

As regards the financial position. When the draft Estimates for 1934 were presented to Council, the revised estimates of revenue and expenditure for 1933 indicated an estimated deficit for 1933 of approximately £85,000, as against a budgetted deficit of £176,000. I pointed out that the figure of £85,000 was regarded as a conservative estimate and that the experience of the last two or three years had demonstrated that actual savings at the end of the year proved considerably in excess of what could reasonably be foretold at the time the draft Estimates for the ensuing year were drawn up.

The accounts for 1933 are not yet closed. Up to the end of November there was an actual deficit of £23,532. From such preliminary calculations as it has been possible to make covering December returns it seems clear that the actual deficit on the year will exceed that figure though it will fall short of the previous estimate of £85,000.

The agricultural position has in some ways changed materially for the better in the past few months. In particular the price of maize on overseas markets has registered a sharp advance. This, together with the higher level of local prices, should place the maize farmer in a much more favourable position, since a given change in price in market centres exercises a much more than proportional influence on values at the farm. Although it is anticipated that the yield of European-grown maize will not be very materially below that of last season, the present lack of rains, with hot weather and drying winds, is unfortunately having a serious effect on the maize crop in particular in the native reserves of the Kikuyu Province.

On present prospects the yield of wheat will be something like 150,000 bags as against last season's yield of 63,000 bags, so that it appears that the Colony will again become self-supporting in this respect, besides continuing to supply neighbouring territories with the major part of their flour requirements.

The position of the sisal industry is more favourable than for some time past. Indeed, the quantity received at the Coast for export during the latter half of 1933 was a record for the Colony, the figures for six-monthly periods since the beginning of 1931 being 6,600 tons, 7,200 tons, 6,900 tons, 9,000 tons, 9,000 tons and (lastly) 9,900 tons. The present juncture is a favourable one at which to bring under consideration measures such as those envisaged in the Sisal Bill which will come before you. It is essential that if East Africa is to maintain its position against competing sources of fibre it must be ready

to supply and as far as possible anticipate every new demand for sisal fibre; we must above all take advantage of every improvement in machinery and in the technical and economic organization of production and marketing. The Sisal Bill represents a move towards the furtherance of these objects, the principle of financial contribution by Government being incorporated in the Bill. An Ordinance for similar purposes has already been enacted in Tanganyika, with which territory close collaboration is being maintained.

Without going into too much detail, it may be mentioned that the situation in regard to tea and wool has also materially improved. The situation in regard to coffee, butter, oilseeds and wattle bark is unfortunately at the moment not so favourable.

The recent rise in coffee prices is to be welcomed as some offset to the decline in the crop yield owing to the unfortunate drought of 1933, and the recovery in the condition of the trees after the November rains promises well for the main crop of 1934 provided the Colony enjoys, as I hope it will, good rains in the near future.

As far as butter is concerned, as I stated in my last Legislative Council speech, a departure which should go far to bring wealth into the native reserves and at the same time to contribute towards overheads in the handling of produce of European-owned farms is the supply of butterfat by natives to the Co-operative Creameries. Though this kind of participation will not be without its initial difficulties I have every confidence that a successful scheme will be evolved within a reasonable space of time. There is some hope, too, of opening up new markets for ghee.

Although, I fear, partially due to the number of cattle that died owing to the drought, the quantity of hides exported during 1933 is expected to be in excess of 90,000 cwt. This is greater than in any previous year. From the immediate standpoint, the value of the export in 1933 will be some 50 per cent greater than in the two previous years. An encouraging degree of success is attending the efforts to improve the preparation of the hides and this commodity will doubtless take its place once more as one of our most important exports.

Experiments in the disposal of surplus native cattle for the manufacture of fertilizers and other by-products are being continued and it is hoped that these, if successful, will lead ultimately to a partial solution of the pressing evil of overstocking in native reserves.

The presence of locusts in the vicinity renders it imperative to conserve our resources somewhat at a time which might otherwise have been opportune for wise productive expenditure. It is earnestly to be hoped that the threat involved in their

proximity does not develop into a visitation such as has been recently experienced in this Colony.

You may have seen in the press that I recently paid a visit to the goldfields and from what I saw there I am very hopeful as to their future. There is just a possibility that the Secretary of State may be able to go by air to Kakamega on Thursday next and see something of the mining operations in that neighbourhood, but we are naturally anxious that he should do nothing to overtax his strength. He is intensely keen to make this visit for it will give him an insight not only into mining conditions, but also as regards the efforts that are being made both by the Government and the miners to ensure fair play to the natives.

It may interest you to know that Sir Robert Williams, the Chairman of Tanganyika Concessions is coming to stay with me on Sunday next. We shall welcome Sir Robert for his company's interests in Kenya are of considerable importance.

There has, as you are aware, been some uneasiness over events in the Emburu country, particularly with regard to murders that have been committed there and to the difficulty of obtaining evidence sufficient to bring the perpetrators to justice. Evidence has now been produced to the satisfaction of the Supreme Court that owing to the influence of the Laibon Ole Olomo the administration was being hampered in this respect and he was recommended for deportation by the judge. The recommendation received the approval of the Governor in Council and arrangements have been made to deport him to Kwale in the Coast Province.

The Fourth Interim Report of the Civil Service Board will be laid on the table during the session. This, and the other Reports have been before Executive Council, but the issues are so involved that a special meeting of the Council has been called to give consideration to the many complicated details. It is hoped that I shall be able to give you more definite information about the Local Civil Service when the new Council meets in April.

I am also hopeful that as a result of the Secretary of State's visit we may be able to proceed with the erection of the Central Offices. We are, I think, all agreed that the time has now arrived when these offices should be built: the cash position is more favourable, building costs are lower, and the distribution of this loan expenditure which has already received your approval will materially relieve the unemployment situation.

The measures which will be laid before you during this final Session are not of a very controversial character and I trust that it may be possible to dispose of them during the week. It is unfortunate that we cannot meet on Wednesday but this cannot be helped as the Secretary of State is giving

his promised interviews to European and Asiatic Elected Members on that morning. As soon as business is completed I propose to adjourn Council and then issue the usual Proclamation for its dissolution. As far as I can see the new Council will hold its first Session on or about the 24th April: this is based on nomination day being on or about the 12th March and election day on or about the 27th March. Of course, it all rests on the length of this Session.

Honourable Members of Council, it is possible that I shall be with the Secretary of State during the last few days of this Session and thus will not be in the Chair. I should therefore like to express my thanks to all Members for the valuable services they have rendered to the Colony during the past three years when you have had to deal with many vexed and difficult questions. In particular I must thank the Unofficial Members who often at great personal inconvenience and at some expense have given freely of their time and of their knowledge and experience.

Honourable Members, in conclusion and in opening this Session I most earnestly trust that with the help of Almighty God its deliberations may tend to the further peace, prosperity and welfare of the Colony of Kenya.

LT-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I have been requested by Members on this side of the House to say how much they would like to be associated with your remarks about the Secretary of State.

HIS EXCELLENCY: Thank you! I will convey your message.

MINUTES.

The minutes of the meeting of the 31st December, 1933, 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):

Fourth Interim Report of the Civil Service Board.

• Schedule of Additional Provision No. 4 of 1933.

BY THE HON. THE ATTORNEY GENERAL (MR. W. HARRADIN):

The Civil Procedure (Amendment No. 3) Rules, 1933.

Register of Voters (Amendment) Rules, 1934.

Voting by Post Rules, 1934.

Legislative Council (Amendment) (Election of Members) Rules, 1934.

Legislative Council (Amendment) (Indian area) Rules, 1934.

By THE HON. THE CHIEF NATIVE COMMISSIONER (MR. S. H. LA FONTAINE) :

Report of Select Committee on the Native Exemption Bill.

NOTICE OF MOTIONS.

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

ECONOMIC RECONSTRUCTION COMMITTEE.

" This Council regrets the delay in the appointment of an Economic Reconstruction Committee, and trusts that such a Committee will be appointed immediately with a personnel and terms of reference adequate to the purpose in view."

THE CIVIL SERVICE BOARD.

" This Council views with grave alarm the manner in which a new Committee calling itself the Civil Service Board is dealing with the accepted recommendations of previous Committees on the subject of a Local Civil Service."

BILLS.

FIRST READINGS.

On motion of the hon. the Attorney General the following Bills were each read a first time :—

- The Non-Native Poll Tax (Amendment) Bill.
- The Transfer of Revenue Collection Bill.
- The Chattels Transfer (Amendment) Bill.
- The Land and Agricultural Bank (Amendment) Bill.
- The Criminal Procedure Code (Amendment) Bill.
- The Arbitration (Amendment) Bill.
- The Tax on Imported Packages (Amendment) Bill.
- The Public Officers (Change of Titles) Bill.
- The Interpretation and General Clauses (Amendment) Bill.
- The Sugar (Amendment) Bill.
- The Limitation Bill.
- The Sisal Industry Bill.

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

Council adjourned till 10 a.m. on Tuesday,
13th February, 1934.

TUESDAY, 13th FEBRUARY, 1934

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Tuesday, 13th February, 1934, THE HON. THE COLONIAL SECRETARY (MR. H. M.-M. MOORS, C.M.G.), presiding.

The President opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 12th February, 1934, were confirmed.

NOTICE OF MOTIONS.

THE HON. THE TREASURER (MR. G. R. SANDFORD) : I beg to give notice of the following motion :

" Be it resolved that this Council hereby approves the expenditure of a sum of £2,750 upon the purpose specified in the Schedule hereto as a charge against Loan Account and further approves provision being made therefor from savings on the amount already approved for medical buildings.

SCHEDULE.

Medical Buildings :

Kisumu Hospital £2,750."

ORAL ANSWERS TO QUESTIONS.

LANDING FACILITIES AT MOHORO BAY.

No. 5.—By THE HON. CONWAY HARVEY :

" What steps are being taken by the Railway Administration in connexion with the provision of landing facilities for heavy mining traffic at Mohoro Bay?"

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS (BRIG.-GEN. G. D. RHODES) : The Railways and Harbours Administration has carried out a survey of Mohoro Bay and a suitable site for a pier has been selected. This site has been accepted by the local administrative and road authorities.

The Railways and Harbours Administration will undertake the construction of a suitable pier as soon as it is satisfied that the expenditure is justified.

There are at present no definite indications of a heavy mining traffic but close touch is being maintained with the mine owners and Provincial authorities.

THE HON. T. J. O'SHEA: Arising out of that answer, may I ask whether the Railway Administration have ascertained from the owners of the mines at present operating there if there is any machinery coming forward in the near future necessitating these facilities?

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: The position, Sir, is that we have been in touch with mining interests and I have asked for any information they can give me in regard to their future progress. Up to date I have had one letter only from that area and the information was of a very vague and indefinite nature. I have no doubt that further information will be forthcoming in due course.

THE HON. T. J. O'SHEA: May I ask whether, in the event of information being forthcoming that there is heavy machinery on order requiring these facilities, that the Railway will in the immediate future proceed with the erection of this pier?

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: I think that point is answered definitely in paragraph 2 of my reply when I stated that the Railways and Harbours Administration will undertake the construction of a suitable pier as soon as it is satisfied that the expenditure is justified. I would just point out that, in addition to the pier, it may also involve Government in expenditure because a road of access will be necessary.

MOTIONS.

SCHEDULE OF ADDITIONAL PROVISION No 4 OF 1933.

THE PRESIDENT: Owing to the fact that I am presiding this morning, I will, with the leave of the House, ask the hon. the Treasurer to move the first motion standing in my name.

THE HON. THE TREASURER: I beg leave to move that Schedule of Additional Provision No. 4 of 1933 be referred to a Select Committee.

It is proposed, Sir, that the Committee should be composed in the usual way of the Select Committee dealing with Estimates. The Schedule of Additional Provision No. 4 contains all the additional provision which has been found necessary during the course of the year up to the 31st December, 1933, and the amount of additional provision not as yet covered by motions in this House totals the figure of £22,515. Of that total, a sum of £4,125 is new provision not covered by savings; £9,233 represents small adjustments in votes covered by savings on other votes; and £9,156 represents additional provision covered by revenue, the most important item being the

additional money, £7,175, required for making the refunds of duty on wheat imported under licence. I do not think it is necessary for me to go into any further details in the Schedule which can be examined in Select Committee.

THE HON. THE ATTORNEY GENERAL (MR. W. HARRAGIN): I beg to second the motion.

THE PRESIDENT: The question is that Schedule of Additional Provision No. 4 of 1933 be referred to a Select Committee.

The question was put and carried.

PENSION: MR. S. F. DECK.

THE HON. THE TREASURER: I beg leave to move:

"This Council approves the payment of an unreduced pension of £1,485 a year to Mr. S. F. Deck, who is retiring from the service of this Colony, with effect from about the 21st May, 1934, in lieu of a reduced pension of £776-5-0 a year and a gratuity of £2,587-10-0."

The European Officers' Pensions' Regulations provide that an officer can opt to receive a gratuity and reduced pension, the reduced pension being three-quarters of his full pension and the gratuity ten times the amount of pension he has foregone; and the regulations further provide that the option must be exercised within a stated time, and once exercised cannot be revoked. There are, however, certain circumstances in which Government considers that it is legitimate for an officer to revoke an option once exercised. In 1933, and again in the early part of 1934, motions were placed before this House and approved in which permission was given to an officer who had been retrenched to change his mind; he was allowed to re-register his option, and that was done in the interests of the officer. Of course, it was felt that the circumstances in which he had registered his option had been changed materially by retrenchment. Furthermore, in the case of retrenched officers, the principle acted both ways: that is to say, if an officer had exercised his option for a gratuity and reduced pension, he was allowed to take full pension; and also, if he had not exercised that option, he was allowed to exercise it if he wished.

The motion before the House now relates to an officer retiring in the ordinary course of events. There is no question of retrenchment in this case and in the motion the suggestion is that this officer, who had in fact exercised his option to take a gratuity and reduced pension, should be allowed to change his mind. The motion is placed before Council because Government considers that, in the present financial circumstances of the Colony, that may be allowed if the officer asks to do it.

The effect of passing this motion on the finances of the Colony is roughly as follows:—

During the year following Mr. Deck's retirement we should, if he was held to his option, have to pay the gratuity mentioned in the motion, £3,587-10-0, plus a reduced pension of £776-5-0, a total of £4,363-15-0. That would be the amount to be paid during the first year after Mr. Deck's retirement. By allowing Mr. Deck to cancel his option at his own request the amount we have to pay during the first year of his retirement is £1,035. There is, therefore, an immediate saving in that year of £2,328. In the following years we shall, of course, have to pay a higher pension, which will be £258 a year more, but, in view of the immediate saving during the forthcoming year to the Colony, Government feels that it is quite reasonable to allow Mr. Deck of his own initiative to cancel his option and to opt now for full pension.

The privilege of changing an option previously exercised will only operate as a temporary measure while the Colony is in difficult financial circumstances and the suggestion coming from the officer that he should be allowed to change his mind will not be approved by Government unless Government feels that it would be in the Colony's interests to approve it.

There is one further point I should like to make about this motion. It is only in cases where an officer who has opted for a gratuity wishes to change that to a full pension that Government would support the request at this time because, if an officer who had not opted for a gratuity now asked that he should change his mind and have a gratuity and reduced pension, that would throw an added burden on the Colony in the first year of his retirement, and it is precisely that that we seek to avoid.

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

THE PRESIDENT: The question is;

"This Council approves the payment of an unreduced pension of £1,035 a year to Mr. S. F. Deck, who is retiring from the service of this Colony, with effect from about the 21st May, 1934, in lieu of a reduced pension of £776-5-0 a year and a gratuity of £2,587-10-0."

THE HON. P. A. BEMISTER: Sir, may I ask what was the salary of Mr. Deck when he was working? I want to get the percentage.

THE HON. THE TREASURER: On a point of explanation, the salary was £1,350, and he was also in receipt of a pensionable house allowance of £202-10-0. The amount of pension earned is the maximum two-thirds.

CAPT. THE HON. J. L. COFFEY: Your Excellency, on this point as to whether this officer is allowed to change his mind or not, as pointed out by the Acting Treasurer, it is quite true that probably the finances of the Colony will benefit by the fact that he has changed his mind; but I think it a most disastrous idea that an officer should be allowed to chop and change about like this as it may suit himself. At present it is very difficult to put capital into investments on beneficial terms. All over the world you see vast sums of money lying idle in various banks. I read the other day that £82,000,000 are lying without interest in the banks of South Africa. I do not vouch for the truth of that statement, but it shows that capital, as regards the interest that it can obtain, is at a discount at the present moment. Therefore, I suggest, it pays this officer very handsomely to change his mind and get back his full pension, and I would say to you, Sir, and to this Colony, that it is a very bad principle to allow any officer to change his mind in this matter as it suits his own pocket.

THE HON. THE TREASURER: Mr. President, as the hon. Member for Aberdare has said, it is unusual in the ordinary course of events to allow an officer to change his mind if he once decides on an irrevocable option, but in a case such as this, while it may be admitted that the officer considers it is in his own interest to change his mind, this would not be supported by Government if it was not considered to be in the interests of the Colony that Government should allow him to do so.

The question was put and carried.

PENSION: MR. H. S. LAND.

THE HON. THE TREASURER: Mr. President, I beg to move that this Council approves the payment of an unreduced pension of £880-13-0 a year to Mr. H. S. Land, who is retiring from the service of this Colony with effect from about the 13th of April, 1934, in lieu of a reduced pension of £292-5-4 a year and a gratuity of £974-4-2.

This, Sir, is a case on precisely the same lines as that of Mr. Deck, which has just been approved by the House, and it is unnecessary for me to add anything to what I then said. The effect of allowing the option to be revoked in this case is that during the year immediately following Mr. Land's retirement there will be a saving to the Colony of £870, and that will be compensated for in subsequent years by an additional payment of £97. Mr. Land will retire on a salary of £600 a year, plus a personal allowance of £50, and a house allowance of £75 a year. His total service is 21 years and 7 months.

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

The question was put and carried.

OPERATION OF JUVENILE OFFENDERS ORDINANCE, 1933.

THE HON. THE CHIEF NATIVE COMMISSIONER (MR. S. H. LA FONTAINE): Mr. President, I beg to move the following motion:

"Whereas it is provided by section 25 (1) of the Juvenile Offenders Ordinance, 1933, that the provisions of sections 18, 19, and 20 of the said Ordinance shall not come into force until the Legislative Council by resolution has declared that the provisions of the said sections shall as from a date to be specified in the said resolution be in force either in the whole Colony or in any area or areas in the Colony; Now, therefore, it is hereby resolved that the provisions of sections 18, 19 and 20 of the Juvenile Offenders Ordinance, 1933, shall come into force throughout the whole Colony as from the first day of March, 1934."

Sections 18, 19 and 20 of the Ordinance, Sir, provide machinery for the institution of places of detention in each district in the Colony. When the original Ordinance was passed it was found for financial reasons impossible to incur the expense involved. The early intention was, quite properly, to delay the institution of the respective places of detention. In so far as Kabete Reformatory was concerned the effect was somewhat unfortunate. Under section 12 of the Ordinance any child, who is a person under the age of 14 years, can be sentenced to imprisonment or detention in a detention camp, and, although under section 14 of the Ordinance he can be committed to a place of detention when convicted of a crime punishable by imprisonment in the case of an adult, section 25 (d) suspended the institution of such places of detention as were contemplated under sections 18, 19 and 20. It was therefore made impossible for a child to be sent to Kabete Reformatory. In cases, therefore, where such sentences were imposed and the alternative of committal to Kabete Reformatory was ordered, such orders had to be quashed by the Supreme Court because of lack of force of law. The result of this was considerable inconvenience, and it was the subject of representations by the Supreme Court.

The resolution I have the honour to propose, Sir, enables the Commissioner of Police under section 18 to establish places of detention, and, in particular, to establish Kabete Reformatory as such. This step has been urged by the Supreme Court, it has been recommended by the hon. the Attorney General,

and has received the full support of the Committee which during recent months has been investigating methods of dealing with juvenile crime throughout the country. This is a step which brooks no delay, as without it full use cannot be made of the accommodation at Kabete Reformatory, and magistrates are rather handicapped in dealing in a proper manner with juvenile offenders. I would, Sir, emphasize that the resolution, if adopted by the Council, will involve no additional expense on the Colony.

Perhaps this would be an appropriate time for me to mention that the committee to which I have just referred has drafted its report, which has been signed, and it is now in the hands of the Government Printers. I hope before the session is adjourned that the report will be laid on the table.

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

The question was put and carried.

REPORT OF SELECT COMMITTEE ON THE NATIVE EXEMPTION BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER: Mr. President, I beg to move the following resolution:

"That the Report of the Select Committee on the Native Exemption Bill be adopted."

This Report, Sir, recommends no drastic amendment. It provides certain safeguards and suggests certain adjustments which in the opinion of the Committee are considered to make for the smoother and more efficient working of the Bill. The object of the addition to clause 2 is to ensure that the Provincial Commissioner is the channel through which all applications for exemptions are submitted. It is thought preferable to embody this proposal in the main framework of the Bill rather than to amend Schedule I of the existing Bill which allows the Governor in Council to exempt certain natives in any of the classes named in the schedule without reference to the Provincial Commissioner. The additions to clause 6 are designed to give the Provincial Commissioner power to refuse such exemptions when he thinks fit to do so, and also allows an appeal from his decision to the Governor. It further provides for the submission to the Governor in Council of a list of all natives receiving exemption, at least once a year. It is thought that this will provide a safeguard against any abuse—which is not likely to happen, if I may say so, Sir—of the power to give such exemptions. The amendment to clause 13 was considered necessary; it provides against the abuse by a wife and children of the exemption granted to the holder of

a certificate, particularly in respect of municipal laws. The restraint on relatives while in the company of a holder of an exemption certificate will it is thought readily effect this object.

THE HON. THE DIRECTOR OF EDUCATION: I beg to second the motion.

The question was put and carried.

BILLS.

THIRD READING.

NATIVE EXEMPTION BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER: I beg to move that the Bill to provide for the exemption of certain natives from the operation of certain laws be read a third time and passed.

THE HON. THE DIRECTOR OF EDUCATION: I beg to second the motion.

The question was put and carried.

The Bill was read the third time and passed.

SECOND READINGS.

THE NON-NATIVE POLL TAX (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Mr. President, I beg to move that the Bill to amend the Non-Native Poll Tax Ordinance, 1933, be read a second time.

Hon. Members need not be afraid of this Bill; Sir. It is not the intention of Government to impose by this Bill any new taxation, but hon. Members are well aware that the Bill as originally drafted was passed in a great hurry; it was passed towards the end of last year; and unfortunately it has been found to contain one or two loopholes whereby taxpayers of the Colony whom Government think—and I feel sure hon. Members will think—should pay, have been able to escape without payment. Of course, you will realize that it is impossible in a taxing Ordinance of this kind to make it retrospective; it is almost unheard of. For instance, if you go to England for a holiday knowing perfectly well that you will only stay five months and will leave within that time, a year later you will not find they have made retrospective legislation whereby you can be caught for income tax, because they have reduced the period to three months. That little example, I think, should be sufficient to satisfy you that it is quite impossible for Government in a case like this to make this sort of legislation retrospective. The chief difficulty, as I saw it, and still see it, in the Bill as originally passed last year was the fact that although we were taking really as the basis for

taxation the population domiciled in the country for six months, yet, owing to the time the Bill was introduced, late in the year—and it being necessary to give the taxpayers a certain amount of time in which to collect the wherewithal to pay the tax—there was introduced into the Bill the dreadful phrase known as "due date", with the result that although you were a taxpayer, having been six months in the country—that being one of the qualifications—yet, if you were not here on the "due date", no provision was made in the Bill whereby you could be caught for the taxation before you left. We easily deal with that in this amending Bill, because we have finished with the "due date" and call it the "final date", making it perfectly clear which is the last date upon which you must pay your tax without penalty; that is, the 30th of June, the middle of the year, which just gives the six months residence qualification in the one year. I must make it clear also that this Bill does not attempt to catch people who leave before the 30th of June, 1933, for the simple reason that it was agreed we could not make a demand for payment before that date as we called for the first payment as late as November 8th, 1933; therefore it was always agreed that the tax should be paid somewhere towards the middle of the year. Further, as one of the qualifications of a taxpayer is residence in the country for six months during 1933, it is obvious that we could not fix the final date of payment before the 30th of June. If, however, a taxpayer returns to the country after the final date he can be called upon to pay his tax after the period of grace laid down in the Bill. We also preserve in the last section of the Bill the right to collect any moneys due for the year 1933 should the taxpayer return to the Colony.

There are one or two other important alterations, the chief being that in regard to the amendment of the word "accrue". It happened in 1933 that certain people were able to escape full taxation because it was ruled that the word "accrue" meant "received in". The result was that, for example, a person who was paid by a firm in England £1,500 a year wrote home to that firm and said: "Do not send me £1,500 which I work for and which you owe me. I prefer that you pay £1,000 of that into my bank at home". Naturally, being domiciled here and working here, he pays no income tax at home, and if we leave the original definition of "accrue" in the Ordinance, it means he will only pay on the amount actually received by him in Kenya, namely, £500. We, therefore, make it perfectly clear in the definition that a person living in Kenya and working here, and receiving, say, a sum of £1,500, should pay tax on that amount, regardless of the fact that he does not receive the whole of that amount in this Colony, and regardless of where he has his bank balance. I think that should appeal to the sense of all hon. Members.

There is another slight alteration, and that is really a matter of form only, in regard to returns. At present you send in your return and it is either accepted or not by the authorities. If it happened that it was not accepted, all that would happen would be that the authorities could call for the books. But that has led to a lot of inconvenience. It is perfectly clear that it would be inconvenient to the taxpayer, in the event of the Treasurer wanting to check the figures, if he had to lose his books for a week, which really might be quite unnecessary. We have, therefore, put a provision in this amending Bill, which provides that the Treasurer can set out a form in which the taxpayer can give the necessary particulars. Naturally, we retain the power to call for the books if we do not accept the details given in the return prescribed by the Treasurer. We must retain that, but we hope that it will not be necessary to exercise that power in the ordinary way.

There is one other alteration, and that is in regard to the period of grace. You will remember that in the 1933 Ordinance three months was allowed after return to the Colony within which a taxpayer could pay his tax. It is not thought that that is quite just in view of the fact that the final date, as it will be, is 30th June. If a man leaves on the 29th June without paying his tax, it is manifestly unfair when he has returned that he should be given three months in the same way as a man who left on the 2nd January in the same year, who would also be given three months. We have, therefore, provided in this Bill that a taxpayer will get exactly the same number of days as the days which elapse between his leaving the Colony and the final date for payment. For instance, if he leaves on the 29th June, he will be given exactly one day when he gets back in which to pay. If, on the other hand, he leaves three months or more before the final date, he will be given three months in which to pay on his return.

I think, Sir, those are the most important points in this amending Bill. Hon. Members will see that there is no attempt in any way to alter the principle of the Ordinance at all, but merely to make sure that the taxes to be paid are in fact collected.

THE HON. T. D. H. BAUCE: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is that the Non-Native Poll Tax Amendment Bill be read a second time.

CAPT. THE HON. H. F. SCHWARTZ: Your Excellency, as I understand this Bill is going to a Select Committee I do not propose to say much about it at this stage, but while it may

be right what the Attorney General says with regard to not making certain provisions retrospective in taxation measures, I would ask him to consider in Select Committee whether it would not be possible to make the same provision in regard to the time in which taxpayers become liable, with regard to those who left before the due date last year and who do return to the Colony, the same provision in regard to the time in which they become liable as it is proposed to make in regard to the present year, because, while, as I understand from the Attorney General, Government would not consider making those liable who left the Colony between the passing of the original Bill and the 8th November, 1933, unless they returned to the Colony, I cannot see any reason why the three months originally provided in the Bill for those who returned—which three months is now to be cut down for reasons explained by the Attorney General—should not also affect those who return to the Colony, who left it before the 1st April, 1933. I would ask you to consider that in Select Committee.

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

THE HON. THE ATTORNEY GENERAL: I can give an assurance to the hon. and gallant Member opposite that I will consider this point. At the moment I am not prepared to make any commitment upon that matter, but no doubt he will raise it himself in Select Committee, which I am going to suggest, Sir, should consist of—

The hon. Member for Nairobi South,

The hon. Member for Ukamba,

The hon. the Treasurer,

and myself,

to consider the Bill in due course.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: I formally move, Sir, that this Bill be referred to a Select Committee consisting of:—

The hon. the Attorney General (Chairman).

The hon. the Treasurer.

The hon. Member for Nairobi South.

The hon. Member for Ukamba.

THE HON. T. D. H. BAUCE: Your Excellency, I beg to second the motion.

The question was put and carried.

THE TRANSFER OF REVENUE COLLECTION BILL.

THE HON. THE TREASURER: Mr. President, I beg to move that a Bill to provide for the Transfer of the Collection of Revenue be read a second time.

In most tax legislation in this Colony, Sir, the tax is payable to the District Commissioner of the District, who is empowered by law to issue a valid receipt. The wording of the tax law, for instance, in the case of the education tax, is as follows: "The tax shall be paid by the person liable to pay the same to a District Commissioner at the office of the officer to whom payment is made. A District Commissioner shall give to the person paying the tax a receipt in the prescribed form."

That will continue to be the position in the major part of the country, but with the alteration recently made in Nairobi and the establishment of a Central Revenue Office, it is desired that taxes of certain kinds shall no longer be paid to the District Commissioner but shall be paid to the Central Revenue Office, and this Bill gives power for that to be done.

It is also necessary in making that adjustment to provide that if in fact the Treasurer has appointed somebody to be a collector of taxes in a place like Nairobi, it shall no longer be competent for the taxpayer to have to pay his tax to the District Commissioner. That would lead to duplication of work. This Bill, in clause 2, lays down that when the Treasurer has deputed a person or persons to receive in any district or area any such money, the taxpayer shall go to the officer deputed by the Treasurer for that purpose. I beg to move that the Bill be read a second time.

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

The question was put and carried.

THE CHATELLETS TRANSFER (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: I beg to move the second reading of a Bill to amend the Chattels Transfer Ordinance, 1930.

This, Sir, is a very technical Ordinance and I may say at the outset that I am going to ask you to refer it to a Select Committee of the House. I can assure hon. Members that it has already received the blessing of the Law Society and of the banks, who are the people chiefly interested, and in a certain degree as to one part, the legal advisers to the Secretary of State, so that they may rest assured that it has been considered before being placed before them.

Put very shortly it amounts to this. Under the Registration of Titles Ordinance fixtures were transferred with the mortgage as part of the security for the mortgagee. Under the Chattels Transfer Ordinance, apparently, the same fixtures could be transferred, and it was suggested by the Courts and by the Law Society that we should make it perfectly clear what exactly is included on a Chattels Transfer instrument being executed, and you will find that set out very clearly in the important part of this Bill, on the second page, where it tells you what is not included in trade machinery. What it means is this, that when you execute an instrument under the Chattels Transfer Ordinance, those powers mentioned in (a), (b) and (c) to section 3 make it perfectly clear that fixtures do not pass, with the result that there will be no difficulty when you go before a court of knowing exactly what your security is.

The second section deals with a rather interesting little matter as far as this House is concerned, because in 1930 when the principal Bill was passed, they carefully excluded from the purview of that Ordinance companies. It would appear that some companies did not realize that they were excluded, with the result that in 1933 it was found that certain companies had their registered instruments under the Ordinance, which in the ordinary way naturally would have been null and void. The position was difficult, but a kind-hearted Attorney General and over-indulgent House provided an amendment to the Ordinance which was to the effect that companies could register under the principal Ordinance. That seemed at the moment to settle the difficulty until the Bill went home to the Secretary of State, when he sent it back pointing out that whereas this might appear extremely equitable as far as the ignorant companies who registered under an Ordinance they should not have registered under were concerned, it was not so in the case of those good companies who had taken the trouble to read the Ordinance and register under the proper Ordinance, namely, the Companies' Ordinance; and he directed that we should put back matters to the position where they originally stood. I have done that, except that, as you will see, I have carefully preserved the rights of the unfortunate people who have registered under the principal Ordinance, believing that they could do so legally.

THE HON. T. D. H. BURCH: I beg to second the motion.

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

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, while communications have been going to and fro between the hon. the Attorney General and the Secretary of State, a new point

has cropped up, namely, if this amending Bill is now passed we are putting back into the same position as the 1930 Ordinance farming companies; that is to say, bodies of persons engaged in production who have turned themselves into companies, who will find they will have to pay a stamp duty of Sh. 5 a person on any money they borrow under the instrument created under the Companies Ordinance; whereas those farmers who wish to borrow money under this principal Ordinance will only pay stamp duty at the rate of Sh. 1. It is quite true that position obtained in 1930 as it is to-day, but it was apparently not noticed. I quite agree that this is a matter for discussion in Select Committee, but again I would ask the hon. the Attorney General to keep an open mind with regard to this point, seeing that it does place these farming concerns who have turned themselves into limited liability companies in a direct disadvantage compared with those who are carrying on without having turned themselves into companies.

THE HON. THE ATTORNEY GENERAL: Mr. President, I will of course keep in mind what the hon. and learned Member for Nairobi South has said, but I would point out at this stage that the original Ordinance was a poor man's Ordinance and carefully excluded companies from the preferential treatment which the poor farmer was getting under it, and now we are gradually shifting back to allow the rich man as represented by companies to be better off than individual farmers. And there are many other companies besides farming companies which we have to consider. If we allow them we shall have to open the Ordinance to everybody; if companies are allowed to benefit under this poor man's Ordinance I do not know whom we can exclude. However, it is a matter we can consider in Select Committee.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Bill to amend the Chattels Transfer Ordinance, 1930, be referred to a Select Committee, consisting of:—

The hon. the Attorney General (Chairman).

The hon. the Treasurer.

The hon. Member for Nairobi South.

The hon. Member for Ukamba.

THE HON. T. D. H. BAUCE: I beg to second the motion.

The question was put and carried.

THE LAND AND AGRICULTURAL BANK (AMENDMENT) BILL.

THE HON. THE TREASURER: Mr. President, I beg to move that the Bill to amend the Land and Agricultural Bank Ordinance, 1930, be read a second time.

This Bill, Sir, seeks to extend the scope of the operations of the Land Bank, particularly in the making of short term advances, and of making possible advances to co-operative societies. On both points the original Bill which was before the previous Council in 1928 made the same provision empowering the Land Bank Board to do this, and in each case that provision was cut out from the Bill as eventually passed by a Select Committee. In each case also, Sir, a sub-committee of the Board of Agriculture which reported last January made reference to the desirability of introducing provisions of this kind.

The first part of the Bill, that is to say from sections 3 to 7, deals with short term advances, and on this point I should like permission to read an extract from the report of the Board of the Land and Agricultural Bank for the year 1932, in which the desirability of having some provision of this kind is stressed. These extracts are as follows:—

"The question also arises as to the advisability of widening the scope of the Land Bank Ordinance to embrace the issue of short term loans purely for farming operations. The practice in Southern Rhodesia is to grant advances up to £250 for a period of one year, but capable of extension to three years. The debt is secured by a note on the title deeds, which is registered as a hypothecation at the Deeds Office, and has the legal force of a mortgage; also the borrower is required to sign a promissory note maturing in twelve months, but redeemable earlier from crop proceeds. Where the applicant is already mortgaged to some party other than the Land Bank, the consent of the mortgagee is first obtained by the applicant, the former executing a 'waiver of preference' so that the Land Bank's hypothecation then ranks prior to the mortgage bond. The mortgagee will usually assent to the process, especially if the alternative is that the farm is thrown on his hands. The need for a simple and inexpensive process of making short term loans is also felt where, through some calamity, such as locusts or hail, the farmer's income has vanished and he requires money, not only to start a new crop, but also to meet his obligations to the Land Bank. Provided there is a margin of security over that required for his mortgage loan, he should be able to come to the Land Bank for a small short term advance which would not involve the expense of a mortgage. The sufficiency of the security held by the Bank depends to some extent upon the continuance of farming operations and development of the property, and the necessity for further assistance, in exceptional cases, must be contemplated."

It is very largely on the lines advocated in that report, Sir, by the Land Bank Board that this Bill has been drawn up. The main clause dealing with short term mortgages is clause 3, which provides that temporary advances not exceeding £500 may be given for such purposes as may be prescribed by the Governor in Council. As is quite clear from the report of the Land Bank Board, the necessity for widening the scope of the Ordinance to allow these temporary advances depends on circumstances which require special treatment, either in order to enable farming operations to be carried on, for the marketing of crops, or else to permit farming operations to continue after some calamity such as locusts, hail, drought and so on if a farmer is unable to find funds elsewhere. I wish to make it quite clear that in each case of these temporary advances there is no suggestion that the security required by the principal Ordinance should be watered down; they would only be given on adequate security. There is something in clause 3 dealing with that. In 3 (2) it suggests that no advance should be made which together with other advances makes the total amount outstanding against that farmer more than the maximum of £3,000 at present laid down in the principal Ordinance. In my opinion there should be provision also—and I hope there will be—that the amount advanced shall not exceed the statutory limit of 60 per cent of the fair agricultural value of the land. The limitation of the advance in relation to the land pledged is contained in section 28 of the principal Ordinance, and I hope that in clause 3 (2) of this amending Bill there will eventually be inserted a reference to that section 28. The Land Bank Board holds very strong views on that point, and they are most unlikely in any case, whether the limitation is made by law or not, to allow more than 60 per cent of the value to go out in advances, but it is preferable to have this limitation expressed in the law itself.

Another and most important point to be considered in clause 3 is the purposes for which these temporary advances can be made. There is, of course, nothing in the principal Ordinance which prevents the Land Bank Board from making an advance of £500 for one, two, or three years. That is well within their province, but they can only make that advance for the purposes set out in section 19 of the principal Ordinance which, generally speaking, deal with permanent improvements and development charges on land and so on, including of course the paying out of the first mortgage in order to get the title of the land. These purposes, generally speaking, are for permanent development, and it is of the essence of the temporary advances in this Bill that the purposes of the principal Ordinance should be widened. The question of what purposes should be laid down was considered by the Land Bank Board. Their recommendations have already been sub-

mitted to the Governor in Council who are prepared to approve of the widening of the purposes in the following respect. It will naturally follow that these temporary advances can be given for any of the purposes laid down in section 19 of the principal Ordinance; it is also proposed the purposes should be extended to include the following—to meet the expenses of carrying on farming operations generally, and secondly, for the discharge of existing liabilities incurred in farming. I think, Sir, we shall agree that these purposes are wide, and should adequately cover what has been in the minds of the Land Bank Board and the committee of the Board of Agriculture and everybody else in regard to these temporary advances. I think, Sir, in regard to the principles underlying clauses 3 to 7 which deal with temporary advances, I have said enough to indicate what is intended.

Clauses 8 to 11 deal with the position of co-operative societies. Provision for making advances to co-operative societies was also included in the original Bill of 1928. The Select Committee which examined the Bill and reported before the principal Ordinance because law suggested that this clause should be deleted for the reason that there was at that time no legislation for governing co-operative societies. In 1931 an Ordinance was passed providing for the registration of co-operative societies, and in that Ordinance it was quite clearly contemplated that such societies should be empowered to raise money on loan for any of the lawful objects of such a society, and for that purpose to mortgage their assets, the movable and immovable property. With that law on the Statute Book, it becomes possible to consider the introduction of an amendment to the Land Bank law to provide for such advances to be made. Clause 8 provides for such advances. The purposes of advances to co-operative societies are described in clause 8, as advances for the erection of buildings and equipment and the purchase of land for any one or more of the objects for which that society is legally competent to pursue. The security on which such an advance will be made is stated in sub-clause 3, to be on the joint and several liability of the members of the society at the time of making the application referred to and upon such additional security as the Board may require. Security generally speaking would lie in the buildings, machinery, stocks and joint and several liability of members of the society, and in the case of a limited liability company specifically referred to in clause 11, upon the unpaid capital of the society.

One or two points arise in these clauses which I may perhaps mention. The first is that whereas an ordinary advance to farmers under the principal Ordinance is repayable in equal half-yearly instalments of principal and interest, it

is proposed, as is the case in South Africa and Southern Rhodesia; that repayment of loans from co-operative societies should be in equal repayments of capital, the interest decreasing as capital is repaid. Secondly, it is proposed that there should be a limitation in time for these advances to ten years, and it will be noticed, in clause 8, subclause (3), that, again as in the case of Southern Rhodesia and South Africa, interest shall be payable yearly in advance.

Special provision is made in clause 10 regarding the retirement of a member from a co-operative society and, in circumstances approved by the Board, a certificate is issued to him giving him full discharge from his liability. That, I think, I need not deal with at length, as it is a matter which will be considered in committee.

There is one other feature of this Bill completely different in kind, appearing in clause 12. The form of declaration by an applicant which has been supplied by the Board under powers given it by the principal Ordinance requires a declaration on oath. Generally speaking, that has to be done before a magistrate or a justice of the peace, but it is found that in many cases applicants for advances come to see the secretary first, who deals with their cases, and helps them to fill in these forms; and it would be a great convenience if he could attest declarations. The present secretary was made a justice of the peace in Southern Rhodesia for this particular purpose.

Clause 13 of the Bill is intended to supply a suitable and inexpensive process in cases where a mortgagee formally agrees, either for the purpose of a temporary advance or an advance under the principal Ordinance, that any mortgage, charge or encumbrance in favour of the bank shall have priority over his mortgage, charge or encumbrance. This clause deals only with cases where consent is obtained, and that consent must be signified in writing, and when all parties are agreed on this matter, then the mortgagor can obtain the registration provided without unnecessary cost to himself.

THE HON. THE ATTORNEY GENERAL: I beg to second.

The question was put and carried.

Council adjourned for the usual interval.

On resuming.

HIS EXCELLENCY THE GOVERNOR (BRIGADIER-GENERAL SIR JOSEPH ALOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.), presided.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Bill which has just passed its second reading, the Land

and Agricultural Bank (Amendment) Bill, be referred to a Select Committee consisting of:—

The hon. the Attorney General (Chairman).

The hon. the Treasurer.

The hon. Member for Nyanza.

The hon. Member for Trans Nzoia.

THE HON. THE TREASURER: I beg to second the motion.

The question was put and carried.

THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of the Bill to amend the Criminal Procedure Code.

I have to apologize to the hon. House, Sir, for introducing this short amendment at this stage when hon. Members are probably aware that I have a large amending Bill coming in in the near future, based on the report of the Attorneys General Conference last year. Unfortunately, the Court of Appeal for Eastern Africa sitting in Nairobi a few weeks ago discovered what they believed to be a fatal error in the existing Code, which was to the effect that no unsworn statement could be made from the dock by an accused person, the result being that we were harking back to the law of England of many years ago, so that it is necessary for me to introduce this short Bill to correct that error. When the matter was raised, I was asked to make it quite clear in the Bill exactly what was meant by an unsworn statement, and with the consent and approbation of the Bench in Kenya I put in the word "verbal" before the word "statement" which occurs on the twelfth line of section 3 of the Bill. Since then, I have been in communication not only with the members of the Law Society here but the neighbouring territories of Uganda and Tanganyika. As hon. Members are well aware, it is our desire to get the laws as near as possible, particularly the criminal law, the same in all three territories. But we are not any of us quite sure whether the word "verbal" should go in, although it would settle perhaps a difficult point. Therefore, at a later stage I propose to ask that the word "verbal" which occurs before the word "statement" be deleted, so that the word "statement" will remain alone, and it will be left for the law of England to decide whether that statement shall be verbal or written. It is desirable, of course, that we should follow as far as possible whatever the procedure happens to be in England for the time being:

The opportunity has also been taken, as I had to move this amendment, to move another, which has been directed by the Secretary of State, and that is with regard to whipping. It has unfortunately occurred in the past that punishments have been given of imprisonment and whipping. When these cases have come to the Supreme Court for revision, it has been found sometimes that no case had been made out against the accused. When the order went back to the magistrate, it was found that the whipping had already been given, so that although the imprisonment was not carried out the accused person had already received his whipping. The Secretary of State having heard of this, suggested that when the next amending Ordinance was introduced I should make provision that that should not happen, and it has been provided for in section 2 of the Bill before hon. Members now.

THE HON. T. D. H. BRUCE: I beg to second the motion.

The question was put and carried.

THE ARBITRATION (AMENDMENT) BILL.

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

This Bill has been introduced at the request of the Chief Justice and the legal fraternity of this country. It appears that in the past arbitrators have been sitting on arbitrations and have had to decide quite serious points of law; when they have been asked by one or the other side to state a case for the Supreme Court they have been able to refuse, with the result that injustice was done, and there is no power in the Supreme Court to direct these arbitrators to state a case. Therefore this short amendment that hon. Members are asked to consider to-day provides that the Supreme Court may direct an arbitrator to state a case on a point of law whenever they shall see fit, which naturally will be when application is made and substantiated by one side or the other to the Supreme Court.

THE HON. T. D. H. BRUCE: I beg to second the motion.

The question was put and carried.

THE TAX ON IMPORTED PACKAGES (AMENDMENT) BILL.

THE HON. THE TREASURER: Your Excellency, I beg to move that the Bill to amend the Tax on Imported Packages Ordinance, 1933, be read a second time.

The tax on imported packages was introduced in Kenya last August, and since that measure was introduced here the neighbouring Governments of Tanganyika and Uganda have

introduced similar measures. The tax was applied as from the first of December, 1933, in all three territories. It was pointed out, Sir, when the Kenya measure was before the House, that it was in effect a tax on imports and therefore similar in kind to the customs legislation. That point is of importance both in the collection of revenue and in the allocation between the territories concerned of the revenue derived from this tax. In the case of Uganda, provision was made in the principal Ordinance of Kenya for the allocation of the proceeds between Kenya and Uganda, but there not being at that time any similar legislation in Tanganyika no reference was made to Tanganyika in our principal Ordinance. The Tanganyika measure was introduced towards the end of last year and contained a section empowering the Government of Tanganyika to enter into an agreement with the Governments of Kenya and Uganda for the allocation of the revenue, and that section was precisely similar in intention to clause 2 of the present Bill. Clause 2 of the present Bill is also similar to the corresponding provisions of the Customs Management Ordinance of the Colony, which provides for agreements to be entered with the neighbouring territories for the allocation of revenue. It was therefore suggested that in this Bill similar power should be taken to deal with the package tax as is done with customs revenue, and in view of the fact that the tax in all three territories came into force on the first of December, it is provided in clause 1 that this Bill should have retrospective effect to that date.

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

The question was put and carried.

THE PUBLIC OFFICERS' (CHANGE OF TITLES) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill to provide for the change of titles of certain public officers be read a second time.

This Bill, I think, Sir, almost speaks for itself. As hon. Members are well aware, from time to time officers are mentioned by their official designations in an Ordinance, and also from time to time, unfortunately, Governments change the titles of officers, with the result that we have in an Ordinance no person entitled to act under the particular section where that title is mentioned. An instance is given in the schedule to the present Bill, where you see that the title of Director of Medical and Sanitary Services is now Director of Medical Services. It is therefore necessary for this House to pass this Bill in order that the Director of Medical Services may execute the duties of the Director of Medical and Sanitary Services under certain Bills of the Colony to-day. I have also made

provision in this Bill that His Excellency the Governor in future, by adding to the schedule, will be able to accomplish this object without having to worry the House to effect a change of name.

THE HON. T. D. H. BRUCE: I beg to second the motion.

The question was put and carried.

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill to amend the Interpretation and General Clauses Ordinance be read a second time.

As hon. Members are aware recently the provinces in Kenya have been reorganized. The result of the reorganization has been that there are one or two districts not actually included within provinces. In these circumstances, the duties of Provincial Commissioner in these districts have in effect to be performed by the District Commissioner, and all this Bill does is to say that where in any Ordinance a certain power is given a Provincial Commissioner in a particular district the District Commissioner may exercise that power.

THE HON. T. D. H. BRUCE: I beg to second the motion.

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 (Amendment) Ordinance, 1930, be read a second time.

The reasons for this Bill, Sir, are set out very fully in the "Objects and Reasons", and I have very little to add to them. The Sugar Amendment Ordinance is a measure very drastic in its operation, and in areas where it has been fully applied it is only right that those against whom it was not intended to operate should be relieved of any hardship which might result from this application. The Bill has come up mainly in connexion with the Kikuyu who are resident in the neighbourhood of the Thika district. It is proposed that if this Bill goes through, they should be allowed to have a grant of sugar without the necessity of having a permit under the principal Ordinance.

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

LT.-COL. THE HON. W. K. TUCKER: Your Excellency, I think the people in this country mainly responsible for the distribution of sugar, who happen to be

largely resident within the constituency I am temporarily representing, will be rather disappointed that the hon. mover has not indicated a little more clearly the degree of relaxation to the existing legislation that is intended. For instance, some people reading this Bill when it was published took the extreme view that any and every *duka* owner who had got a clean slate with the Administration might be entitled to apply for a limited supply of sugar in the future, whereas he had been prohibited in the past; on the other hand, others believed a very much more restricted issue of sugar to those people might be applied. I do hope, Sir, when the hon. mover replies to the debate that he will for the benefit of the sellers and buyers give a very much clearer indication of the new situation in comparison with the old one.

In the same way, Sir, one observes that this power is given to the Provincial Commissioner, whereas the original Ordinance gives such powers as are required in the original Ordinance to the District Commissioner. I have no doubt that there are good reasons, but on the other hand it is my submission that in many districts in this country it is a comparatively simple thing to approach the District Commissioner with the application laid down in this Bill and a difficult one indeed from the point of view of expense and convenience personally to approach the Provincial Commissioner. I hope that these two points relevant to the debate will be adequately dealt with by the hon. mover.

HIS EXCELLENCY: If no other hon. Member wishes to speak I will call upon the Chief Native Commissioner to reply.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, there was no question at the time the question of this Bill came up for consideration of giving permits to traders in sugar. The relaxation which was contemplated under the Bill was entirely for the benefit of the natives, who might suffer hardship on the strict application of the Sugar (Amendment) Ordinance of 1930. The hon. Member has mentioned that it would be rather a hardship if the discretion was left solely in the hands of the Provincial Commissioner, but I do not feel that there really will be any substantial difficulty in the matter. The District Commissioner will presumably in most cases be consulted by the Provincial Commissioner in the issue of these permits for sugar.

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

The question was put and carried.

THE LIMITATION BILL.

THE HON. THE ATTORNEY GENERAL: Sir, I beg with your permission to withdraw the Limitation Bill which is down for second reading to-day. The reason for my doing that is that I find, owing to overwork in the Printer's Department, it has been impossible to circulate the Bills in time to conform with Standing Rules and Orders, and it is therefore unfair on Members of the House to ask them to vote on a Bill which they have not really had the time to consider. For the benefit of those who are particularly interested in the Bill, I can assure hon. Members opposite that it will be my personal endeavour that it is brought before the House as soon as possible at the next meeting of Council.

THE SISAL INDUSTRY BILL.

THE HON. THE COLONIAL SECRETARY (MR. H. M. M. MOORE): Your Excellency, I beg to move the second reading of a Bill to impose a levy on the export of sisal fibre and to regulate the expenditure of the proceeds thereof and of sums granted for the purpose for the improvement of the sisal industry.

This Bill, Sir, is a short one and its objects are very simple. In the first place, it empowers the Government to impose a levy on all sisal fibre produced and exported from the Colony. The amount of that levy is to be fixed by you, Sir, after consultation with the Committee which this Bill sets up, but there is a proviso under clause 5 (3) of the Bill that in no case shall such levy exceed the sum of ten cents of a shilling on each hundredweight or part of a hundredweight of sisal fibre produced in and exported from the Colony. That, Sir, shows the contributions that the industry itself is prepared to make towards the common fund.

On the Government side, Sir, clause 6 provides for a grant-in-aid from the Government on a pound for pound basis; but hon. Members will observe that in clause 5 (b) of the Bill, provision is made to ensure that, during the first year of operation of the Bill, in no case shall the sum of money for which Government will give a grant-in-aid, exceed the sum of a thousand pounds. That sum, Sir, I may say, will as far as we know on present estimates, equal the amount which the levy will realize on the present estimated exports of sisal. The clause further goes on to say that from the period of the operation of this Bill, should it be the case that the export of sisal increases and that therefore the amount of the levy will amount to a sum in excess of one thousand pounds, the Government, during the operation of this Bill, shall only pay anything in excess of a thousand pounds on this pound for pound basis after consideration by the Governor in Council.

That proviso has been put in, I may say, with the agreement of the Kenya Sisal Growers' Association, regard being had to the present financial position of the Colony, but at the same time it is desired to maintain the general principle of a pound for pound payment by the Government when financial conditions are better.

The next clause of importance, Sir, is clause 7, which lays down the constitution of the Committee which is to advise you, Sir, in all matters connected with this Bill; and finally, clause 9, which directs the purposes to which this proposed fund shall be devoted. On that, Sir, perhaps I may very briefly give a short history of the circumstances which have led up to this Bill.

As long ago, Sir, as 1929 the Agricultural Commission recommended that a fund of this nature should be introduced, the object of the fund being to promote research, particularly industrial research, into the uses of sisal in the general interests of the industry. Following up that recommendation, Sir, the Select Committee on the 1930 Estimates endorsed it and pressed the subject to Government, and a Bill was actually drawn up and forwarded to the Secretary of State which was approved in principle. Then, owing to financial conditions and the general economic depression, neither the sisal industry nor the Government felt able at that time to proceed with the scheme, and it remained in abeyance until June of last year, when a joint scheme was presented to the Governments both of Kenya and Tanganyika by the Sisal Growers' Associations of those two territories, which provided in effect for legislation largely on these lines—at least for contributions from the two Governments concerned, and the devotion of the proceeds of the fund primarily to industrial research. That scheme, Sir, was considered by the Tanganyika sisal growers and it did not entirely meet with their approval. The Tanganyika growers were of the opinion that in their territory this money should also be devoted to questions of cultural and economic research, and accordingly in November last they passed a Bill which enables the Tanganyika Government to impose a cess of two shillings a ton on Tanganyika sisal for the purpose of payment into a fund. The money being expended at the discretion of the Government of that territory. That, quite frankly, filled both this Government and our local growers with some despondency and dismay because they thought that this question of dealing on general lines with our neighbouring territory had been lost. Accordingly, as a result of both official and unofficial communications, our Director of Agriculture and Colonel Maxwell, the President of the Kenya and Tanganyika Sisal Growers' Associations, accepted an invitation to attend a conference at Tanga on the 11th January of this year. I am glad to say that at that conference all misunderstandings were cleared up,

and it was agreed that the Tanganyika Bill, which leaves the Government of that territory the very widest powers as to the purpose for which it will devote the money so raised, shall stand, and that this Government shall proceed to introduce the Bill the second reading of which I am moving now; and that the proceeds of that fund, both of the Tanganyika fund and of the Kenya fund, shall be devoted to research—partly economic and partly industrial—in London on purposes which would be mutually decided upon by the interests of the two territories.

This Bill does not provide for the setting up of an inter-territorial Board or anything of that character, because it was felt that at the present stage it would be undesirable, and indeed a matter of some legislative difficulty, to set up a statutory body of that nature, but I can assure the House that if this Bill is passed to-day and as a result a fund can be set up, the manner in which the proceeds of that fund will be dispersed will be settled by mutual agreement between the two territories, and I feel sure will make for the benefit not only of our own sisal growers, but of the sisal industry of East Africa as a whole. I beg to move the second reading of the Bill.

THE HON. THE ATTORNEY GENERAL: I beg to second.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I rise to support this Bill. It is one which we hope will be of great benefit to one of the leading industries of the country and in voting a certain amount of money for this industry, I think it should be pointed out that never before has the sisal industry had any direct advance made to it.

There are one or two points which should be taken in Select Committee. In section 6 (1) (b), last line of all, Sir, it says "shall be such sum as may be determined by the Governor in Council". I presume that is not going in any way to over-ride the rights of this House to decide any sums which may be devoted.

Another point, Sir, occurs in section 7, subsection (4): "If any member of the Committee is absent from the Colony for a period of more than four months during his term of office, the authority which nominated such member may appoint a fit and proper person to serve on the Committee". It seems there will not be anybody to act for him. They are only small points which no doubt can be dealt with in Select Committee.

HIS EXCELLENCY: If no other hon. Member wishes to speak, I will call upon the Colonial Secretary to reply.

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THE HON. THE COLONIAL SECRETARY: As regards the first point made by the Noble Lord, I should like to assure him that the ultimate decision in this matter naturally rests with the Council who vote the funds. The intention was that in this first instance the advice of the Governor in Council on the matter should be obtained.

As regards the second point, perhaps we could take that up in Committee, but I can only say that no exception was taken to that particular clause when I went over the terms of the Bill with Colonel Maxwell. I think the intention really is to allow for deputies, when we are sure that they are going to be absent from the Colony for any length of time.

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

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: I beg to move that Council resolve itself into a Committee of the whole Council to consider clause by clause the following Bills:—

The Transfer of Revenue Collection Bill.

The Criminal Procedure Code (Amendment) Bill.

The Arbitration (Amendment) Bill.

The Tax on Imported Packages (Amendment) Bill.

The Public Officers (Change of Titles) Bill.

The Interpretation and General Clauses (Amendment) Bill.

The Sugar (Amendment) Bill.

The Sisal Industry Bill.

THE HON. T. D. H. BRUCE: I beg to second the motion.

The question was put and carried.

Council went into Committee.

In Committee.

THE TRANSFER OF REVENUE COLLECTION BILL:

The Bill was considered clause by clause.

THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause.—3.—Amendment of section 289 of the Principal Ordinance.

THE HON. THE ATTORNEY GENERAL: I beg to move the amendment notice of which was given by me yesterday, namely, that the following clause be inserted as Clause 3 of the Bill:—

3. Section 288 of the Principal Ordinance is hereby amended by the insertion of the words "on evidence" after the word "statement" which occurs in the first and fifth lines of the section.

The reason for this amendment being put in at this late hour was a telegram from Tanganyika to the effect that they intended to move this amendment to the Bill in the way I have mentioned. There is no objection and, in fact, it makes for clarity.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: It follows that Clause 3, Sir, will need to be renumbered "Clause 1".

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: I beg to move that Clause 3 (now Clause 4) be amended by the deletion of the word "verbal" which occurs in the twelfth line. I explained to hon. Members, in moving the second reading, the reason for that amendment.

The question was put and carried.

THE ARBITRATION (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE TAX ON IMPORTED PACKAGES (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 2.—Authority to enter into agreement for allocation of tax.

CAPT. THE HON. H. E. SCHWARTZ: I am not certain that the words "Mandated Territory" are the correct way of describing that territory in an official ordinance. Ought it not to be "the Mandated Territory of Tanganyika"? I am not trying to raise a silly point.

THE HON. THE ATTORNEY GENERAL: I quite agree with the hon. Member but I imagine that either way is correct. As a rule one says "Mandated Territory of". It will make no difference whatever to the application of the Ordinance.

HIS EXCELLENCY: Will you propose an amendment?

CAPTAIN THE HON. H. E. SCHWARTZ: I beg to move that the words "Mandated Territory of" be inserted between the word "the" and the word "Tanganyika" in the second line of the second clause and the Governor in Council may enter into an agreement with the Government of the Mandated Territory of Tanganyika", etc.

The question was put and carried.

THE PUBLIC OFFICERS (CHANGE OF TITLES) BILL.

The Bill was considered clause by clause.

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE SUGAR (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE SIAL INDUSTRY BILL.

The Bill was considered clause by clause.

Clause 7.—Constitution of Committee.

CAPTAIN THE HON. H. E. SCHWARTZ: Your Excellency, I have two amendments to move in regard to Clause 7. The first is that the words "of Agriculture" in Clause 7 (a) be deleted. Throughout the rest of the Bill he is referred to as "the Director", and also at the beginning "the Director" means "the Director of Agriculture". I do not know if you will take that amendment first.

HIS EXCELLENCY: The question is that in Clause 7 (a) the words "of Agriculture" be deleted.

The question was put and carried.

CAPTAIN THE HON. H. E. SCHWARTZ: In Clause 7 (4), Your Excellency, after the word "Colony" in line 2, I move to insert the words "and proposes to be so absent". If any member of the committee is absent from the Colony and proposes to be so absent during his term of office . . . As the clause reads at present you have to wait until a member has been absent for four months. If you know that he proposes to be absent for more than four months you can carry on and propose a substitute.

THE HON. THE ATTORNEY GENERAL: Surely, if we say "and" we have to wait. If we use the word "or" it might make a difference—but I think we should have to wait in either event.

CAPTAIN THE HON. H. E. SCHWARTZ: I do not mind, but with the greatest respect to the Attorney General I do not think that is quite the effect of this. If you use the word "or" surely it means that if a person is absent from the Colony, even if he is not going to be absent for four months, you can appoint someone to fill his place. If you put the word "and" in and you are satisfied that he is going to be absent for four months you can immediately fill his place.

THE HON. THE ATTORNEY GENERAL: In that case I do not see any object in leaving in the words "for a period of more than four months" or giving a period at all. "Any person who is absent from the Colony or proposes to be absent" is there any reason for sticking to the four months?

THE HON. THE COLONIAL SECRETARY: Your Excellency, I know of no reason why "four months" was put in. If there is no objection, the whole point can be met by omitting the words "for a period of more than four months".

THE HON. THE ATTORNEY GENERAL: That is right!

THE HON. THE COLONIAL SECRETARY: As far as I know, there is no particular objection to that. I do not think there can be any objection on the part of the Association.

HIS EXCELLENCY: Then will the hon. Member move an amendment?

CAPTAIN THE HON. H. E. SCHWARTZ: I will withdraw my first amendment and move just the words "for a period of more than four months" be deleted from line 2, sub-section (4).

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: I beg to report that the following Bills have passed through the Committee Stage without amendment:—

The Transfer of Revenue Collection Bill;

The Arbitration (Amendment) Bill;

The Public Officers (Change of Titles) Bill;

The Interpretation and General Clauses (Amendment) Bill;

The Sugar (Amendment) Bill;

and that the following Bills have passed with amendments:—

The Criminal Procedure Code (Amendment) Bill;

The Tax on Imported Packages (Amendment) Bill;

The Sial Industry Bill.

HIS EXCELLENCY: The question is that—

- The Transfer of Revenue Collection Bill;
- The Arbitration (Amendment) Bill,
- The Public Officers (Change of Titles) Bill,
- The Interpretation and General Clauses (Amendment) Bill, and
- The Sugar (Amendment) Bill

be reported to Council without amendment; and that

- The Criminal Procedure Code (Amendment) Bill,
- The Tax on Imported Packages (Amendment) Bill, and
- The Sisal Industry Bill

be reported to Council with amendment.

The question was put and carried.

The Council resumed its sitting.

HIS EXCELLENCY: I have to report that—

- The Transfer of Revenue Collection Bill,
- The Arbitration (Amendment) Bill,
- The Public Officers (Change of Titles) Bill,
- The Interpretation and General Clauses (Amendment) Bill, and
- The Sugar (Amendment) Bill,

have been considered clause by clause in Committee of the whole Council and have been reported to Council without amendment; and that

- The Criminal Procedure Code (Amendment) Bill,
- The Tax on Imported Packages (Amendment) Bill, and
- The Sisal Industry Bill,

have been considered clause by clause in Committee of the whole Council and have been reported to Council with amendments.

CAPT. THE HON. H. E. SCHWARTZ: On a point of order—I hope Your Excellency will not think that I am raising trivial points, but there has been a mistake. According to Standing Rules and Orders, Bills, having passed through Committee with or without amendments, a motion has to be moved that these Bills be reported to Council. That has not been done. According to Standing Order No. 77:—

"(1) When a Bill shall have been settled in Committee of the whole Council and no amendments have been made the question shall be put that the Bill be reported to Council without amendment.

"(2) When a Bill shall have been settled in Committee of the whole Council and amendments have been made the question that the Bill be reported to Council with amendments may be put, at the discretion of the Member in charge of the Bill, either forthwith or on a subsequent day."

HIS EXCELLENCY: We have always adopted this procedure have we not?

CAPT. THE HON. H. E. SCHWARTZ: No! The question has always been put. I only raise the point, Sir, because it is the right procedure. I am not suggesting we should go back now.

THE HON. THE ATTORNEY GENERAL: The hon. Member is quite right in detail. I used the word "report".

HIS EXCELLENCY: I do not know whether you would like to rectify this?

CAPT. THE HON. H. E. SCHWARTZ: No, Sir!

THIRD READINGS.

THE HON. THE ATTORNEY GENERAL: I beg to move that these Bills be read a third time and passed.

THE HON. T. D. H. BRUCE: I beg to second the motion.

HIS EXCELLENCY: The question is that the Bills just enumerated be read a third time and passed.

The question was put and carried.

- The Transfer of Revenue Collection Bill,
 - The Criminal Procedure Code (Amendment) Bill,
 - The Arbitration (Amendment) Bill,
 - The Tax on Imported Packages (Amendment) Bill,
 - The Public Officers (Change of Titles) Bill,
 - The Interpretation and General Clauses (Amendment) Bill,
 - The Sugar (Amendment) Bill, and
 - The Sisal Industry Bill,
- were each read a third time and passed.

Council adjourned till 10 a.m. on Thursday,

15th February, 1934.

THURSDAY, 15th FEBRUARY, 1934

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Thursday, 15th February, 1934, His Excellency The Governor (BRIGADIER-GENERAL SIR JOSEPH ALOTHIUS BRANE, G.C.M.G., K.B.E., C.B.), presiding.

His Excellency opened the Council with prayer.

MINUTES.

His Excellency: Minutes of the meeting of the 13th February—has any Member given notice of any amendment to the minutes?

THE HON. CONWAY HARVEY: I beg to move that the name of Conway Harvey be removed from the list of absentees; that is, that line 8 of the minutes under consideration be deleted.

THE HON. THE ATTORNEY GENERAL (MR. W. HARRADIN): I beg to second.

His Excellency: The question is that the minutes of the 13th February be amended by the deletion of the name of the hon. Conway Harvey—line 8 of the minutes.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: There is another amendment on page 5, Sir, three lines from the bottom, where the words "without amendment" occur. It should be that the Bill be reported to Council with amendment. The amendment is that the word "without" be deleted and the word "with" substituted therefor.

THE HON. THE TREASURER (MR. G. R. SANDFORD): I beg to second.

The question was put and carried.

The minutes as amended were approved.

COMMUNICATION FROM THE CHAIR.

His Excellency: I desire to make a statement from the Chair. The Secretary of State, before he left this morning for Kakamega, authorized me to say, with reference to the interviews he granted to Elected Members yesterday, that the verbatim report of what took place will be issued to the press as soon as the various speakers have had an opportunity of correcting what they said. Also this morning he told me that he was anxious to clarify the position and he asked me to communicate the following statement from him, which I will read:—

(1) In the opinion of the Treasury and of the City, Kenya has borrowed as much as is justifiable, having regard to the present financial position. That is a fact which cannot be disregarded;

(2) a proposal that Government should borrow largely in order to take over existing mortgages in not a development proposal; it is a relief proposal;

(3) any proposal for sound new economic development will be sympathetically considered. The Secretary of State has, for example discussed fully with the representatives of the sisal industry certain proposals for the instalment of machinery to obtain greatly reduced costs of production.

In so far as this affects the motion to be moved by the hon. Member for Uasin Gishu, I consider it desirable that this statement should be made now. The Colonial Secretary will deal with the matter by replying to the motion.

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 the Select Committee on Schedule of Additional Provision No. 4 of 1933.

Schedule of True Cognizable Crime under the Penal Code 1920 to 1933.

By THE HON. THE ATTORNEY GENERAL:

Report of the Select Committee on the Chattels Transfer (Amendment) Bill.

Report of the Select Committee on the Land and Agricultural Bank (Amendment) Bill.

Report of the Select Committee on the Non-Native Poll Tax (Amendment) Bill.

NOTICE OF MOTIONS.

By THE HON. THE COLONIAL SECRETARY:

That the Report of the Select Committee on Schedule of Additional Provision No. 4 of 1933 be approved.

By THE HON. THE ATTORNEY GENERAL:

That the Report of the Select Committee on the Chattels Transfer (Amendment) Bill be adopted.

That the Report of the Select Committee on the Land and Agricultural Bank (Amendment) Bill be adopted.

That the Report of the Select Committee on the Non-Native Poll Tax (Amendment) Bill be adopted.

ORAL ANSWERS TO QUESTIONS.

INCREASE IN CRIME.

No. 3.—*LT.-COL. THE HON. LORD FRANCIS SCOTT* asked :

"In view of the increase of crime in many parts of the Colony, will Government appoint immediately a small committee to—

- (a) inquire into the causes of this increase;
- (b) make recommendations as to the best methods to be adopted so as to enable the police to deal effectively with this menace?"

THE HON. THE COLONIAL SECRETARY : It is not considered that the appointment of a Committee with the terms of reference suggested by the hon. Member would serve any useful purpose.

2. A schedule illustrating the true cognizable crime in settled and in urban areas for the past five years has been laid on the Table. This schedule shows increases in crime in the Nairobi, Mombasa and Lumbya areas. In the case of the first two places a variety of causes, including that of economic depression, are responsible. In the case of the Lumbya district, tribal indiscipline is accounted the cause and that is being dealt with.

3. It is not considered that on these figures a case has been made out for an immediate increase in the Police Force, but the position is being carefully watched by the Commissioner of Police and the Government. Should on further examination the situation warrant it, the sanction of the Legislature will be sought for any additions to the Force considered necessary.

4. Legislation to give effect to Recommendations 21 and 23 of the Crime Committee Report is being prepared.

THE HON. CONWAY HARVEY : Arising out of that answer, would the hon. gentleman give some indication of the measures which are being taken to deal with tribal indiscipline at Lumbya?

THE HON. THE COLONIAL SECRETARY : The question of the position at Lumbya has recently been the subject of a very careful investigation by the District Commissioner, Mr. Brumage, who has particular knowledge of that tribe, and it is that he believes that the general result of his investigations is that he considers that the Laibons, who, as we all know, exercise a very strong influence in that district, are really at the bottom of a great deal of this crime. Steps are now being considered by Government as to the best manner of dealing with the Laibons and their evil influence in that area.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Arising out of the first reply of the hon. Member, can I be told why the police posts in the Nakuru area are omitted from this schedule?

THE HON. THE COLONIAL SECRETARY : I think, Sir, the answer is that at the moment the police posts in that area have been closed.

LT.-COL. THE HON. LORD FRANCIS SCOTT : What, Nakuru?

THE HON. THE COLONIAL SECRETARY : To what particular posts does the hon. Member refer?

LT.-COL. THE HON. LORD FRANCIS SCOTT : Well, Sir, Nakuru and the surrounding district. They have closed Njoro and Solai but there are posts at Molo, Rongai and Ravine.

THE HON. THE COLONIAL SECRETARY : I am sorry that omission had escaped my notice. I will take it up with the Commissioner of Police.

PIONEER WORK OF MR. I. A. JOHNSTONE.

No. 6.—*THE HON. CONWAY HARVEY* asked :

"Will Government be pleased to consider the propriety of showing public appreciation in some practical manner of the valuable pioneer work of Mr. I. A. Johnstone which was largely responsible for the development of the Kakamega Goldfields?"

THE HON. THE COLONIAL SECRETARY : Government is prepared, in considering any application on the part of Mr. I. A. Johnstone for a mining concession, to give due weight to the services he has rendered to the mining industry in Kenya by his discovery of the Kakamega Goldfields.

THE HON. T. J. O'SHEA : Arising out of that answer, in view of the fact that Government is contemplating recognition in the shape of concessions, may I ask whether those who were associated with Mr. Johnstone in his discovery will be borne in mind as entitled to equal consideration.

THE HON. THE COLONIAL SECRETARY : The terms of my answer I do not think stated definitely that Government contemplated recognition. It merely stated that any part played by Mr. Johnstone in the discovery would be borne in mind in considering any application by him for a mining concession. If there were other gentlemen associated with him, naturally the Government will give equal consideration to their claims.

LT.-COL. THE HON. J. G. KIRKWOOD: Arising out of that answer, might I ask is it not true that Mr. Johnstone did apply for two areas that have recently been thrown open and that he has not been successful in his applications. It is a lack of appreciation on Government's part if that is true.

THE HON. THE COLONIAL SECRETARY: The answer to the first part of the question is in the affirmative. In regard to the second part of the question, it is believed to be in the public interest to allot the applications as decided upon.

LT.-COL. THE HON. J. G. KIRKWOOD: Would it not be showing appreciation in a practical form to grant at least one of these areas Mr. Johnstone has applied for, whereas several areas have been granted to one specific company. It does not seem to me that you are showing him appreciation at all. It is just the opposite.

HIS EXCELLENCY: That is really not a proper supplementary question.

EDUCATION IN MINING AREAS.

No. 7.—**THE HON. T. J. O'SHEA** asked:

"Arising out of the answer given to a previous question regarding Government's policy in relation to the education of European children resident in the Kavirondo mining areas, is the hon. the Director of Education yet in a position to make any announcement on the subject?"

THE HON. THE DIRECTOR OF EDUCATION (MR. H. S. SCOTT): The European population in the area in question is extremely scattered. Consequently, apart from any other consideration, Government is not prepared to provide any special educational facilities. There is ample accommodation available at the Government School at Eldoret: in the case of parents who are unable to pay the fees in whole or in part, application for partial or entire remission of fees can be made to the School Committee, and all such applications will receive careful consideration.

THE HON. T. J. O'SHEA: Arising out of that answer, may I ask whether Government will make it its business to see that these children are not left without education and will not be allowed to continue residing in that native reserve unless the parents take steps to give them education?

THE HON. THE DIRECTOR OF EDUCATION: There are two questions in that. With regard to the first, Government will make it its duty to see that these children have adequate

education—that is, it is prepared to offer facilities for education, but it is not possible to force people to take advantage of those facilities. The other question is one which I am unable to answer.

EUROPEAN GIRLS' SECONDARY SCHOOL.

No. 8.—**THE HON. T. J. O'SHEA** asked:

"Will the hon. the Director of Education kindly state:—

- (1) Whether Government recognizes the urgent necessity of providing adequate and suitable accommodation in or near Nairobi for the European Girls' Secondary School;
- (2) What steps Government is taking or proposes to take in the matter?"

THE HON. THE DIRECTOR OF EDUCATION: I will take the two parts of the hon. Member's question together. The Government is fully alive to the unsatisfactory nature of the boarding accommodation provided for girls at the Nairobi Secondary School. The possibility of providing new boarding accommodation by utilizing a portion of the unexpended Loan Balances on Public Buildings is being examined.

MOTIONS.

THE HON. THE COLONIAL SECRETARY: Sir, with the permission of Council, I think it might facilitate the debate if the first motion standing in the name of the hon. Member for Uasin Gishu were now taken; then the two Government motions, and then the second motion standing in the name of the hon. Member. I would suggest, Sir, that the hon. Member be called upon now to move his motion.

HIS EXCELLENCY: I take it that that will meet with the approval of the House.

ECONOMIC RECONSTRUCTION COMMITTEE.

THE HON. T. J. O'SHEA: Thank you for the consideration shown to me in this matter. The motion which I wish to move, Sir, reads as follows:

"That this Council regrets the delay in the appointment of an Economic Reconstruction Committee and trusts that such a committee will be appointed immediately with a personnel and terms of reference adequate to the purpose in view."

Your Excellency, I hope it will be taken from the wording of the motion that the one objective is to have this Committee appointed immediately, and if the introductory

words imply any criticism of Government for the delay which has taken place in implementing Your Excellency's promise to appoint this Committee, then I should like to assure the House that no criticism is intended. These words were inserted merely for the purpose of linking up the motion with the promise given by Your Excellency at the last session of the Council. Had it not been for the interview which took place yesterday with the Secretary of State for the Colonies and the statement made by Your Excellency this morning from that gentleman, I should not take up very much of the time of the House in moving this motion; but, Sir, in view of what took place yesterday, and in view of the statement which has been made this morning, it seems necessary to restate the case for the appointment of this Committee. I very much regret indeed that it should be necessary to restate the case. We had thought it was recognized by Government, when Your Excellency last session was good enough to give an assurance that this Committee would be appointed; and it is indeed a source of grave disappointment to us that there is now hesitation about implementing that promise.

Yesterday's interview was very disappointing indeed, Sir, but there was one very satisfactory feature about it, regarding which I should like to pay a tribute to the Secretary of State. We appreciated very much that he should have been so entirely frank with us. We appreciate that all the more because by being frank he had of necessity to tell us something which sounded unpleasant in our ears: that in his considered opinion the circumstances of this Colony did not justify the raising of further loan monies for its economic recovery.

In view of that very disappointing statement, I am afraid that it is necessary at any rate briefly to review the arguments which we have urged upon you for the appointment of this committee and the arguments upon which we believe you gave your decision in favour of that point of view. We urged it, Sir, because in the first place world wide conditions make it not only advisable but necessary, and we urge it in the second place because the conditions of our own country make it not only advisable but necessary. In the minds of some, the improvement that has taken place in our circumstances during the last six months lead to the belief that if we can keep things going on as they are we shall achieve recovery in a somewhat reasonable period of time. Your Excellency, I am one of those who believe that that is not a point of view that should be acted upon by the Government of this country. As radical changes have taken place in the economic structure of the world, of necessity there have been radical changes in the economic structure of our country, and the committee of the nature suggested is essential if we are to realize the possibilities of the country for the government of which we are responsible.

It is the height of foolishness to believe, in my humble opinion—unless I am assured the opinion is universally held—it is the height of folly to believe that conditions will ever again be as they were before the economic collapse took place. One has only got to turn to recent events in the great United States of America, in Great Britain itself, in Australia and Germany, and in France, to realize that the collapse, the economic collapse, of recent years was a complete collapse; that things can never be again as they were, and that any country surviving in the future must remodel its economic structure in keeping with the world wide changes that are taking place. It seems to me essential that we should square up to this issue, and not delude ourselves with false hopes that by drifting along we shall find ourselves on our feet again. It cannot possibly be. Changes have taken place in the economic structure, and in the political structure, of the world to an extent that make it imperative for us to adapt ourselves to those changes.

The second issue likely to be prominent in the minds of Government in dealing with this matter is—“are we capable of handling such a difficult task as the readjustment of the economic structure of this country without outside assistance?” Now, Sir, it may be regarded at first sight as presumption on our part to believe that we are so capable. But I suggest that on examination it will be found that the greater ability which may be brought in from the outside to tackle the task will be so handicapped by lack of knowledge of the factors with which they will have to deal that we can discount the greater ability that might be brought in from outside. One of the outstanding things of the last few years is the complete failure of the expert to deal with problems of the world; men who in the past quite rightly enjoyed universal respect as masters of finance, as experts of banking, as industrial organisers have failed because of the complete change in the circumstances with which they had to deal, and we have seen it proved over and over again that those with an intimate knowledge of the facts, inspired by the determination to find a solution of the problems were much more successful than those who had enjoyed respect because of their greater ability in dealing with more normal circumstances. So I say without hesitation, that I am quite confident there is ability in this country; combined with a knowledge of the requirements of the case, that would succeed in tendering advice to Government and real assistance in achieving our economic recovery. I am perfectly confident that this committee would justify itself.

It has also been suggested to us, Sir, that a committee of this nature is not a body best fitted to deal with the problem. We were reminded that in other countries the Government has

found it possible to deal with similar situations without the need of appointing such a committee. That statement was made without a knowledge of the circumstances and the government and organization of this country. I do not think that anybody will question my statement that in the past Government has always found it helpful to have the assistance of people who were more familiar with the circumstances of industrial and commercial organizations than Government is itself. Our Government is not so constituted that there are members of it thoroughly familiar with the factors with which they have to deal. In the past Government has always found it helpful to have outside assistance, and in connexion with the solution of this problem I feel certain they will find that assistance equally valuable. It must be felt by Government that this side of the House wonders why at this stage there should be any hesitation in setting up this committee. Government might think they are justified in not setting up this committee in view of the information that the finances may not be available for implementing its recommendations. Sir, is that sufficient reason on which to turn it down? Is it fair to assume that such a committee would put up recommendations entirely dependent on finding new finance? Is Government's vision so narrow that it cannot see the wide scope there is for such a committee, even with limited funds available for its recommendations? There are already in existence several committees dealing piecemeal with this problem of economic reconstruction. Can Government not see the good which is likely to accrue from having a committee that would co-ordinate the efforts of those sectional bodies? Again, Sir, are we justified in lying down under the statement that no funds will be available for economic reconstruction because the British Treasury and certain individuals in the City of London are of the opinion that this country cannot ask for additional loan funds? I should have thought, Sir, that because of that statement having been made, it was more than ever necessary to appoint this committee to make out a case to prove to the Treasury and these gentlemen of the City of London that they were completely ignorant of the circumstances of this country; that it justified in very way the granting of further loan funds. In the first place, Sir, I challenge the statement of the British Treasury that this country cannot safely carry further loan funds. What are the facts? It is nominally responsible for a total national debt of seventeen millions of pounds. In actual fact, over thirteen millions of that sum is not the debt of this Colony, but the debt of the Kenya and Uganda Railways and is the responsibility of this and the adjoining territory. I ask the Treasury officials of Great Britain if it were not a fact that that is one of the soundest investments that the British public has ever made? If it were not a fact that an extremely high rate of interest is now being paid regularly on that invest-

ment, and that there has never been any question of doubt about the payment of that interest being made? Can the same be said of the greater proportion of investments that have been made by British people on the advice of the British Treasury? No, Sir. From the investment point of view, the Kenya and associated railways has proved one of the soundest investments and most profitable that the British public has ever made. There has never been any question of our defaulting, and never any question of token payments. In actual fact, if you compare the position of the British investors in this country with the position in which the British investor finds his funds in other parts of the British Empire, we can truthfully claim that we stand at the top of the list.

Of the balance of this seventeen millions, something under four millions is in actual fact the debt of this Colony, a sum of approximately £1 per head of the population. Now, Sir, I would ask—are there many countries in the world to-day that have such a low national debt as that? Are there many other countries of the world to-day so well able to carry such a small national debt? Why then say that this country is carrying an amount that should make British investors doubtful of our ability to carry on.

What are the foundations of national credit? They are the natural resources of the country, the character of its people, and the possibilities of those natural resources being exploited at a profit within a reasonable period of time. From this point of view, Sir, is the Government of this country not in a position to assure the British Treasury that a further investment in developing these natural resources will be perfectly safe? I am astonished at the suggestion that the Government of this country hesitates to tell the British Treasury that they are wrong in their view, I am astonished at the reluctance on the part of our Government to put up a case and prove it, I am astonished that the Government so lacks faith in the country that they are endeavouring to govern. In view of the statement made this morning, it is only fair to the country that Government should state what is its opinion on the question of the ability of the country to carry a further national debt. In our Government doubtful of the future of the territory? Does it share that view of the British Treasury that it will lie down under this dictum, that under the circumstances prevailing we are to be denied having a comparatively small sum of money to get on with our economic recovery?

Let us look at it from another point of view. Can Government justify inactivity on its part in the circumstances? Can it deny the right that every part of the British Empire has resorted to, to extreme measures to deal with the situation and to borrow on much more doubtful security for schemes considered necessary to recover? Are we to understand that this

is one of the few parts of the world to be left to chance for its recovery? Great Britain itself has thought it necessary to borrow very large sums and on shakier credit than ours to subsidise industry and agriculture in many forms so as to bring about improvement in the economic circumstances of the country. Why, then, should it be regarded as heresy on our part to say that it is necessary and advisable to have the same in Kenya. Have we not got the prospects to justify the same courage and vision on the part of our Government?

In a memorandum which was presented to the Secretary of State yesterday, very brief mention was made of some circumstances that, in our opinion, justify us in believing that we have some special claim upon the Imperial Government for its co-operation in this matter. To only one of those circumstances will I refer, Sir, the fact that the British Government in the past, acting on our behalf, inflicted us with the most expensive loans that have been raised in London for the Colonies, without having the foresight to make provision for the redemption of those loans when circumstances became more favourable. By that lack of foresight on the part of the British Government, this country is heavily penalized and is to-day carrying a burden of interest which has not been carried proportionately by any other part of the British Empire. Nevertheless, Sir, we have faced up to that and we have met our commitments in a way that not even the Government of Great Britain itself has been able to meet its commitments; and then we are told that our credit is not good for a paltry half-million or million pounds to get on with the work which lies to hand. I cannot help feeling, Sir, that in this matter Government is showing lamentable lack of courage. Government's hesitation to get on with this committee is due, in my mind, to a conviction that such a committee would make recommendations to Government that they would not be willing to implement. It lacks courage, it lacks confidence in itself, it lacks confidence in the country, and is undoubtedly obsessed by the fear that any such committee would make recommendations that Government would be afraid to tackle. In the first place, I feel quite confident that any committee nominated by Your Excellency to deal with such a grave problem would be composed of people who would not make recommendations to Government without a very strong case indeed to support them. I feel certain that Government need have no fear whatever that any such committee would put its name to wild-cat schemes or half-baked measures such as those we hear so much about at the present time. Such committee, I am confident, would have the ability and the sense of public responsibility carefully to consider any schemes put up to them and would not make recommendations to Government which were not justified from every point of view.

Well, this question is almost entirely an economic one, Sir, but it still has political implications. It is all very well for people who are aspiring to membership of this Council for the first time to talk about severing economics from politics. Experienced members of this House are conscious that politics are very largely a question of finding a solution of economic problems, and the converse also holds true, that even in dealing with economic problems you have to consider their political implications. Your Excellency, I ask you to consider what is going to be the effect on this country if it goes forth from this House to-day that the promise you gave at last session to appoint this committee is not going to be implemented. The consequences, Sir, not only economically but politically, will be very far-reaching. In response to the earnest appeal that you made to this House and, through this House, to the country, after you returned from overseas, the country has pledged itself in many ways to a policy of the closest co-operation with Government in seeking solutions to our economic difficulties. Without exception the men who are offering themselves to the constituencies at the forthcoming election have pledged themselves to that policy of co-operation and to finding solutions to our economic difficulties. They have done that, Sir, because of the assurance given by you that that co-operation would be welcomed, that that co-operation would result in active measures being taken to find solutions for our economic difficulties; and I ask you, Sir, what is going to be the position of those men when they go to the country next month and tell it that on the very first step in the carrying out of that policy of co-operation, the Government has failed. What is going to be the effect upon Government during the next year or two? Can you imagine, Sir, that it is going to retain the confidence of this country to the slightest extent after such a departure? It cannot possibly. The consequences will indeed be great because however independent in theory the Government of this country may be of the people whom it governs, the fact still remains that it is dependent upon the warm support and co-operation of the people for the continuance of its existence, and for the achievement of any of the purposes for which it is in being. On the other hand, Sir, let us consider for one moment what will be the effect upon the country if it goes forth from this House to-day that, despite the difficulties have been foreshadowed by that statement on the part of the Secretary of State, our Government is nevertheless determined that the facts shall be explored and that a case shall be made out in the hope of convincing the Secretary of State that his support of our efforts is justified. Imagine what the effect would be, Sir. It would give new light and hope to the country, it would encourage those who have been struggling through these difficult years to continue in the struggle. It will accelerate the efforts towards recovery

that have been already in operation and I feel confident, Sir, that if Government has the courage to take that step the results within the next twelve months will be such as will cause us to look back on this as a day on which something was done for which we can well ask credit.

Your Excellency, this is one of the last occasions on which I shall have the privilege of addressing this House. I have had the honour of being a Member of it for some ten years. During that period I have on more than one occasion expressed my earnest conviction of the causes I was advocating as in the best interests of my country. I have on more than one occasion made an earnest appeal to Government to accede to the point of view I was endeavouring to argue. Never have I spoken with deeper conviction and never have I been more earnest in making my appeal than I am to-day, when I make this appeal to Government immediately to set up this Economic Reconstruction Committee with a personnel and terms of reference adequate to the purpose in view. I make that appeal, Sir, because I am convinced that if Government does so, it will be doing something which will indeed answer our daily prayer and work towards the prosperity of this Colony and Protectorate.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I rise to second the motion so extremely ably and fully put forward by my hon. friend the Member for Uasin Gishu. Sir, may I just take your minds back to the origin of this motion. It was two months ago that the hon. Member who has just spoken moved a resolution asking for such a committee, and if I recollect aright, I seconded that motion. You, Sir, gave us a definite undertaking as the Governor of this Colony that that committee would be appointed, and in view of that undertaking we withdrew our motion. Now, Sir, it seems to me an unthinkable position that an undertaking given in public in this House by the Governor of the Colony should not be implemented. It would be a terrible state of affairs if the word of our Governor became known as a mere puff of air. It is said, Sir, that circumstances have changed. The Secretary of State has informed us that the financial pundits in London say we can have no more money. That, Sir, is nothing new in the history of the building up of our Empire. Forty years ago that great Empire-builder, Mr. Rhodes, approached the then Chancellor of the Exchequer, Sir Michael Hicks Beach, and asked him to help him with a two-million loan for the purpose of building his railway to the north. It was turned down and Mr. Rhodes bitterly said how the same financial pundits were always ready to lend money to any two-penny-halfpenny foreign state, but would do nothing for the British Empire, and from that moment he realized it was no

good placing any faith in what he called "the Imperial factor". Another great pro-consul and ex-Colonial Secretary was fond of saying that the marvellous thing about the British Empire was how it progressed despite the Treasury officials.

Sir, we naturally accept the statement of the Secretary of State for the Colonies that there is no money available to-day. We know, Sir, that we were told the same thing two years ago, that we could have no more money until we balanced our budget. But in spite of that, Sir, Sir Philip Cunliffe-Lister did work on our behalf and he got another quarter of a million pounds for us, for the Land Bank. If, Sir, we can put up a sound enough case to show that we are in a financial position to carry the burden of further loan funds, and if we can put up a case to show that the objects for which we require the money are sound and justifiable and for the economic benefit of the country, surely, Sir, these expert financiers will judge the case on its merits and may quite conceivably change their minds. At the same time, Sir, if nothing is done at this end, if it is nobody's business to examine the various proposals which may be put forward, how can we put up a case to convince the people at home? And for that reason, Sir, in spite of the fact that there is no money available to-day, I do most earnestly pray Government will accept this resolution and will appoint the committee to explore very thoroughly any proposals which may be forthcoming, to get rid of all the impracticable ones which are not worth further consideration, and to concentrate on those which are practicable and which are sound from the point of view of development of the country. I do earnestly pray that Government will accept this request, Sir. In the statement you read out this morning I think the Secretary of State said that what was called a reconstruction loan was in fact a method of relief and not development. I am not quoting quite correctly, but that was the gist of his statement. I should like first to say that no definite proposition on these lines has yet been put forward to Government. There are proposals which should be considered and gone into to see whether they are sound or otherwise. But the point I wish to make is that the giving of some method of relief to hard-pressed farmers to enable them to carry on on their farms is definitely a measure for the development of the country and not merely for relief. Anyone who travels the country to-day, and sees the state of the farms taken over by the banks or other mortgagees, and sees the magnificent crops of Mexican marigold now covering the land, will realize that unless something is done to keep the present farmers on the land we shall have no further development but shall go rapidly backwards.

Now, Sir, I do not wish to traverse the ground already so ably gone over by the hon. mover of the motion, but I should like to stress that it is our duty at this end to take the initiative

in these matters to put up the best case possible for the benefit of the country. I agree that we do not want to commit ourselves to wild-cat schemes or anything impossible, but we should be allowed to explore sound, solid and reasonable measures which are required for the better development of the country, the economic reconstruction of this country, and then see if we cannot put up such a good case that we may convince the people at home of the justice of our case. I beg, Sir, to second the motion.

HIS EXCELLENCY: The question is that the motion moved by the hon. Member for Uasin Gishu be approved.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I rise to support the motion before the House. To my mind, the announcement made by Your Excellency this morning is one which has created a profound sensation in this Council, that the co-operation and assistance of the officials and un-officials is to be refused in advising Government on the reconstruction of this Colony. We are all aware that during the last three years we have gone through a financial crisis due to the low price of cereals and the collapse of the world's markets. It is not peculiar to Kenya; it is world wide. I would say before proceeding any further that I should like to associate myself with the remark passed by my colleague, the hon. Member for Uasin Gishu, in thanking the Secretary of State for the Colonies for his frankness. It certainly is an asset. Although he does not see eye to eye with us nor we with him, we agree to differ, but I hope that any remarks passed by me or which may be passed here will not be taken as personal. We are entitled to our opinion, and I suggest, Sir, that the statement that Kenya cannot afford further loans is incorrect. If this Colony were put up to America to-morrow for double the amount of the loan, within a fortnight or three weeks we should be a Colony of the American nation. They would put up money quick enough. It is futile in my mind to suggest that a sum of seventeen million pounds is a burden that this Colony is incapable of carrying. It has been pointed out that the greater part of the loan is on behalf of the Railway. It has also been stressed that the responsibility for financing the Railway is on the shoulders of Kenya, but that is wrong; it was originally built as a strategic railway into Uganda, not to develop Kenya at all. It was built by Imperial funds by the Imperial Government, they now tell us that because we have built this railway—it was built on a very expensive loan, costing a great deal more than it should—we have to shoulder the burden, inasmuch as that responsibility is a contingent liability on Kenya. There can be no question that this is a contingent liability on Uganda and Kenya, and the sooner that issue is faced the better. In bank parlance, we know that a

contingent liability is a definite practice insured at times to get further finance, and this one is a more direct handicap on Kenya than on anyone else to-day. There are other implications in the notification of His Excellency the Governor not to accept this motion, and whether this is done to stampe the country back on the constitutional issue just before the election I do not know. I hope, seeing that we have decided for the moment to shelve that issue, that Government will assist us by accepting this motion, and advise the Secretary of State that in the opinion of Government the intention not to accept or implement the intention behind the motion is a profound blunder. It is going to be frightfully difficult for every man proposing to stand at the forthcoming election if the motion is refused and for the men who have given their services for years freely at great expense and time to themselves in trying to assist the country of their adoption, in which they have made their homes—it may decide them to have nothing further to do with politics and to get out of the Colony at the earliest possible date. I think it most regrettable indeed, and I can think of no incident which has happened during the seven years I have had the honour and pleasure of trying to help in this Council, of any action proposed by Government which will have the effect that this action will have on the country. It will be deplorable, Sir, and I do hope, even at the eleventh hour, that your advice will be accepted by the Secretary of State and that he will allow this motion to go through. It is astounding and must be realized that one man apart from the Cabinet—I take it that the Secretary of State has not consulted the Cabinet on the question, I cannot think that he has done so, so that I am reduced to the conclusion that it is on his own initiative, that it is largely on his responsibility, that the co-operation of the Colony is being refused by Government in trying to find a way out to improve the financial and economic condition of this Colony in the near future. We are all trying to pull together, and if on the eve of the election our co-operation is refused—I do not accept the ruling of the financial advisers at home, whether the Governor of the Bank of England or the Imperial Treasury, that Kenya cannot afford a further loan. The motion itself has not asked for a further loan, but an inquiry and an investigation; it desires to be put in a position to advise Government on different problems yet to be explored. Those in touch with the actual facts of the Colony are well aware that a large percentage of the farming community are financially bankrupt. It is a question whether it is this Government's intention to find ways and means of keeping these men on the land, of keeping their families going on their farms in the near future so that there is every possibility of success rewarding their efforts if given the least leg over the stile. We all know that in business money makes money, and even in desperate cases a loan wisely granted will

very often pull a farmer or an individual out of his trouble. If that assistance is going to be refused it means that Government is then going to be asked for further supplementary estimates for money to be spent in deporting these poor unfortunate people from the Colony. That is actually what is going to happen when they are down and out and become a charge on the community—their passage is paid somewhere else. If that is the idea of this Government or of the Cabinet or the Imperial authorities for popularizing this country, and making it a strong centre of European civilization then it has got me beaten. It makes me wonder whether it would not be a good thing if Tanganyika were given back to the Germans, and then the Imperial authorities *ipso facto* would be bound to establish a very strong European settlement in this Colony to hold their own in this part of the world on behalf of the Empire. I am speaking as an Imperialist, who spent some years of his life in voluntary service on behalf of the old flag to keep it going, and yet I have to speak in this Council on a motion like this one. It is most damnable to be put in that position. I do hope, Sir, that you will not force this motion through, that it may be held over. Let it be held over for consideration, no harm can be done. But do not force it through this morning, because if you do you will arouse the country in a manner not realized by the Secretary of State.

MAJOR THE HON. J. O. K. DELAP: In rising to support the motion before the House, I would like to draw Your Excellency's attention to what I believe is a misapprehension existing as between us and the Colonial Office and the Treasury at home, and that is that it seems to be thought—I am afraid it is thought—that when in the future and from time to time this country does and will require capital for the development of its resources—that we are asking for a dole, that we are asking for charity, that we are asking for assistance that we do not intend to justify. I stressed yesterday the point that in making suggestions leading up to further financial assistance we wished to lay before the investors the prospects of what this country was prepared to do, the security it could offer for the repayment of the loans and the facilities it could offer for payment of interest on money it could borrow; and it seems to me that the principal work of this committee, which Your Excellency was good enough to promise should be established, would be, as has been said, the setting aside and the killing once for all of some of those foolish panaceas which have been put up for the further establishment of our credit, and the careful consideration of the case which we should have to put before the investor. Now, Sir, if it is taken as decided that we have not a proper case to put, how can we ever hope to get our credit on a proper footing. We require this committee to examine the whole situation and see why it is that we think

we are justified in the belief that we have in our country, and in the optimism that we feel in the prospects of this country; and to try and make other people, especially investors, share it with us. We really require this committee, and in asking for it we are not asking for anything which is not justified.

HIS EXCELLENCY: If no other hon. Member wishes to speak I propose to adjourn.

The Council adjourned for the usual interval.

On resuming.

HIS EXCELLENCY: If no other hon. Member except the hon. mover wishes to speak I will call upon the Colonial Secretary.

THE HON. THE COLONIAL SECRETARY: I have listened, as I feel all Members of this House have listened, with the greatest attention to the terms of the motion moved by the hon. Member for Uasin Gishu and to the speeches that have followed his; and I feel, and all of us, I feel sure, on all sides of the House feel, that in speaking as they have done they have been inspired by one thing only, and that is a desire for the improvement and development of this Colony. And I need hardly say that you, Sir, and the Official Members are entirely at one with them in their desire to see this Colony go forward as rapidly as possible and recover from the present economic depression from which it suffers. In fact, Sir, I may say that it was with that object in view and because we were all thinking along the same lines that at the last session of Council we readily agreed to the appointment of this committee. And I should wish to make it quite clear, Sir, that in agreeing to the appointment of that committee we felt then that, on the information before us, its activities were likely to be fruitful and that one of its first duties would be to examine the financial position of the Colony and to gauge whether or not further loan funds, for whatever purpose, would be required, and, if so, what the likelihood was of this Colony being able to obtain them. Indeed, during the interval that has elapsed, the hon. Acting Treasurer and myself did informally discuss terms of reference on those lines. Then, as we all know, the Secretary of State visited this Colony and it was considered—and I think that was a reasonable consideration—that as we should have the advantage of his presence and advice it would be desirable, before agreeing either to terms of reference or to the appointment of the committee, to get some indication from him as to the chances of this Colony being able to obtain further loan expenditure.

Hon. Members yesterday were informed quite clearly and frankly as to the position on that matter, and in view of that pronouncement the reason why, Sir, you and this Government felt any hesitation in proceeding with the appointment of the committee was that—if I may say so—we felt that to proceed with the appointment of a committee which would explore the different demands for further loan funds—an operation which would probably take considerable time—only to know that when such application was made at home it was bound to be turned down, we should be wasting the time not only of hon. Members opposite but of the Official Members of that committee, and also might be leading the public in general to foster false hopes which would not in fact be realized.

However, Sir, to turn to the debate this morning, which has hinged on rather different lines, the point has been taken that a promise was made by Government, a pledge was given, and that that pledge is not going to be fulfilled. I agree, Sir, and I know every Member of this House agrees, that it would be unthinkable to suggest that a pledge given in open Council by Your Excellency is not going to be honoured to the full. If, Sir, that is the impression—and I gather it is—that honourable Members have if the Government do not accept this motion, I feel, Sir, that that is an over-riding consideration which should at the moment even compel us for a moment to depart from the realities of the situation. I have, therefore, Sir, your authority for saying that, if that is the view held by hon. Members opposite, and if the real question before the House is whether or not the pledge given by this Government is to be honoured or not (even though, in our opinion, it may be that the appointment of such a committee may not result in all that we originally hoped for) Government is prepared to proceed with the appointment of the committee.

I would, however, Sir, before I sit down, just like to make this point clear. The terms of reference of that committee and the personnel have yet to be decided upon and naturally on a subject of such importance you, Sir, will consult your Executive Council, and, however eager we all may be to assist in every possible way the farmer in this Colony, who is, as we know, in such dire straits, I do suggest that in facing this situation we must face up to facts and to the cold realities. We here may have, and have good reason for optimism in the future of this Colony, but when it comes to the question of floating a further loan we have to deal with hard-headed financiers in London. They are not going to be influenced by the speeches of hon. Members opposite, however eloquent. They are merely going to turn to our Estimates, to our records of the last few years, under which, as we all know with regret, we have had to register a deficit. They will look at our loan commitments as published in the Colony's statement of assets

and securities; and it is on that alone that the ultimate decision as to whether the loan can be raised or not will be decided. On that matter, Sir, we have received in perfectly frank and unequivocal terms the opinion of the Secretary of State. We all know that the Secretary of State has fought our battles here in the past. We all know, he made it abundantly clear in that interview, that he was prepared to fight our battles again, but he did say to us, "Gentlemen, in presenting your case I have got to present it to a body of cold, hard-headed business men in London and you are going to ask me too much if you ask me to press on your behalf a case which at the bottom of my heart I cannot say with certainty is an economic proposition." Put me up an economic proposition"—and he made it abundantly clear that if we did that he would use all his influence to get that economic proposition through. He further indicated that in his opinion the preparation of such an economic proposition would probably be better performed by the different industries concerned, who already had their organizations in this country, and he went, I think, so far as to congratulate us in our youth as a Colony on the steps which the individual industries had taken to organize themselves. It is that, therefore, that has influenced the attitude that Government has taken over this motion. It was no question of Government going back on its pledged word; it was no question of its not being anxious to identify itself to the utmost with anything that could make for the benefit of this country. If I may say so, it was rather a question of a difference of opinion as to technique, than as to the essential importance of our situation. If that is only the line that divides us, and if that line is going to be taken up and used in public places as a suggestion that this Government is going back on its pledged word, we feel on this side of the House that we shall be paying too dearly for a matter of technique. I have the authority, therefore, of Your Excellency to say that we will accept the motion.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I have been asked by the Noble Lord, and I do so only too gladly, to express on behalf of the hon. Members on this side of the House our very real gratitude to Government for the line they have decided to take. The feeling that will be engendered throughout the Colony as a result of this decision will be a most beneficial one, just as it is no exaggeration to say that had the decision gone the other way it would, as the hon. Member for Uasin Gishu said, have had the most disastrous repercussions. I do not propose to deal with the question at length, but I think I can say without exaggeration that when it is known throughout the country that Government have been strong enough to have been influenced by cold logic and reasoned argument such as was heard in the speeches especially

of the hon. mover and seconder, they will feel that there has been shown some definite implementation of that promise of co-operation which we welcomed so much. I believe, Sir, this debate to-day which started on such dangerous grounds, will have done more to help those who in a couple of months will be placed here to carry on the work we have tried to do than can be imagined at the moment.

THE HON. T. J. O'SHEA: Your Excellency, I should like to associate myself with the views given expression to by the hon. Member for Nairobi South. I want to add my assurance to his that this wise and great decision of Government will in my opinion have a far reaching and beneficial influence. I am very pleased indeed that at this stage I should be associated with Government in the realization of what is so widespread, that what the country needs is our co-operation in the solution of our difficulties.

HIS EXCELLENCY: The question is:

"That this Council regrets the delay in the appointment of an Economic Reconstruction Committee and trusts that such a committee will be appointed immediately with a personnel and terms of reference adequate to the purpose in view."

The question was put and carried.

SUPPLEMENTARY EXPENDITURE.—MEDICAL BUILDINGS, KITALE.

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 £2,750 upon the purposes specified in the Schedule hereto as a charge against Loan Account and further approves provision being made therefrom from savings on the amount already approved for Medical Buildings.

SCHEDULE.

Medical Buildings, Kitale Hospital £2,750."

Hon. Members will remember that when dealing with the estimates for the current year the Select Committee in paragraphs 91 and 92 of their report expressed their hope that Government would consider the possibility of finding from loan funds sufficient money to supply a native hospital at Kitale. At that time—admittedly rough estimates were presented to the committee—it was suggested that for a sum of about £2,600 a fifty bed hospital could be erected. As a result of going into the matter more fully with the Loan Works Committee, as instructed by the Select Committee on estimates,

it was found that that sum would hardly suffice for a full fifty bed hospital. At the same time, the Director of Medical and Sanitary Services informed us that a very adequate building could be put up very much on the same lines as the native hospital erected at Nyeri, for £2,750. This sum will provide thirty beds at the start, and it will not be difficult, should the financial position improve, to add another ward to that as time and circumstances permit. I beg formally to move the motion standing in my name, Sir.

LT.-COL. THE HON. C. G. DURHAM: Your Excellency, I had the privilege of going into the details of the scheme, and fully appreciate the dire necessity of a hospital in Kitale. I beg, Sir, to second the motion.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, while supporting the motion I do hope that every step will be taken to erect this building as economically as possible. It was suggested, I think, that artisans from the Native Industrial Training Depot might be used. One other point arising out of this matter, Sir, there are a certain amount of loan funds still available which have been voted and are available for expenditure. I trust that Government will go thoroughly into the question of these funds to see whether any re-allocation of savings or otherwise might be made for certain objects—I do not wish to mention any particular one—which are of urgent necessity in the Colony to-day.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I would only say in reply, that the Loan Works Committee are very carefully examining the cheapest manner of constructing this building. It may be done by the Native Industrial Training Depot—they have as a matter of fact a good deal of other work on their hands at the moment—or it may be done by contract. The deciding factor will very largely be a question of economy. On the general point raised by the Noble Lord, I can assure you that if it be the case that we are going to proceed generally with a building programme from temporarily suspended loan works, the question of the general reallocation will be a matter to be very carefully considered, regard being had to the different claims on these balances.

The question was put and carried.

FAMINE RELIEF.

THE HON. THE CHIEF NATIVE COMMISSIONER (MR. S. H. LA FONTAINE): Your Excellency, I beg to move the following motion:

"Be it resolved that this Council approves the expenditure of a sum of £3,000 upon the purposes specified in the Schedule hereto as a charge against the revenue and other funds of the Colony.

SCHEDULE.

Administration Extraordinary.—

Famine Relief £3,000."

A serious food shortage has developed. Sir, in the Coast Province of this Colony. It is largely due to the recent infestation of locusts, which in certain areas have done a considerable amount of damage. In addition to this, natives and their stock have suffered from the cumulative effects of four seasons of drought. In consequence, the matter has reached the stage when it requires the intervention of Government. The Provincial Commissioner for the Coast, who can second this motion, has recently toured the areas affected, and he will be able to give this Council details which will convince them. I hope, as to the need for the provision of the sum asked for.

I would emphasize the fact that the Local Native Councils will give from their funds what assistance they can towards this object. It is hoped, Sir, that the sum asked for, in addition to the amounts which the Local Native Councils will contribute, will be sufficient to tide over any famine, and enable the natives concerned to be fed for a period of two months. In regard to the actual details of the contributions of the Local Native Councils, it is not possible at this stage to say exactly how much will be provided. I beg, Sir, to move the motion standing in my name.

THE HON. S. H. PAPAN: I rise to second the motion. With your permission I will inform the House of the position as I know it to be. At the end of the year there appeared to be good promise. The crops, including maize crops, were promising fairly well in spite of rather insufficient rains. We found, however, that we were in a precarious position because the natives had no food in their stores, having had four seasons of drought. They depended upon the rains in January. Some rain fell, and speaking of the Coast ten-mile strip a certain proportion of the maize crop was saved, and other crops have survived and will be able to feed the natives. The Salaki Valley, one of the most fertile areas, was in the position in January that if the rain fell within the next ten days there would be a considerable amount of maize harvested. Luckily a certain amount of rain did fall, and the maize came on, so that there will be a good deal of help to be derived from this area. The Tana at the present moment has a good average yield, but the locusts were advancing in that direction when last we heard of them. I am in a food shortage concerning which the District Commissioner has changed his mind during the last ten days. He said first of all that he thought they would

just be able to carry on without assistance. In the last ten days he has said that some assistance will be necessary, but that is not the worst end of the Province and will not require any assistance until after April.

The position at the end of January in the Digo District was serious. The rains in the hinterland had failed, and locusts were hovering on the border. They came and they wiped out all the food in the hinterland without exception. I verified that myself, and there really is no food except roots in that area, and except stock.

The position now is this: there is a population of 31,000 natives in the Digo hinterland. Of these, 40 per cent have migrated to the Coast strip and, there being better crops there, it is thought that the Coast strip will be able to support that 40 per cent of those 31,000. There is a considerable settlement of Akamba there. They have more stock than their neighbours and should be able to carry on, so that roughly 17,000 people remain to be provided for. The Coast is not in a position to feed any more than these and they have literally nothing more to eat except their few stock and these roots. I have tasted the stuff to see what it is like, and I understand it is rather poisonous unless you treat it properly. The cattle are in an extremely poor condition.

The Kilifi District is not quite so bad; it is more populous but not nearly so bad, and the costs of famine relief should be about one-third what they are in the Digo District. The Native Council should be able to make a fairly substantial contribution. At the beginning of this month the District Commissioner informed me that it was necessary in his opinion to start famine relief at once. I called for any advice I could get—the Agricultural Officer and the Veterinary Officer, Mr. Lillywhite, an experienced farmer, the District Commissioner at Digo and the District Officer in charge at Malindi. We had our first meeting on the 2nd February. Mr. Lillywhite and the Agricultural Officer, Coast, expressed the opinion that the Kilifi District would be able to muddle through somehow. Within a week deaths had occurred in the Mangepa area, there had been an invasion of locusts, and the Agricultural Officer reported that he had changed his mind and was definitely of opinion that famine conditions prevailed in the Kilifi District as well as the Digo District.

The steps which might be taken were then debated at a meeting on Thursday last. The decisions reached were not actual decisions of Government; they were merely the arrangements which we on the Coast decided to put up. We con-

considered the possibilities, for instance, of advancing either on payment—selling the maize for payment; importing it and selling it cheap—or getting it in and selling it on credit; or starting famine relief works on roads for payment which would suffice for the work that was done. There is something to be said regarding all these methods and for reasons which I will state shortly we came to the conclusion that the only sound way to tackle the question was the last one, that is to say, famine relief works.

With regard to advances on credit, the greatest difficulty about that is that in a sense the native has no credit. He has not been able to pay his taxes properly in full for many years past. Although collections sometimes exceed estimates, the estimates are based on the assumption that a certain number of natives will not succeed in paying their taxes. Therefore it appears that we should get money by starting relief works on roads and providing the natives with food in lieu of pay.

That broadly represents the views of the officers on the Coast. Having considered the position of the Native Councils, I find that the Digo Native Council has in hand about £1,500 balance and is contemplating putting up to Government a recasting of its estimates so as to save us much as it can on its expenditure estimates. Of that money they have voted definitely to famine relief £500 and they have expressed their willingness to increase that amount. That is all the information I am able to give at the moment and it has covered, as far as I am able to, the whole survey of the situation.

HIS EXCELLENCY: The question is:

“Be it resolved that this Council approve the expenditure of a sum of £3,000 upon the purposes specified in the Schedule hereto as a charge against the revenue and other funds of the Colony.

SCHEDULE.

Administration Extraordinary—
Famine Relief

£3,000.”

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, it must be a great disappointment to every Member of this House to hear that so soon in the year almost a third of our estimated surplus in the year's estimates should have to go for this purpose. We must trust that this is not the forerunner of further largely increased expenditure to be brought about by the same cause.

Sir, I take it that, strictly speaking, as this is a relief work, we should vote against it, but even relief work of this sort has its benefit in development, as we heard just now from

the Provincial Commissioner, Const., that work is going to be done to improve the roads and in other ways. Incidentally, it will distribute moneys to the districts in the purchase of foodstuffs. One must be very sorry for these unfortunate natives who have suffered so severely from the infestation of locusts, and I support the motion.

MAJOR THE HON. R. W. B. ROBERTSON-ECSTACE: Your Excellency, I very much regret the causes of this motion. I only last week travelled through a considerable area of the country, and saw the enormous damage that this new invasion of locusts has done; very much more than any other invasion we have had—coconuts, *mahindi*, etc. I do trust very much that this money will be voted and will be devoted to relief work, especially on roads.

THE HON. CONWAY HARVEY: Your Excellency, in my opinion this motion serves to illustrate the very great importance of a sounder agricultural policy. This Council very rarely meets without demands being made on the exchequer for famine relief in some form or another, and I suggest that if natives were made to concentrate on the production of foodstuffs it would be very much better for them and the country; and I do wish to take advantage of this opportunity to deprecate frittering away public funds and wasting official energy and native energy as well in a mistaken experiment in the production of arabica coffee by natives, a production which everybody knows quite well is not a native crop, is quite unsuitable for native agriculturists and which may have very serious effects on the great European coffee industry of Kenya in which no less than £8,000,000 have been invested. My main point is that I consider it is the duty of Government to do everything humanly possible to concentrate on the production of foodstuffs and crops suitable to native agriculture in the various districts.

THE REV. CANON THE HON. G. BURNS: Your Excellency, only a week ago I travelled through the areas described by the Provincial Commissioner for Mombasa and it was one of the saddest experiences I have had for a very long time. It was not that natives had not done their work and planted their crops; but in *shamba* after *shamba* the *mahindi* had reached a fair height, and as you passed through the area you noticed that owing to the drought it was just breaking down, withered, and that they would never get a single cob. In acres and acres and acres I saw that myself. On top of that is the invasion of locusts and I agree with all that has been said about the destruction they have done. The necessity for immediate action is very real indeed, Sir, and through no fault of the natives themselves, or of those who are administering that district

which has suffered so much from drought during the last year or two. I do hope the Government will see its way to grant this, and that steps will be taken at once to relieve the situation. When I was down there I was speaking to the chief, and he told me that within the last week five of his people had died of starvation in that area. It has come to the time when some help must be brought to these people, or many more will be dying of starvation in the near future.

LT.-COL. THE HON. J. G. KIRKWOOD: While agreeing with practically everything said on this side of the House, and while the motion has my sympathy, we have to face up to the facts. We are all aware that there is a certain amount of loan funds which has been held in suspense for Central Offices and I understand that it is the possible intention, at least, of Government, to go on with the building of Central Offices. As I understand, that money is the only cash available . . .

HIS EXCELLENCY: Is the hon. Member not getting off the motion, which is that this Council approves the expenditure of a sum of money for the purposes specified in the Schedule? I do not think it has got anything to do with Central Offices.

LT.-COL. THE HON. J. G. KIRKWOOD: I quite realize that, but I was going to ask Your Excellency to give an assurance that the Central Offices will not be proceeded without first having obtained . . .

HIS EXCELLENCY: The hon. Member is out of order. It has nothing to do with this motion at all.

LT.-COL. THE HON. J. G. KIRKWOOD: I bow to your ruling, Sir, but I was trying to point out that the only available cash is cutting across the estimated balances and it is quite conceivable that the items due to locusts will also cut across the balances of the Colony and also across the budget, and that we might then find ourselves again in serious financial difficulties if everything that is available is spent while it could be retained, if only for a time. That is all, Sir.

There is also the point, Sir, that locusts are very much appreciated as food by natives and I am wondering whether, when these infestations take place, steps could not be taken to see that that food is conserved. There is also the point, Sir, about what steps the agricultural officer has taken to advise the natives right throughout the Colony to grow such crops that are not attacked by locusts, and these are points that should be considered. It was my intention, Sir, to support this motion, because it is unthinkable that natives should be deprived of food or otherwise reduced to a situation of starva-

tion, but the points I have mentioned are not trivial points and they are well worthy of consideration by Government, and I hope they will have consideration, notwithstanding what my hon. colleague for the Rift Valley may think of them. I have had thirty years' experience of the native in Africa and I do know something of the consequences to them of these infestations.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I do appreciate very much the helpful criticism that has been given on the other side of the House. We are all agreed in principle with the provision of this money, and therefore there is very little for me to add. I should, however, mention that this provision is only considered sufficient to last for the forthcoming period of two months. I feel it necessary to add that warning.

HIS EXCELLENCY: The question is:

"Be it resolved that this Council approves the expenditure of a sum of £3,000 upon the purposes specified in the Schedule hereto as a charge against the revenue and other funds of the Colony."

SCHEDULE.

Administration Extraordinary.—

Famine Relief £3,000."

THE HON. S. H. FAZAN: Your Excellency, I beg to second.

The question was put and carried.

THE CIVIL SERVICE BOARD.

THE HON. T. J. O'SHEA: Your Excellency, I beg to move:

"This Council views with alarm the manner in which a new Committee calling itself the Civil Service Board is dealing with the accepted recommendations of previous committees on the subject of a Local Civil Service."

I understand, Sir, that Government has not in any way committed itself to the recommendations of this new committee, in so far as they differ from the recommendations of previous committees, and I find that it is Government's intention to lay the new conditions of service before the Legislative Council before adopting them. I shall be as brief as I can, Sir, in moving my motion. I have said that this Council views with grave alarm the manner in which the original committee's recommendations were being dealt with by a new body, because I feel certain that hon. Members on the other side of the House feel as strongly as hon. Members on this

side about the manner in which the report of a previous committee has been dealt with by this new body. That previous committee was a very representative one; it included several of the more responsible members of Government. It pursued its investigations over a considerable period of time, it heard evidence, and made a very thorough investigation into the problems it was expected to deal with. That being the case, I feel certain that hon. Members on the other side would regret as we do that a very subordinate committee indeed, with very restricted terms of reference, should take upon itself to upset these previous recommendations, and to even go so far as to have the impertinence—I can find no other word—to go against the considered conclusions not only of this House but of the Executive Council of the country and also against the considered opinion of the Secretary of State for the Colonies. That may sound a very serious charge against this unfortunate body, but if you examine the reports it will be found a plain statement of fact.

In the course of their four reports this body consisting of two comparatively junior members of the Government service, and one gentleman of not great experience of the problems, have actually gone so far as to ignore the considered opinions of the Executive Council and to ignore the agreement with the decision of the Council with the Secretary of State for the Colonies. From the expressions of astonishment, Sir, on the faces of some hon. Members opposite, it is obvious to me that they have not studied the reports, but when they do they will find that I have made a statement of fact. From a careful study of these reports it is obvious that this new body has concerned itself almost entirely with finding any and every excuse to increase the emoluments of the Service beyond those previously recommended. Having raised the scale of salaries recommended by the previous body, on the ground that they were too low in view of the value of the privileges being done away with, they then proceeded to restore those privileges, and so by the time we get the final report they have completely lost sight of the guiding principle on which we were instructed to act, that the emoluments were to be in relation to the value of the services rendered. Furthermore, the new body made no attempt whatever to consider the financial implications of their various recommendations. If that aspect of the case were examined, I think it will be found that instead of achieving the economies we set out to achieve the new Service will be almost as costly as the old, and without any justification.

I can assure this House, Sir, that there is no desire on my part or of any Member on this side, to have the terms of the new Local Civil Service other than adequate and satisfactory to the Service itself, but we are insistent that the

remuneration of that Service shall be related to the value of the service given and shall not be entirely out of keeping with the value placed on those services outside the Government organization. I appeal to Government, in finally endeavouring to decide these matters, to bear in mind the far reaching influence the remuneration of the Civil Service has upon the remuneration that must be paid to people similarly engaged outside. I would also ask Government, Sir, to prominently bear in mind that their decision in this matter of the European Local Civil Service will largely influence the terms on which the Asiatic Service must be engaged in future, and to also bear in mind that these conditions will more or less apply to the very big railway organization. In the aggregate, the amount of money involved will be very considerable indeed. We were very keen indeed, Sir, that this contentious subject of the Local Civil Service should be disposed of ~~and~~ before this present Council was dissolved. It is a matter of regret that it has not been, and I hope the matter will be finally disposed of in the very near future, that it will cease to cause any friction between the Civil Service and the people outside, and that we shall have a general recognition of the desire on the part of the people outside that the Service should be properly remunerated and content. I have much pleasure, Sir, in moving this motion.

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

THE HON. THE COLONIAL SECRETARY: Your Excellency, as the hon. Member has made clear in his speech, the whole question of the final form of the Local Civil Service will need consideration by Government, and in the circumstances it is perhaps premature to go into detail on the merits of the various recommendations made in the four interim reports. At the same time, no doubt it will be of value to Government to hear the views of the hon. Member and to bear them in mind when considering the final decision. There are, however, one or two points of a general character which arise from the terms of the motion which it is appropriate for me to refer to. The first is the expression used in the motion, "in which a new committee calling itself the Civil Service Board"; and the suggestion rather made by the hon. Member in his speech was that this committee was almost self-appointed, and argued that its rights and duties go beyond its terms of reference. Actually, I think, he used the expression that there was some impertinence in their doing so. First of all, I should like to make it abundantly clear that if there has been any impertinence the responsibility for that rests with the Governor in Council and not with the committee. I do not want to go at great length into this rather lengthy subject. As hon. Members pro-

aware, the start of all these proposals for a Local Civil Service originated from the Fitzgerald Report in which certain principles were laid down. Those principles—and let me just remind hon. Members that the Fitzgerald Report dealt not only with the Local Service but also with the Overseas Service, and in fact its major pre-occupations to Government at that moment were to deal as far as they could with questions of Overseas Service. When the Executive Council came to consider its report they generally accepted, but only in the widest terms, the principle of setting up such Local Services; and a despatch in those terms was sent to the Secretary of State who also agreed to the general principal of a Local Civil Service. No commitments were made at that time. Then, as a result of that report, it was considered to be desirable to get down to some detail. The Fitzgerald Report made it clear that it was laying down general principles. As a result, the Merrick Committee was appointed with the following terms of reference:

"To examine, to report upon, to schedule posts and to draft Regulations, having regard to the principles laid down by Executive Council at its meeting of the 7th January, 1932, for the inauguration of—

- (a) a Local Asiatic Service; and
- (b) a Local Asiatic Service

applicable to Government Servants not employed by the Kenya and Uganda Railways and Harbours Services".

If you turn to the appendices of that report, under the different headings of pay, leave, passages, pensions, quarters, age of retirement, and so on, the relative sections of the Executive Council's decision on the matter were given. Under pay, "general approval" was given; under leave, "general approval"; under passages, "general approval", and so on. The Merrick Committee at an early stage in its deliberations, not being quite certain if their terms of reference allowed them to deal with specific matters, asked whether or not they had this power in 15 (2) and (3) of the original report, whether it was in their province to examine them. The reply was in the affirmative, and to that extent, therefore, this particular aspect of the terms of service may be regarded as still an open question. Then, Sir, the report of the Merrick Committee was received. In view of the fact that we had now for the first time got down to detail and definite recommendations for salaries, passages and so on, the normal procedure was taken of circularizing heads of departments for their views as to the particular recommendations affecting them. Those views were in the course received and collated, and they revealed a great deal of matter of detail which Government considered definitely

did require careful detailed consideration if any terms introduced were to be fair not only to future entrants but to existing members of the Service, for it will be remembered the original terms of reference of the Merrick Committee definitely involved not only future entrants but officers at present engaged on agreements. Accordingly, the Executive Council decided that this was too intricate a matter for such a body as they were to deal with adequately, and appointed in accordance with the spirit of the original recommendation the Civil Service Board, an *ad hoc* body, for the purpose of dealing with these detailed matters. It also made clear, and it is reflected in the decision of the Council, that this Board—to the personnel of which the hon. Member takes such exception—was an *ad hoc* body, appointed for this particular purpose, and was not a permanent Civil Service Board which it is contemplated will be in continual session once the Service has been set up.

I feel, Sir, that it is only due to the members of this *ad hoc* Board for me in this place to pay a very full tribute to the very hard and consistent work which they have put in to dealing with their different terms of reference. It is a most difficult and invidious task, and I would suggest that the hon. Member's suggestion that they are not fitted for that task is ill-founded. The first chairman of the Board—there were slight changes owing to officers going on leave—was Mr. Fitzgerald, who was chairman of the first committee, which consisted of Mr. Wade, Mr. Barton and Mr. Ley. Owing to leave changes, Mr. Wade assumed the chairmanship and Mr. Fitzgerald went on leave, and Mr. Hayes-Sadler of my office and Mr. Webster of the Public Works Department, both officers who have in the course of their duties to deal with the details of terms of service, were appointed. That Board continued to function under the chairmanship of Mr. Wade until he recently went on leave. Therefore, it cannot be said that the chairman and members of that Board were irresponsible members of Government, and so far as Mr. Ley is concerned, I think it is general knowledge in this town that he is a man of great business experience and knowledge as an employer and a successful business man who can be counted on to regard these matters on purely economic grounds without regard to any political considerations. That being so, I feel the suggestion that this Board has gone beyond its duties is hardly fair, because if Members will go to the length of studying the four interim reports they will find that in each case the recommendations made are in accordance with the terms of reference submitted to them by the Government, and if Government has gone wrong in any manner in expanding those terms of reference it is the Government which is to blame, and not the

committee. I do not propose to go into the details of this question, because I take it it will be fully debated on a future occasion in this House.

HIS EXCELLENCY: I will now call upon the hon. Member to reply.

THE HON. T. J. O'SHEA: Your Excellency, I am sorry my reply has got to take longer than my introductory speech. I have been too trusting to Government in this matter and I now find it necessary to justify the motion in replying the criticism of it put up by the Colonial Secretary. In the first place, let me make it clear that in the Fitzgerald Committee Report in the paragraphs dealing with the Civil Service Board we contemplated a very responsible Board with a due sense of its responsibilities. Now this Board that has been set up, which apparently is not the permanent Board; calls itself the Civil Service Board, and consists, as to two of the four members, of comparatively junior officers of Government. I sincerely hope I did not say irresponsible members of Government. During its proceedings it had two different chairmen, and towards the end of its proceedings, apparently, it had no chairman at all, because I find that the fourth interim report had no chairman at all responsible for it. That is not the kind of Board contemplated by the Fitzgerald Committee, and I sincerely hope Government has a greater sense of its responsibilities to the Service than to set up a Board of this nature as a permanent Civil Service Board.

I have also, Sir, been taken to task for using the word "impertinence" and an effort has been made to make Your Excellency responsible for the workings of this committee. I entirely exonerate Your Excellency in this matter. You are in no way responsible.

THE HON. THE COLONIAL SECRETARY: On a point of explanation, I said the Governor in Council, not Your Excellency in person.

THE HON. T. J. O'SHEA: I also, Sir, exonerate Your Excellency's Government from this responsibility. Now, Sir, I should have hesitated to make this charge against this committee were it not that they themselves provide me with the least four occasions that they have gone outside their terms of reference. They are slightly apologetic about doing so, but here is the extraordinary thing about it, Sir, that they give no sound reasoning as to why they do so, and endeavour to turn down the recommendations of previous committees that had been accepted by Executive Council and also by the Secretary of State. On page 5, Sir, of the first report:—

Reference to Appendix 1 shows that in the matter of grading, "the Board has departed from the recommendations of the Fitzgerald and Merrick Committees".

At the bottom of the page on page 7:—

"The Board, however, after full consideration recommends a not unimportant departure from the Merrick Report (and also from the Fitzgerald Report) in connexion with free medical attendance, and that is the extension of the privilege to the officer's family . . . The Board believes that in practice the extension of the privilege would not be costly to the Medical Department. . . and in that particular paragraph, Sir, it turns down a recommendation that has been made by the Fitzgerald and Merrick Committees after full investigation. Without making any inquiry, they assume that the cost of adding to the privileges of the officer's family would not be great, whereas as a matter of fact the medical officer had given reasons to the original committee to prove that that would be a very costly service.

Again, Sir, in the third Report, on page 2, paragraph 7, they say: "In determining the points in the new salary scales to which serving officers in Category (C) are to be transferred, we consider that it would be indefensible to disregard the terms of their existing agreements".

Now, Sir, Category (C) is those men and women who have less than six years' service with Government. For many years we argued in this House as to whether Government officers had or had not a permanent contract with Government, and it was conceded after a very hard fight that Government has the right to cancel certain classes of contract, but it was contended in equity that any officer who had served a considerable period of time with Government should not have that contract cancelled. The original committee recommended that any officer who had not served more than ten years might be re-engaged on new terms, because the old terms were so costly, and so out of proportion to the value of the services rendered. Government referred the matter to the Secretary of State and we have been informed that the Secretary of State agreed that any man who had not more than six years' service should be regarded as not having anything in the nature of a permanent contract and could be offered re-engagement on new terms. The Executive Council and the Secretary of State were in agreement on that, and this committee has the audacity to turn round and say that it recommends that anybody who has been in the service of Government from the 1st January, 1933, must in effect be regarded as entitled to all the privileges of the old Service. In other words, they have so manipulated things that there can be no substantial saving to the country

because of the way these people have manipulated the terms. I commend a study of the fourth Interim Report not only to Government but to Members on this side of the House.

In introducing this matter I had hoped that Government was not committing itself to the recommendations in so far as they had departed from the principles originally agreed upon, and I am astonished at the reply given by the Colonial Secretary. On occasions, Sir, I am left guessing as to whether this Government is not actuated by Machiavellian cunning instead of, as I am inclined to give it credit for, honest stupidity. I am now beginning to have little doubt on the matter and that Government really is hiding behind this committee and is going to tear up the work of ten years on the part of Members of this House on both sides. That is why, Sir, I have undertaken the rather unpleasant task this day of drawing attention to the feelings that do prevail on this subject. We are all most anxious that the new Local Service should have decent terms, we all subscribe to the principle that the State must be the model employer, but this country is not going to stand any more for Terms of Service that make the Civil Servants of this country absolutely privileged persons. They are not going to have a state of affairs in which the rest of the country is bled to provide conditions which are not justified by the services given, and I sincerely hope Government will not make the mistake of departing from the decisions taken some time ago by the original committee and which did recommend terms which were regarded by the Service itself as honourable and just.

HIS EXCELLENCY: Do you wish the matter to be put to the vote.

THE HON. T. J. O'SHEA: Your Excellency, I shall not press the matter to a division, if I am right in understanding that Government is not committed to those recommendations and that it will place these terms before this House before they are adopted by Government.

THE HON. THE COLONIAL SECRETARY: An undertaking has already been given, Sir, by Government on two previous occasions.

THE HON. T. J. O'SHEA: In that case, Sir, I beg leave to withdraw the motion.

The motion was by leave withdrawn.

SUSPENSION OF STANDING ORDERS.

THE HON. THE ATTORNEY GENERAL: I beg leave to move the Suspension of Standing Rules and Orders in order to enable the following motions to be introduced without due notice:—

"That the Report of the Select Committee on Schedule of Additional Provision No. 4 of 1933, be approved."

"That the Report of the Select Committee on the Chattels Transfer (Amendment) Bill, be adopted."

"That the Report of the Select Committee on the Land and Agricultural Bank (Amendment) Bill, be adopted."

"That the Report of the Select Committee on the Non-Native Poll Tax (Amendment) Bill be adopted."

THE HON. THE TREASURER: I beg to second the motion.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, as you know, hon. Members on this side of the House are very jealous of the Suspension of Standing Orders, but on this occasion, as it is generally for the convenience of the House and there is no matter of great moment under discussion, we are prepared to support the motion.

The question was put and carried.

Standing Rules and Orders having been suspended:

SELECT COMMITTEE REPORT ON SCHEDULE OF ADDITIONAL PROVISION NO. 4 OF 1933.

THE HON. THE COLONIAL SECRETARY: I beg to move that the Report of the Select Committee on Schedule of Additional Provision No. 4 of 1933 be approved.

THE HON. THE TREASURER: I beg to second the motion.

The question was put and carried.

SELECT COMMITTEE REPORT ON CHATTELS TRANSFER (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the report of the Select Committee appointed to consider the Bill to amend the Chattels Transfer Ordinance, 1930, be adopted.

As hon. Members are aware, Sir, one glance at the report before them, shows that there is no amendment contemplated by the Select Committee except one of which notice was given on Monday morning. That amendment merely refers to the principal Ordinance, a section of which now becomes redundant in view of a new section which is brought in.

THE HON. THE TREASURER: I beg to second the motion.

The question was put and carried.

BILL.**THIRD READING.****CHATELTS TRANSFER (AMENDMENT) BILL.**

THE HON. THE ATTORNEY GENERAL: I beg to move that the Chateaux Transfer (Amendment) Bill be read a third time and passed.

THE HON. THE TREASURER: I beg to second the motion.

The question was put and carried.

The Chateaux Transfer (Amendment) Bill was read a third time and passed.

MOTION.**SELECT COMMITTEE REPORT ON THE LAND AND AGRICULTURAL BANK (AMENDMENT) BILL.**

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the report of the Select Committee appointed by this House to consider a Bill to amend the Land and Agricultural Bank Ordinance, 1930, be adopted.

This report is somewhat more comprehensive than the one I have just moved, but actually there is not a great deal more substance in it. The principal amendments, which we have recommended in this report are merely verbal amendments and affect in no way the principles laid down in the original Bill before this House. I refer particularly to those amendments which deal with words such as "approve" instead of "prescribe". It is thought that where the Board is going to do certain things it is better to use the word "approve", as by using the word "prescribe" as that is defined to mean a certain particular method of doing things in the Interpretation Ordinance—it might be inconvenient for the Board, so that it would be quite sufficient if we inserted the word "approve" in place.

The principal amendment is to be found in section 3 (2), where the first thing the committee was anxious about was the notification of the decision of the Board to grant an advance to be inserted in the Gazette as a preliminary step to the advance being given, the position being now that when a man applies for an advance and the Board decide they will grant it, immediately that decision is made a notice is put into the Gazette to that effect. From the date of that notice the priority with regard to the advance will begin to rank. Another small amendment inserted in section 3 (2) is by the insertion of the words "if any" after the word "advance". The object is to make it perfectly clear that the Board has the power to advance money to persons who have not already received money under the principal Ordinance. It was thought by certain members of the committee that this was not clear, and the insertion of the words "if any" will make it beyond doubt. There is n

further amendment to that subsection, by inserting the reference to section 23 (2) and (3) of the principal Ordinance. Those two subsections deal with certain restrictions under which advances are made. By inserting these two subsections in this amending Bill it indicates that these provisions will have the same effect in the new amending Bill as in the principal Ordinance. A small amendment occurs in section 3 (4) by the substitution of the word "decision" for the word "resolution", in the last line but one of the paragraph. It is merely a verbal amendment, and more in accord with what is happening under the Bill; it is not a resolution of the Board but a decision. The committee also thought it would be wiser to have what was originally section 4 (2) slightly reworded and inserted as 3 (5), in order to make it clear under what conditions the temporary advances were made. The new section makes it perfectly clear that no payment can be made to an applicant before two things have happened. One is the notice put in the Gazette; the second that it has been registered in the register book kept for that purpose by the Registrar of Documents. The other amendments are merely consequential to what I have told you except in regard to the last amendment, where we substitute for section 13 the section which hon. Members will see in the report before them. It is thought only just that where a person agrees to waive a priority some notice should be given to the general public. We are therefore making it clear that as soon as an agreement to waive priority has been obtained from the prior chargees to any land upon which the Land Bank lend money under this Ordinance, that agreement shall be filed with the Registrar of Documents in the proper place, so that any person who wishes to see exactly what happened to the land by referring to the Registrar of Documents will be able to find out how the matter stands. It will prevent persons coming to an agreement, saying nothing about it; for instance, selling a mortgage to an innocent purchaser who would know nothing about this agreement which would be binding upon him. Now it is up to the purchaser to look in the Register.

THE HON. THE TREASURER: I beg to second the motion.

The question was put and carried.

BILL.**THIRD READING.****LAND AND AGRICULTURAL BANK (AMENDMENT) BILL.**

THE HON. THE ATTORNEY GENERAL: I beg to move that the Land and Agricultural Bank (Amendment) Bill be read a third time and passed.

THE HON. THE TREASURER: I beg to second the motion.
The question was put and carried.

The Land and Agricultural Bank (Amendment) Bill was read a third time and passed.

MOTION.

SELECT COMMITTEE: REPORT ON THE NON-NATIVE POLL TAX (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency. I move that the report of the Select Committee appointed to consider a Bill to amend the Non-Native Poll Tax Ordinance, 1933, be adopted.

Again the recommendations of this Committee are extremely short, the only actual amendment being one of which I gave notice on Monday of this week. It is merely a verbal amendment making it quite clear that in clause 2 we refer only to 1934. The question was carefully gone into, as I have stated in the report, with regard to making certain sections of this Bill retrospective. After considering the matter from every aspect we came to the unanimous conclusion that it would be wise under the circumstances to leave the Bill on that point as it stood.

THE HON. THE TREASURER: I beg to second the motion.
The question was put and carried.

BILL.

THIRD READING.

THE NON-NATIVE POLL TAX (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Non-Native Poll Tax (Amendment) Bill be read a third time and passed.

THE HON. THE TREASURER: I beg to second the motion.
The question was put and carried.

The Non-Native Poll Tax (Amendment) Bill was read a third time and passed.

HIS EXCELLENCY: Council is adjourned *sine die*, and the proclamation of dissolution will be issued to-morrow.

Council adjourned sine die.

TUESDAY, 24th APRIL, 1934

The Council assembled at 11 a.m. on Tuesday, 24th April, 1934, at the Memorial Hall, Nairobi, His Excellency the Governor (BRIGADIER-GENERAL SIR JOSEPH ALOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.) 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.

HENRY MUSCK-MASON MOORE.
WALTER HARRAGIN.
GEOFFREY WALSH.
SIDNEY HUBERT LA FONTAINE.
ETHELBERT BERNARD HOSKING.
ALBERT RUTHERFORD PATERSON.
HAROLD BRITHAM WATKINS.
HERBERT SEPTIMUS SCOTT.
ARTHUR EDWARD HAMP.
JOHN CLARK STONACH.
GEORGE DOUGAL KIRSOPP.

Nominated Official Members.

THOMAS FITZGERALD.
EDWARD BUTLER HORNE.
HAROLD ROBERT MONTGOMERY.
HENRY GUY PILLING.
HUGH ROBERT EVERARD EARLE WELBY.
GEORGE HENRY CAHNE BOULDERSON.
THOMAS DUNDAS HOPE BRUCE.
HAMNETT HOLLAND BRASSY-EDWARDS.

European Elected Members.

FREDERICK ARTHUR BEMISTE.
FERDINAND WILLIAM CAVENDISH-BENTINCK.
CONWAY HARVEY.
ARTHUR CECIL HOYE.
JAMES GEORGE KIRKWOOD.
GEORGE HUTTON RIDDELL.
ROBERT WILLIAM BARRINGTON ROBERTSON-EUSTACE.
HERMUTH ERIC SCHWARTZ.
LORD FRANCIS GEORGE MONTAGU DOUGLAS SCOTT.
SIR ROBERT DE VREE SHAW. BART.
ERNEST HAY WRIGHT.

Indian Elected Members.

ISHER DASS.
 NAHAR SINGH MANGAT.
 JAGANNATH BHAVANISHANKAR PANDYA.
 SHAMSUD-DEEN.
 ALEX CAETANO LACTANCIO DE SOUBA.

Arab Elected Member.

SHERIFF ABDELLA BIN SALIH.

Nominated Unofficial Members Representing the Interests of the African Community.

REV. CANON GEORGE BURNS.
 RUPERT WILLIAM HEMSTED.

Nominated Unofficial Member Representing the Interests of the Arab Community.

SHEIKH ALI BIN SALIM.

COMMUNICATION FROM THE CHAIR.

HONOURABLE MEMBERS OF COUNCIL.

I see from *Hansard* that on the 2nd June, 1931, I extended a welcome to the Council assembled for the first time on that day after the statutory general election.

I remember in my opening address stating that we were holding our first sitting at a time of difficulty and anxiety, and indeed, had one been able to look into the future, one would have used stronger terms as regards the difficulties and anxieties which were looming ahead of us.

The depression was then hanging like a great cloud not only on East Africa but on the whole civilized world; it soon descended right on to us, and we in Kenya found ourselves groping in the darkness, uncertain as to what the future had in store for us. Government expenditure had to be cut down ruthlessly, and the cost of production of our primary products also had to be ruthlessly cut if we were ever again to have any chance of competing in the world's markets. The problem was to gauge the extent to which these pruning operations should be carried, for, if we went too far, we might cause such injury to the trees as would have seriously retarded their recovery.

Hon. Members, I believe that when the history of the Colony comes to be written without prejudice—to use a popular expression—the work done by the old Council during those three difficult years will be given the recognition it deserves. Under its guidance the Colony is emerging from the fog in a

better condition to face any buffeting which she may still have to encounter. In like manner have the farmers adjusted their ideas, their methods and their costs to a level which should enable them to take advantage of any improvement in trade conditions.

I should like now to extend a welcome to this new Council, and particularly to those Members who have taken the oath to-day for the first time.

I am glad that I have been able to persuade Sir Ali bin Salim to return to public life as the Nominated Unofficial Member to represent the Arab community. (Applause.) You will recollect that on ceasing to be Liwali of the Coast he could no longer remain an Official Member.

Hon. Members will have observed from a recent supplement to the Official Gazette that amended Royal Instructions have been issued by His Majesty; the effects of which are to provide for an increase in the number of representatives of native interests on this Council from one to two, and to remove the restriction which formerly obtained whereby such representation was confined to Christian missionaries. As there appears to be some misconception in the public mind as to the reason for this change, it is perhaps desirable that I should make it clear that it arises directly from the Report of the Joint Select Committee on Closer Union, which was printed for publication on 6th October, 1931. The Committee dealt at length with the question of the best method of securing a proper representation of native interests, but considered that at the moment it was necessary for them to go no further than recommend that the nominated representation of native opinion in the Legislative Council be increased. The Government of Kenya, in a despatch dated the 6th February, 1933, expressed its agreement with that proposal, and recommended that representation should be increased from one to two, and, further, that the restriction which limited the choice of representatives to Christian missionaries should be removed so as to leave the door open for securing, without any restriction, the best representation locally available. Those proposals were accepted by the Secretary of State in his despatch of the 13th July, 1933, which was published for general information. It was considered that the election of a new Council provided a suitable opportunity for initiating this change, and the Royal Instructions have been amended accordingly. Any suggestion that the amendment in question has been rushed through without due consideration or publication of the Government's intentions is therefore entirely without foundation.

We are lucky in having in Mr. Rupert Hemsted the very type of representative we require. Mr. Hemsted has had long and varied experience in the Colony, and, in addition, he is known to be sympathetic towards the native population and to be keenly anxious to improve their conditions of life and to foster development.

Hon. Members, my term of office will have expired before your labours will have ended, but I firmly believe that you are entering on your difficult task under auspices far more favourable than those which confronted the old Council in 1931. Many important and complicated questions have been settled or are on the way towards settlement, and it is to be hoped that you will be spared the numerous Parliamentary and other Commissions and Committees which have certainly added to our labours during the past three years. It is also believed that the mining industry has now entered a more settled stage of its existence, and that we will no longer be subjected to the worries of unfair criticism which at one time occupied a great deal of my time and that of a number of my senior officials. The Budget speech of the Chancellor of the Exchequer delivered a few days ago gives us ground for hoping that trade conditions will soon improve and thus ease the growing anxiety which has been the lot of so many farmers and business men for some time past.

But our watchword must be "Frugality", and we must resist all temptation to be otherwise than frugal. You will find that temptation will soon arise, and I would ask you to co-operate with me in resisting demands for expenditure which is neither productive nor urgently necessary. In connexion with productive expenditure it is my hope that the efforts of the Economic Development Committee which is now sitting will result in the discovery of ways and means to increase our wealth.

Hon. Members, there will be laid on the table during this sitting the Report of the enlarged Committee appointed by the old Council to examine the unemployment position. The position, as you will see, is not so unsatisfactory as some people thought, and the fact that the Secretary of State has now approved of the recommendation of the last Select Committee on the Estimates regarding the building of the Central Offices will do much to relieve the situation. Our thanks are due to Mr. Fitzgerald and his colleagues for the painstaking work they performed on this Committee.

Turning to the financial position, the accounts for 1933 were closed a fortnight ago, and showed a deficit on the working of the year of £46,539. The Estimates for 1933, as passed by the Legislative Council in May, provided for a deficit of

approximately £176,000, so that there was thus an improvement of nearly £130,000 as compared with the position as envisaged in the Estimates.

This improvement was due, in part, to revenue exceeding the estimate, and, in part, to savings on expenditure.

Revenue exceeded the estimate by just over £75,000. Of this excess, an amount in the neighbourhood of £40,000 may be attributed to new taxation measures introduced during the course of the year and not taken into account when the revenue estimates were prepared. The balance of the excess, viz. £35,000, is therefore actual revenue in excess of the estimate. The preparation of revenue estimates has been a matter of great difficulty during recent years, and since 1929 there have been serious shortfalls. It is a matter for satisfaction to be able to record that, for the first time for four years, the revenue estimates have been realized.

The actual expenditure for 1933 showed savings of over £51,000 as compared with the provision sanctioned in the approved estimates. This saving accrued after taking into account expenditure upon items which were unforeseen when the Estimates were passed. That this result was achieved is due to the maintenance of the programme of strict economy in all the services and to the loyal co-operation of heads of departments, who are to be congratulated upon the successful manner in which they carried out services at reduced cost and secured savings on estimates which, in themselves, allowed substantially less money for those services than in recent years.

Analysis of actual expenditure under recurrent heads of Estimates shows that, in twenty-seven recurrent heads, savings aggregated over £182,000. There were excesses on six recurrent heads, the total amounting to some £43,000; the principal excess, which amounted to nearly £42,000, was in respect of pensions and gratuities.

Comparison of recurrent expenditure in 1933 with that in previous years is complicated by the inclusion in 1933 accounts of provision for the whole cost of the Northern Brigade of the King's African Rifles, the Uganda share of that cost coming to revenue as a reimbursement, and by the fact that the 1933 Estimates also reflected the amalgamation of the Kenya and Uganda Postal and Telegraphic Service with that of Tanganyika, the Tanganyika share of the expenditure coming to revenue as a reimbursement. If allowance is made for these factors, and a basis of true comparison is established, it will be found that recurrent expenditure in 1933 on all heads except interest, pensions and gratuities, public debt funded, and rent and interest to H. H. the Sultan of Zanzibar—heads which

are not susceptible to departmental control—shows a further progressive decrease. As compared with actual expenditure on the heads in question, amounting to £2,170,360 in 1930, the comparable figure for 1933 is £1,785,926, showing a reduction in the three years of £385,334. Hon. Members will, I am sure, agree with me that so large a reduction in the cost of recurrent services of Government reflects great credit on all those responsible for the public expenditure of the Colony.

With regard to 1934, the revenue prospects for the year depend so much upon agricultural conditions in the Colony that it is virtually impossible, at this early stage, to make any useful revision of the estimates. Given reasonably favourable agricultural conditions during 1934, there is no reason yet apparent for assuming that the revenue estimates, as approved with the Budget, will not be realized.

Hon. Members, as regards the agricultural position, I made a fairly comprehensive statement at the last session of Council held in February, and I feel that a further forecast at the present time cannot usefully be made.

If we are vouchsafed good rains during the next five or six weeks, the outlook is a good one, but if on the other hand we are to have the misfortune of another dry year, then we must tighten our belts and face the situation in the same spirit as we have faced similar situations in the past.

In so far as the locusts are concerned, you have been kept fully informed as to the position and of the fact that the Government has the organization in being ready to deal with hoppers should they hatch out in accessible places in the neighbourhood of cultivation.

I am sure hon. Members were gratified to see the announcement of the decision of the Tanganyika Concessions, Ltd., to take up their option over the holdings of the Eldoret Mining Syndicate. To my mind this is excellent news, for it will inspire confidence in our Kenya goldfields, and I trust that before long other promising propositions will attract the capital necessary for their more intensive development.

I may mention that the Area II referred to in Sir Albert Kitson's main report will, with certain reservations, be thrown open to general prospecting on the 17th May; intending prospectors will before that date have the opportunity of reading Sir Albert's further report on that particular area. Also, we hope shortly to allocate certain of the subdivisions of Areas III and IV, hitherto unallotted.

I have heard with pleasure that both the Mining Ordinance, 1933—which came into operation on the 6th February last—and the regulations made thereunder appear to be working smoothly.

Hon. Members, at the opening of the last Budget session, I explained that the Kenya and Uganda Railways and Harbours' working figures were much better than had been anticipated when the 1933 Estimates were framed. In November last I estimated that the railway revenue for the year would exceed the approved estimate by £300,000, and I am glad to say that the final figure of excess is £365,000.

On the expenditure side, as a result of the stringent economy exercised, ordinary working expenditure was kept below £1,000,000—a figure which is the lowest since 1924, notwithstanding the fact that the route mileage now operated has increased by 73 per cent since that year. This very low figure is not, however, likely to be repeated, owing to the need for catching up on necessary arrears of maintenance of rolling stock and other assets which have been allowed to accumulate during these last few years owing to the critical financial position.

The final Port figures disclose a similarly satisfactory position. These final figures show a loss of £29,891, instead of a loss of £40,000 estimated in November last; this being an improvement of £10,000 over the Budget estimate.

As regards the present position, in this year's Railway Estimates reduced figures, as compared with the actuals for 1933, were adopted for maize, coffee and cotton exports, and slightly increased figures for sisal and wattle bark. Present indications are that the total results from these commodities will not differ greatly from the Estimates. Up to the end of March the revenue shows an improvement over the revenue for the same period last year of £32,000, but it does not appear as if this standard will be maintained unless there is a continued improvement in the general trade position as well as favourable weather conditions in East Africa. The Harbour revenue estimate for this year was a conservative one, and it is at present anticipated that it will be realized.

Owing to reduced working costs, the elimination of expensive services and increased revenue in certain directions, the financial position, notwithstanding the heavy loan charges, has definitely improved, as is shown by the fact that the Deficit Account, which at the end of 1933 was £350,782, is now £317,916, while Renewals and Betterment Fund at the end of 1933 totalled £1,654,139.

The Report of the Land Commission has now been printed and it is hoped to arrange for its simultaneous publication in England and Kenya in the very near future. The Report consists of one volume of 618 pages, containing the recommendations, and three volumes of Evidence, containing 3,458 pages. This in itself testifies to the immense time and labour spent on its compilation.

I am sure that the Report, when published, will be carefully studied by hon. Members and the general public, and I trust that in your consideration of any individual recommendations which are made you will remember that they form part of an attempt to deal comprehensively with the whole range of problems that confront us in connexion with the occupation and use of land by the native in Kenya. In connexion with the Samburu position, I informed hon. Members in February last of the difficulty that the Government was experiencing in obtaining sufficient evidence to bring before the courts those responsible for the spear-blooding murders that have been committed in the Laikipia areas, and I explained the circumstances in which the Laibon Ole Odomo had been deported to Kwale in the Coast Province. In the interval, the Administrative and Police officers have been working in close co-operation in an endeavour to obtain any further evidence that would throw light both on these spear-blooding murders and on the circumstances in which the late Mr. Powys met his death. It will be remembered that in the latter case, as a result of two separate inquiries, Mr. Powys' death was attributed to accidental causes, the suggestion being that he had probably been attacked and killed by a lion. More recently, owing to information received from native sources, doubts have arisen again as to whether, in fact, Mr. Powys was not killed by a party of Samburu *moran*. I should like to emphasize that there is no suggestion that the Samburu tribe as a whole is out of control. My information is that it is the *moran* who are responsible for these incidents which have occurred. I have just received information that sufficient proof is now forthcoming to show that the tribe or sections of the tribe are guilty of suppressing evidence with regard to these incidents, and a collective fine will therefore be imposed.

As a measure of administrative control, I have issued instructions to establish a *boma* probably in the vicinity of the Kisima, so as to provide for closer administration of the tribe.

The outbreaks of stock-thieving among the Lumbwa, to which some public attention has been drawn, have been definitely linked up with the activities of the Lumbwa Laibons, and the best method of giving the local administration powers to deal with the situation is being actively considered.

Apart from the two areas to which I have just referred, no special problems of administration have arisen, but certain representations have been made regarding the desirability of strengthening the Police in the Nakuru district and in the mining areas at Kakamega. It is proposed in the former case, instead of reopening one of the recently closed out-stations, to appoint an additional officer of the rank of assistant inspector,

who would be a mobile officer and be required constantly to patrol the district. At Kakamega, it is proposed to station an assistant inspector in the township for the general supervision of the area.

At headquarters, experience has shown that as a result of the reorganization of the Central Finger Print Bureau of the Native Registration Section of the old Statistical Department, an additional officer with training and experience in finger print identification is essential. He must be qualified both to give expert finger print evidence in criminal cases which the courts could accept, and also to identify and classify finger prints in the Criminal Records Section. Steps are therefore being taken to obtain an inspector with the necessary qualifications from home.

As hon. Members are aware, there is a meeting of the Governors' Conference next week, which will be attended by their Excellencies the Governors of Tanganyika Territory and Uganda and the Acting British Resident, Zanzibar. The agenda, which is a lengthy one, includes an examination of the incidence of consumption taxes, excise, trade licences, and similar taxes within the orbit of the Customs agreements, with a view to seeing if any inequities exist. This is a difficult and complicated question, and a meeting of the Treasurer and Commissioners of Customs of the three territories is being held this week to carry out some of the preliminary work. I do not anticipate that any final recommendations based on this examination will be reached at this meeting, but hope that some considerable progress may be made. The position of the sugar and tea industries in East Africa and how they can best be fitted into the general world organization of these industries is also being considered, and I am glad to say that to help us in our deliberations we shall have before us the recommendations of the producers of these crops in these territories.

Consequential on the recent changes in terms of service for the Administration, whereby for new entrants the pension constant has been reduced and a lower initial salary introduced, it has become necessary to consider whether any changes of a similar nature in the departmental services are necessary; this is another major item on the agenda, as are also some of the recommendations of the Report of the Commission of Inquiry into the Administration of Justice in Kenya, Uganda and Tanganyika Territory in criminal matters, which do not appear to all Governments suitable for adoption in existing circumstances. There are also certain questions of transport, native policy, education and research.

Hon. Members, I now propose to refer to a matter which some people may think is hardly in consonance with my "frugality" remarks, although I personally do not take this view. The following is an extract from my opening address in June, 1931:—

"Hon. Members, I would most earnestly ask for your support in connexion with proposals which, as soon as the details are ready, will be laid before you for your consideration. They will relate to the provision of at least adequate hospital accommodation for Europeans, Asiatics, and Africans in Nairobi . . . The present state of affairs as regards main hospitals available for the treatment of serious cases from out-districts is, I consider, deplorable, and in this respect we are far behind any other Colony I have ever visited or served in. It is no time for luxuries, but the above is a sheer necessity, and in my judgment action should be taken without further delay."

Unfortunately, the desperate financial position forced us to postpone action, but if the words I have just quoted were true in 1931, how much more true are they in 1934? Remember that it will be quite two years before a combined grouped hospital could be erected and made available for use, and remember that in the interval much may happen which will make its need all the greater. Mining activities on a larger and different scale will, I hope, have commenced, and, in addition, it is now no secret that we are investigating the possibility of the air service forming part of our military forces. A statement to this effect was recently made by the Secretary of State in reply to a question in the House of Commons. This, if it comes about, should make a reality of my dream of a flying ambulance capable of bringing patients in comfort to a central hospital where they will get expert treatment and all modern comforts.

In addition to this, another necessity has recently forced itself upon our notice and requires immediate attention. I refer to the boarding accommodation for the European Girls' Secondary School.

If I can get the support of the Unofficial Members, I will endeavour without delay to put proposals before you dealing with these important and necessary works. I think, so far as the necessary finance is concerned, it will be found that, after adjustments—such as the cutting down of expenditure on the Central Offices—have been effected in our unexpended loan balances, practically no new money will be required.

Hon. Members, a number of Bills will come under your consideration, but they will, I trust, prove uncontroversial in character. The most important are: The European Civil Ser-

vice Provident Fund Bill, which provides for the creation of a provident fund (this forms an integral part of the proposals for the inauguration of a Local European Civil Service, which will be laid before you in the course of the session); the Juveniles Bill, which has been drafted in accordance with the recommendations of the Report of the Committee on Juvenile Crime, and which, I hope, will do something to solve the problem of juvenile crime in Nairobi; and the Special Districts Administration Bill, which has been specially designed to meet the special conditions obtaining in the Northern Frontier District.

Hon. Members, it is hardly necessary for me to repeat what I have said in previous addresses to Council, namely, that it is my earnest desire to co-operate to the fullest possible extent with all sections of the community in determining what is best for the country as a whole.

In conclusion and in opening this Session of Council, I most earnestly trust that with the help of Almighty God its deliberation may tend to the further peace, prosperity and welfare of the Colony of Kenya.

MINUTES.

The minutes of the meeting of the 15th February, 1934, were confirmed.

PRESENTATION OF PETITIONS AND MEMORIALS.

The Hon. F. A. Bemister presented a petition from a number of residents in the Mombasa Electoral Area, praying His Excellency to order inquiries into the existing law concerning the showing of films, and into the methods adopted by the Kenya Film Censorship Board; and stated that in his opinion the petition was properly and respectfully worded.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table:—

By THE HON. THE COLONIAL SECRETARY (MR. H. M.-M. MOORE):

Schedule of Additional Provision No. 5 of 1933.

Schedule of Additional Provision No. 1 of 1934.

Statement required under section 150 of the Electric Power Ordinance for the year ended 31st December, 1933.

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

Rules of Court (Mortgage Suits Consolidation), 1934.

Voting by Post (Amendment) Rules, 1934.

Register of Voters (Amendment No. 2) Rules, 1934.

By THE HON. THE CHIEF NATIVE COMMISSIONER (Mr. S. H. LA FONTAINE) :

Report of the Committee on Juvenile Crime and Kabete Reformatory.

By THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES (Mr. E. B. HOBKINS) :

The Crown Lands Ordinance: Return of Land Grants, 1st October to 31st December, 1933.

NOTICE OF MOTION.

The Hon. the Colonial Secretary gave notice that at a subsequent meeting of the Council he would move that Schedule of Additional Provision No. 5 of 1933 and Schedule of Additional Provision No. 1 of 1934 be referred to the usual Select Committee on the Estimates.

BILLS.

FIRST READINGS.

On motion on the Hon. the Attorney General, the following Bills were each read a first time:—

The Limitation Bill.

The Immigration Restriction (Amendment) Bill.

The Harragin Pension Bill.

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

The European Civil Service Provident Fund Bill.

The Post Office Bill.

The Northern Frontier Province Poll Tax (Amendment) Bill.

The Diamond Industry Protection Bill.

The Juveniles Bill.

The Penal Code (Amendment) Bill.

The Special Districts (Administration) Bill.

Notice was given that the second reading of each of the above Bills would be moved at a later stage of the session.

The Council adjourned till 10 a.m. on Wednesday,
25th April, 1934.

WEDNESDAY, 25th APRIL, 1934

The Council assembled at 10 a.m. on Wednesday, 25th April, 1934, at the Memorial Hall, Nairobi, His Excellency the Governor (BRIGADIER-GENERAL SIR JOSEPH ALOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 24th April, 1934, were confirmed.

PAPERS LAID ON THE TABLE.

The following paper was laid on the table:—

By THE HON. T. FITZGERALD :

Report of the Committee on Unemployment.

NOTICE OF MOTIONS.

THE HON. THE CHIEF NATIVE COMMISSIONER (Mr. S. H. LA FONTAINE) : Your Excellency, I beg to give notice of the following motion:—

“ Be it resolved that this Council approves the expenditure of a sum of £3,500 upon the purpose specified in the schedule hereto as a charge against the revenue and other funds of the Colony :

Schedule.

Administration Extraordinary.

Famine Relief “ £3,500.”

ORAL ANSWERS TO QUESTIONS.

RULES UNDER THE LEGISLATIVE COUNCIL ORDINANCE.

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

Whether Government will appoint a Select Committee of Legislative Council to inquire into the provisions of the Legislative Council Ordinance and the rules promulgated thereunder, and to report on such amendments thereto as may be considered necessary?

THE HON. THE COLONIAL SECRETARY (Mr. H. M. MOORE) : The answer is in the affirmative.

HOSPITAL CHARGES.

No. 12.—CAPT. THE HON. H. E. SCHWARTZ asked:—

Whether the Director of Medical Services will consider introducing a sliding scale of hospital charges at the European Hospital, Nairobi, so as to give much-needed relief to those who find it impossible to pay the present flat rate charge of Sh. 24 per day?

THE HON. THE DIRECTOR OF MEDICAL SERVICES (DR. A. R. PATTERSON): The matter is receiving the attention of Government at the present time, and a sliding scale of hospital charges—applicable to all Government European hospitals—is being prepared for the consideration of His Excellency the Governor in Council.

BILLS.

SECOND READINGS.

THE SPECIAL DISTRICTS (ADMINISTRATION) BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to move the second reading of a Bill to Provide for the Maintenance of Order within Certain Districts of the Colony.

Though the Bill is not limited in its application to any specific part of the country, yet at present it is proposed to confine its application to the Northern Frontier District. It was, in fact, devised to deal with conditions in that area, and the remarks, Sir, which I have to make will be confined to showing in what way those conditions have made this legislation necessary.

On the assumption by the civil Government of the administration of the Northern Frontier Province, strong recommendations were made by the administrative officers concerned that special legal powers were necessary in order that the situation in that area might be economically and efficiently handled. Their recommendations were supported by a committee appointed by Sir Edward Grigg to examine all the circumstances in that area, and received the approval of the Chief Native Commissioner. As a result, a Bill modelled on the lines of the Frontier Crimes Regulations of 1901 of the Northern Frontier Province of India was drafted, but it was decided to defer its introduction into the Legislative Council until it could be seen whether the situation in that area could not be better administered under the existing laws of the Colony.

The experience of the intervening eight years, Sir, has proved beyond doubt that these legal powers are insufficient in the matter. To strengthen the legal position in the interim, the Provincial Commissioners were granted powers to impose collective fines under the Collective Punishments Ordinance, up to 10,000 shillings, but these powers, though they were very beneficial in their effect, were found to be ineffective in dealing with inter-tribal fights and raids. For instance, a serious conflict which occurred between the Boran and the Degodia on the Usso in 1931, when both sides frankly admitted to fighting, was a case where it was impossible to apply the provisions of the Collective Punishments Ordinance, in view of that admission.

The difficulties, Sir, which the Administration have to face in the Northern Frontier Province are, as a rule, migrations, which bring bloodshed in their train, blood feuds and vendettas, outbreaks of stock diseases, wrongful possession of grazing grounds and the return of the outlaws, who, after committing offences in Kenya, cross over to the other side, and return to Kenya when all is quiet. These difficulties have been further increased by certain political circumstances of the country, the extent of the area, the aridity of the country which causes the population to be nomadic, the impenetrability of the bush which provides asylum for offenders, and finally the presence of two long international frontiers, which enable malefactors to cross over and hide themselves in one or other of these territories.

The Bill which I have the honour to propose is designed to meet and dispose of the difficulties I have detailed, and to ensure by provisions suited to the area that law and order are maintained and respected.

The following is an explanation of the various clauses of the Bill.

Clauses 5, 6 and 7 establish British Tribunals, which accord more with the particular local conditions than those contemplated under the Native Tribunals Ordinance.

Clauses 8 and 9 contain powers to deal with tribes who show themselves openly hostile to Government. These powers were assumed at the time of the sack of Serenli in 1916, and the following Aulihan revolt in 1916-17. The most striking recent example of the necessity of these powers is shown in the case of the Gurreh-Boran feud. By the use of these powers this feud was, at the end of the Great War, all but extinguished. It reopened during the administration of 1921-24, and since then, in spite of every effort, it has increased in violence. The powers under these clauses will naturally only be used under the most serious circumstances.

Clauses 10, 11 and 12: These clauses were in force under sections 70, 71 and 72, Cap. 7 of the Revised Edition, which was repealed by the Criminal Procedure Code. They have proved necessary in India, and it is considered that they are essential to the administration of the Northern Frontier District, where opportunity for evasion is great.

Clauses 13, 14 and 15 are for the prevention of the spread of a blood feud by means of taking securities. Existing examples of these inter-clan feuds are Abd Wak-Mohamed Zubier, the Turkana-Samburu, and the Gabbra-Rendille.

Clause 16 gives power to ensure peace by the removal of certain subversive elements. These are particularly needed in the case of individual vendettas, and also to prevent the activities of the Mullah priests, whose tendency is to preach sedition. A number of murders which occurred near Wajir in 1932 were the direct result of the preaching of these priests.

Clause 17 (a) and 17 (b) provide for the control of migrations and the control of grazing, which tend to bring bloodshed in their train; and this clause is considered very essential both in this country and in British, French and Italian Somaliland.

Clause 17 (c) provides for the removal of any village situated in the vicinity of a frontier. Had these powers been available in 1930, it would have been possible to avoid the complete massacre of 17 men, women and children near the frontier early one morning.

Clause 18 provides for the holding of passports by tribes of that area who are not at the time registered under the Native Registration Ordinance. An attempt to do so after the war was resisted, and it is considered that by this means the object can be achieved without any friction.

I might mention here that the Secretary of State has approved the principle of the passing of this Bill.

THE HON. THE ATTORNEY GENERAL (MR. W. HARRAGIN): Your Excellency, I beg to second the motion.

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

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I rise to support this Bill. It is obvious that in certain parts of the country, such as the Northern Frontier Province, special powers must be given to the officers administering those areas if good government and order is to be maintained. For those reasons, Sir, I support the Bill.

THE REV. CANON THE HON. G. BURNS: Your Excellency, while supporting the Bill, there are one or two things that I should like to be made a little more clear. In regard to the setting up of the tribunal which is to deal with these cases, is it to be a permanent one, or just set up for the occasion, as the occasion may arise? Secondly, there is the question of the publication of these rules under this Bill in a language that the people may be able to understand. Publication of such rules, Your Excellency, in English, set up on some door of a house or the dwelling places of those who may be concerned does not seem to me to be a very effective way of giving the people to understand that such law is really in existence.

I do not know whether it is Your Excellency's intention to submit this Bill to a Select Committee, but in regard to the section relating to action "antagonistic to the Government, or any foreign power in amity with the Government, or towards any person being resident in the Colony," one naturally would think that the common law of the Colony would deal with such cases, and I should be very grateful for information on these points.

THE HON. J. B. PANDYA: Your Excellency, I do not think I can support the principle of this Bill, on the ground that it is a repressive legislation—or may I say the beginning of it in this country? I thought that the Government has since a long time dropped the wisdom—namely, the legislation—which they used to borrow from India. From various instances that we had during the last few years in this country, it appears that the legislation which was borrowed from India has been jettisoned and replaced by wisdom from other countries, and in these days whatever comes from India is taboo here. I do not think it is a compliment that this piece of repressive legislation should be now borrowed from India and I am quite sure circumstances in both countries materially differ. The speech that the hon. Chief Native Commissioner made in proposing this Bill did not convince me that we in this country have similar circumstances, and I do not think, Sir, that repressive legislation of this nature should be placed on the Statute Book of this country without exceptional circumstances.

THE HON. SHAMSU'D-DEEN: Your Excellency, I am in favour of giving all possible powers to the administrative officers of the Colony to maintain peace and order in the country, but I am not at all happy in my own mind as regards this proposed legislation, which has been borrowed from a province of India popularly known in India as the "lawless province". It is only recently that the Legislative

Council in that province has been sanctioned by the Imperial Government, and while the newly constituted Legislative Council in that province is probably thinking of repealing what has been described as a repressive law, we in Kenya are going to introduce it into this Colony. We already in Kenya have many special laws to deal with truculent tribes, in the form of collective punishment and so forth, and I am not at all sure if by passing a law of this nature that we are not giving the impression to the outside world that all is not very peaceful and orderly in this Colony. This measure, of course, is intended to be applied to the Northern Frontier parts of the country, with which I am not very well acquainted, and if the Chief Native Commissioner can assure me that it is certain without this law that peace and order cannot be maintained in that part of the country, I shall certainly vote in favour of it, but I am not at all keen on supporting this particular Bill.

THE HON. R. W. HEALSTED: Your Excellency, I should like to say that a Bill of this description is very necessary in an area like the Northern Frontier. It is a vast area, consisting of a place where conditions are quite different from any other part of this country. It is a very arid country, inhabited by numerous small tribes, who are constantly at war and at loggerheads with each other, and constantly fighting for grazing grounds and watering places. I am very glad, Sir, to see that there are to be these additional powers.

THE HON. N. S. MANGAT: Your Excellency, without commenting on the merits or demerits of the Bill, I simply wish to point out that the Bill is through and through administrative, and in some sections additional powers have been conferred on Provincial Commissioners and District Commissioners. In these cases, however, the final appeal is to the Governor, and if the Bill is not going to Select Committee I shall certainly move an amendment to clause 25 (2).

HIS EXCELLENCY: If the Bill is not going to Select Committee, it will go into Committee of the whole House, when the hon. Member can move any amendment that he desires.

THE HON. N. S. MANGAT: Your Excellency, without definitely moving an amendment, I should like to bring to the notice of the House that the right of appeal should be not to the Governor but to the Supreme Court. If a case is decided by a District Commissioner, an appeal lies to the Provincial Commissioner, and then to the Governor, and I would rather that power rested with the Supreme Court. If the House goes into Committee to consider the Bill, I will address the House further on this point.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I think it would be wise if I were to intervene on one or two small points raised in regard to the law contained in this Bill. With regard to the point raised by the hon. Member, Mr. Mangat, it was a point which I expected every lawyer to make, because this Bill keeps lawyers out of it. (Laughter.) It is only natural that the hon. Member should say that these matters should be reviewed by the Supreme Court instead of the Governor, but I think it would be very undesirable in this particular instance that that provision should be inserted here, because the Bill is purely administrative, and it is with the object of keeping it administrative that we put the Governor in, in place of the Supreme Court. It has been proved impossible, we are told, for the ordinary laws of the land such as are dealt with by the Supreme Court to deal with these particular people in the part of the country we are referring to. You have been told that this measure is only going to be applied, at any rate at the moment, to the Northern Frontier. It is only right that I should tell you that this Bill was called the Northern Frontier Bill, but in view of the fact that I discovered a section which in exceptional circumstances gave the Governor power to apply the whole or parts to other lawless parts of this Colony, I thought it might be deceiving the public to leave that name in. I therefore altered it, with the approval of His Excellency the Governor in Council, to the name it has to-day.

With regard to the points raised by the hon. and reverend gentleman representing Native Interests, I might say, with reference to the point as to whether the court shall be permanent or not, as the Bill is drafted it will be entirely a matter for the Provincial Commissioner. It is unlikely, I presume, from what I have heard of the country, that it would be possible to appoint a permanent court which would have to travel all over this huge area, and under great difficulties of travelling. It is therefore to be expected that in cases where trouble arises the court will be an *ad hoc* body appointed by the Provincial Commissioner to deal with the trouble brewing at the moment. With regard to the other point made by the hon. and reverend Member, in dealing with section 8, he took exception to the word "persons", and suggested there was no reason why the ordinary law of the land should not protect those persons, although there might be a difficulty in the case of a foreign power. You realize, I am sure, when you are dealing with hostile tribes, or whatever the body may be, there is no comprehensive word that one can use; we put in the word "persons" to cover any such type or class or clan or tribe or body; "persons" will cover all those, and where, as

explained by the hon. the Chief Native Commissioner, there is a feud between two particular clans, section 8 will come into operation at once.

Those are the only points of law raised in this debate, Sir, which it is necessary for me to answer, except a very small point raised by the hon. Member, Mr. Pandya, with regard to taking laws from India. The hon. Member is perfectly correct when he says it has been our policy, especially with regard to commercial laws in East Africa, in recent years, to break away from India. But we should hardly look to England for the requisite law to discover how to deal with the Northern Frontier Province. It is necessary for us to go to older colonies which have similar troubles to our own to find the laws that they have found to have suited their book and which have apparently acted very well. Instead of experimenting on our own, which is always a dangerous thing, we have adapted our law from that of India.

THE HON. ISHER DASS : Your Excellency, I rose to speak just now, but probably you did not see me.

HIS EXCELLENCY : The debate is not yet over, and you have the right to speak.

THE HON. ISHER DASS : Your Excellency, with regard to this Bill, I would certainly have supported such a measure if I had not seen the results of the working of such measures in some of the provinces of India. At first, when such legislation was introduced in the Assembly in India and the different councils of the provinces it was said by the official side that they were ordinary measures to deal with emergency cases, but when actually passed into law and enforced by the Government they were very repressive. Your Excellency, from my personal knowledge, I have seen that those laws have formed the best part of the repression upon innocent people upon whom they have been enforced. That is from my personal experience.

Your Excellency, when I come to read the aims and objects of this Bill, in the first paragraph it says, "which, from their geographical position or the primitive stage of the development of the inhabitants, require special legislation to deal with the unruly". Your Excellency, after 50 years of British reign in East Africa, I am surprised if to-day we should feel the necessity or if the Government should feel the necessity of bringing in this legislation to control these people. I should have thought that probably, by doing everything possible in the power of Government, those tribes residing in that part of

Kenya should have progressed, and progressed so well—in view of the fact that Government have from time to time given us the assurance that they have done everything for the development, socially and otherwise, of these people. Now, Your Excellency, if it is so, then in other words Government is to-day confessing that they have done actually nothing, and that these tribes are still in a primitive stage. It is true they are primitive races, but whose fault is it? It is Government's, if these people after 50 years are still in that stage. I will point out to Your Excellency that I have been six years in the country, and I have seen from time to time, whenever such legislation is brought in it is passed as measures to deal with these people. I come in contact with these natives and know they have been badly treated under such legislation simply in the name of administrative purposes. On the other hand, Government is out to do everything for these people to remain in a primitive state. After 50 years, Government should be assumed to pass this legislation to control them. Government has actually, in my opinion, failed in its duty in not having done everything possible to make these people civilized, or semi-civilized even, for the simple reason that after 50 years in this country we find in this Council not a single African to represent their own interests. That shows how much they have been educated in 50 years' time.

HIS EXCELLENCY : I think the hon. Member is getting a bit beyond the scope of the Bill; he should confine himself to the Bill. I don't want him to get into the larger question of fifty years of education.

THE HON. ISHER DASS : Your Excellency, if I may be permitted to say so, the Government has acted after all these fifty years, if they have brought this Bill to-day before the Council.

In section 5 of this Bill, sub-section (1), Your Excellency, it is stated: "such arbitral tribunals as he shall think fit, which shall exercise over tribesmen such jurisdiction as is given to them under the provisions of this Ordinance and within such limits as may be defined by such order". Sub-section (2) says: "A Provincial Commissioner or District Commissioner may at any time suspend, cancel or vary any order establishing an arbitral tribunal or defining the limits within which such jurisdiction may be exercised."

In these two sub-clauses of clause 5, a Provincial Commissioner or District Commissioner can appoint a tribunal, and if the tribunal unfortunately does not work according to the wishes of the administrative officer, the Provincial Commissioner or District Commissioner is given power to suspend

and cancel it, and he can appoint a new one. I have great admiration for the way in which most administrative officers carry out their duties, but I have my own reasonable doubts as to the advisability of a provision whereby they can cancel a tribunal at any time if it does not work according to their wishes.

Under section 6, Your Excellency, "every Provincial Commissioner or District Commissioner may sit as adviser in any arbitral tribunal in his province or district". Having appointed the tribunal to deal with such questions, administrative officers under section 6 are also to be entitled to sit as advisers in any such tribunal. Personally, I am opposed to such a principle by which a man who appoints a tribunal should be entitled to sit and advise on that tribunal, because he sees if members of the tribunal are actually acting in accordance with his wishes or not. If he thinks that one or two members of the tribunal are not acting according to his wishes, he can certainly suspend them or remove them.

Section 8, sub-sections (a), (b) and (c): "(a) the arrest wherever they may be found within the said district or area of all or any of the members of such tribe; (b) the seizure of all or any property belonging to such tribe or its members, or any of them, which may be found within the said district or area; (c) the detention in safe custody of any person or property so arrested or seized." Here, Your Excellency, a district officer in a district is to be given powers under this legislation to arrest any or all members of any tribe. Personally, I always thought, and I am sure, Your Excellency, that the fundamental principle of British justice is that every man is held to be an innocent man until he is proved otherwise; and here a district officer or Provincial Commissioner is being given powers to arrest one or all members of one tribe, thinking that they are all criminals. I admit one or two members of a certain tribe might have committed an act against the Government, political or otherwise—even a criminal act but a whole tribe cannot be treated as a criminal; but here the powers are being given to administrative officers to treat them so.

In section 13, sub-sections (2) and (3), it is stated: "A bond executed under this section shall be liable to be forfeited if the persons bound thereby to be of good behaviour or to keep the peace"

THE HON. SHAMUD-DEEN: On a point of order, Your Excellency, if an assurance can be given that this Bill will be sent to a Select Committee, all this time might be saved, because all these details could be settled in Select Committee.

HIS EXCELLENCY: I am not prepared to give that assurance.

THE HON. ISHER DASS: Under section 13, sub-sections (2) and (3), we find that if any one member of a tribe commits or attempts to commit or abets the commission of any offence, or does anything that in the opinion of the District Commissioner is an offence, a bond executed under this section is forfeited. Now, Your Excellency, I do not agree personally that one or more members of a tribe should be asked to furnish securities to Government for good behaviour of others when we have not given them any legal powers to go from village to village and keep every single individual of that tribe in order. I cannot see any reason why any one in any race or tribe should be held responsible for the good behaviour of the rest of the tribe in all the circumstances. I appreciate the difficulties under which administrative officers have to carry out their duties, but at the same time, they are human beings, and I can see their shortcomings also, and I shall certainly oppose giving these officers such wide powers.

In section 16, sub-section (a), it is written: "(a) is conducting himself so as to be dangerous to peace and good order". I have many doubts in regard to this paragraph, because this paragraph as I interpret it relates to political affairs. When the natives are advanced—and they are going to be advanced in a short time, Your Excellency—the Provincial Commissioner or District Commissioner, if he finds that anyone in his district has called a political meeting to protest against any legislation, that member of a tribe, in the eyes of the Commissioner, will not be acting in good order. There are certain legislations under which political meetings cannot be held without the previous sanction of the District or Provincial Commissioner, and if permission is refused, then, what chance have these people to put forward their protest. This section is going to gag these people's mouths from speaking, and anybody who tries to organize a meeting can be regarded as a dangerous person, and can be so treated under this legislation.

In section 17, sub-section (e), a Provincial Commissioner can direct the removal of any village situated in close proximity to the frontier of the Colony to such site as may be deemed suitable, due regard being had to the amount of grazing grounds and watering-places required by the inhabitants concerned.

Your Excellency, I had often heard that Rome was not built in a day, but if it was not built in a day it was destroyed in a day. Here a District Commissioner, or a Provincial Commissioner, is being given the power to destroy Rome in a day.

In section 25, sub-sections (1) and (2), "any person aggrieved by any order made by a District Commissioner under this Ordinance may within thirty days from the date of such order appeal therefrom to the Provincial Commissioner"; and "(3) any person aggrieved by an order made by a Provincial Commissioner, or made by a Provincial Commissioner upon appeal from a District Commissioner, may within thirty days from the date of such order appeal therefrom to the Governor."

My learned friend has rightly objected that the right of appeal should have been transferred to the Court instead of to the Governor. After all, in a court of law, a man, however primitive he may be, can have certain privileges and facilities under existing legislation. He can approach someone to appeal on his behalf; but here, where the appeal lies to Your Excellency, that man can simply present his application and rest there. I have specific cases in my mind, but I do not want to refer to them; but I have seen that when a District Commissioner gives a judgment in a certain case of inquiry and an appeal is made to the Provincial Commissioner; just an ordinary routine, the Provincial Commissioner says that unfortunately he cannot alter the decision arrived at by the District Commissioner. While I am opposing the whole Bill, at the same time I oppose this clause particularly. The Bill should have provided that appeal should lie to the Supreme Court and not to the Governor.

Section 28, Your Excellency, reads: "No person shall be liable to be sued in any court for any act done or ordered to be done by him in the exercise of jurisdiction conferred by this Ordinance, whether or not within the limits of his jurisdiction."

Your Excellency, these last few words in this section 28, "whether or not within the limits of his jurisdiction"—I cannot agree to any such powers being given under this legislation to administrative officers, for the simple reason that specific cases have happened in India where people have been aggrieved by certain acts and when the limits of jurisdiction have also been exceeded, and there the individuals concerned have been simply sheltered by the higher authorities on a mere excuse of "an error of judgment." It might be a case of life or death, and here we have to be satisfied with the provisions of this section.

Your Excellency, the last paragraph that I am going to refer to is 30: "This Ordinance shall continue in force until the 31st day of December, 1935, and shall then expire: Provided that the Governor may, with the approval of the Secretary of State and the Legislative Council, by proclamation

declare that this Ordinance shall remain in force until a date to be fixed in such proclamation, or until repealed." Your Excellency, with regard to this point, I simply want to say that once a repressive measure is introduced and passed, and unfortunately when it is borrowed from India, where we have fasted a good deal of repression at the hands of certain officials, we find that the Bill, on the date of expiry—I can make a prophesy—will remain on the Statute Book. Therefore, instead of doing everything humanly possible in our power, or in the power of the Government, for the uplift of these people, socially, and to make their conditions economically better, we are dealing with them with legislation of this nature borrowed from India. Personally, I think we are doomed. I strongly oppose the measure.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, the hon. Member opposite who represents Indian interests appears to be quite oblivious of the facts which have already been put before the House. I am quite sure that if the hon. Member (Mr. Isher Dass) himself had been living in the vicinity of the Northern Frontier he would have been the first to clamour for the introduction of this Bill. It is obvious that the powers granted to the administrative officers in this wild country must be wide, and that we must trust those officers. The remarks of the hon. Member for Indian interests were in essence an attack on the sense of justice and integrity of the British administrative officers. I think, Sir, the fact that the hon. Member, Mr. Hemsted, a former Provincial Commissioner of the area in question, has given his support to the Bill shows that this Bill is really necessary for the proper administration of the Northern Frontier Province.

The hon. Member for Indian interests referred to the need for improving the social and economic development of that area. I need hardly say, Sir, that measures are now being taken, and have been taken for a great many years past, to improve those conditions.

With regard to the question raised by the hon. and reverend Member who represents native interests, on the subject of languages, I need hardly assure the House that anything that can be done to make the provisions of the Bill, or any regulations passed under it, intelligible to the people concerned, will be done by the administrative officers themselves.

With reference to the point raised by the hon. Member for Indian interests respecting the removal of villages on the frontier, he seems to have forgotten the fact that I mentioned

in the course of my speech in moving the second reading of the Bill the very terrible massacre which happened in 1880. Measures for the removal of villages are for the protection of the people, and are not for the repression of innocent people in that area.

There is no question, Sir, of applying this Bill to any other part of the country except the Northern Frontier Province; I have already assured the House in that regard. I do not think, Your Excellency, that there are any other serious points that I have to reply to.

HIS EXCELLENCY: The question is that the Special Districts (Administration) Bill be read a second time.

The question was put and carried.

THE LIMITATION BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Bill to consolidate and amend the law relating to Limitation be read a second time. I feel that I should apologize to the hon. Members opposite in introducing such a lengthy Bill on an intricate subject at their first meeting, when it might almost be said they were at their buttle stage! However, I can only assure them that I made every effort to dispose of this dreadful Bill before they were actually elected, but the Noble Lord was too clever for me, and discovered, when I endeavoured to introduce it at the last meeting of the last Council, that there was some technical omission, so that it had to be carried over until now. But it gives me great pleasure, naturally, to see so many familiar faces opposite once more, and an added pleasure to think they will be able to collaborate with me in considering this very intellectual Bill.

As hon. Members are aware, this Bill has been on the stocks for the last seven years. It has been banded about between various East African colonies, between Attorneys General offices, and various Law Societies. It had a twin brother at one time, known as Prescription; and there was so much trouble over it that it was decided that the only way to give birth to Limitations was by killing Prescription, so that for the moment we shall only be worried by Limitation. But I promise that in a few months the twin brother will be brought to life once more.

This Bill was referred to the Law Officers' Conference last year. It was decided then, with the complete approbation of the then Attorney General of Nyasaland that it should be

Kenya's duty to put up a draft Bill to be known as the Limitation Bill. (Laughter.) That is the Bill which is now before you. I may say at this stage that the Bill has been submitted to the Law Society, who have gone into it carefully, and except for one or two details, which will be referred to in Select Committee—if Your Excellency will accept my motion that it be referred to a Select Committee; where it can be dealt with with greater ease—they approve of it.

As far as the ordinary man in the street is concerned, there are only two principles involved. The first one is the extension of time within which an action can be brought on a simple contract. As you are aware, at present we work under the Limitation Act in force in India in 1907. Actually, it was introduced into India in 1877, but, as you are probably aware, the adoption of laws from India to this Colony only goes up to 1907. Therefore, when in India they saw the error of their ways, and repealed the Ordinance and replaced it, we unfortunately were left with this old derelict until 1934. This Bill, however, is based entirely on the English law, and practically does away with all the provisions which appeared in the old Indian Act. In adopting the English law, it has been necessary to enlarge the time of limitation from three to six years. In simple language, it really means this: that if under the existing law there had been no admission of debt on a simple contract for a period of three years, automatically you were debarred from bringing an action against that person. Now, instead of three years, there will have to be a period of six years. It is a question for your consideration as to whether this is a wise or an unwise action to take, but I can tell you that it has the support not only of the Law Society, which I mentioned before, but also of the Chambers of Commerce, who have considered this question very seriously, though they have possibly one or two slight amendments to move during the committee stage.

Hon. Members will realize the reason for this when they consider the particular life one leads here. In a normal way, a man arrives in this country, say, in 1927, not too well off. He runs up debts in 1927 and finds difficulty in paying in 1928 and 1929, and if he is not pressed and he does not make any payments, he goes on leave in 1930, with the result that when he returns at the end of the year, unless immediately sued the debts are statute barred, and he need not pay anything at all. That is one reason, I believe, why the commercial community suggest the period be extended to six years.

The other large amendment in principle is extending from one to two years the limitation with regard to bringing an action in tort. You will realize that if a man is knocked

down by a motor car and has his leg broken, and does not start an action within the year, he is automatically statute barred. The object of this Bill is to extend that time to two years.

I am glad to say, Sir, that as far as one can see there will be no added expenditure as a result of passing this Bill, and I can only say it has been brought forward as a result of almost popular demand, not only from the lawyers but the public generally.

THE HON. T. D. H. BRUCE: Your Excellency, I beg to second the motion.

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

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, there is very little that I wish to say in supporting this measure, which, as the hon. and learned mover has stated, has been pressed for by all, though nothing was heard about it for a number of years. There are, however, two important points. The first one arises out of what the hon. and learned Member said, that this Bill follows English law. As far as I can see, from a very careful perusal of it, there is one provision in the English law which I cannot find here; I may have missed it. The essential difference between the law of limitation existing in England and that existing under the 1877 and 1908 Indian Act is that under the Indian Acts the courts have to have judicial cognizance of a suit being time barred, whereas in England it is not taken unless the defendant in the action pleads that the suit is time barred. In other words, limitation at home is a moral defence, and if defendant does not choose to raise it, the court takes no cognizance of it, and the suit goes on in the ordinary way. That is a matter of very great importance. It should obviously be only a defence. At home, limitation put up as a defence in very rare cases is looked upon as a defence which an honourable person does not choose to take, and very few counsel at home would consent to raise the plea of limitation in drawing up a defence to an action. I do not think there will be any two opinions in this House that that is the right procedure to adopt, to do away with the onus which now lies on the court.

The second point is one which arises from the introduction of a measure which automatically increases the period of limitation from what it formerly was. Under this Bill, as I read it, if a debt was incurred we will say on the 1st of January,

1930, that debt automatically expired by the passing of time under the present law on the 31st of December, 1932. Therefore, a debtor, owing to the circumstance that no action has been taken against him, that he has given no acknowledgment or made part payment, was finally relieved of his responsibilities to his creditor, because no action could be brought after the three years had expired. If this Bill passes, those debts which were dead on the 31st of December, 1932, are automatically revived until the 31st of December, 1935. In other words, a statute barred debt is revived; and a debtor who thought—and rightly thought—that his liability in respect of a debt was dead; is now suddenly told that that debt is revived. That is a provision which I do not think should be permitted in this Bill, and I have been asked by Nairobi Chamber of Commerce, who represent, as you of course realize, Sir, the creditor as opposed to the debtor class, to request in Select Committee that this Bill should be amended that those debts now statute barred should remain statute barred. Those debts which would become statute barred, say, next July, would of course continue for another three years, which is a different position, because the debtor would not have been relieved of his position under the operation of the present law.

There are, Your Excellency, one or two small points in the speech of the hon. and learned Member which, with some trepidation, I suggest are not quite correct. The first is, he stated that one of the reasons in the Chamber of Commerce for consenting to the principle of the measure to increase the time from three years to six was that if a person had been, say, a debtor and went on leave, if he did not come back for a year, he would find himself free of the debt. I think the hon. Member will agree that that is not so, because the time a debtor is out of the Colony does not count as part of the time during which the debt shall run.

The other point is, he stated that the object of the clause, so far as actions in tort are concerned, was to increase the period from one year to two. Subject to correction, I think it decreases it from three years to one, the period under the Indian Limitation Act being three years under actions in tort. It is not so much the man who is injured, but rather that, if anyone runs down a person in a motor car, it is not thought right that five and a half years afterwards he should suddenly be faced with an action. I am not certain in regard to torts in England. I think in regard to libel and slander it is one year at home, and for certain other torts, other periods; but it was agreed, and no objection has been taken by the Chamber of Commerce, that all such torts as the hon. mover referred to should be two

years, as actual actions in tort should be commenced within a reasonable period. Such actions are not in the same category as commercial offences.

I support this measure whole-heartedly, and I have no doubt the Committee will be able to come to agreement.

THE HON. SHAMSUD-DEEN : Your Excellency, it has been stated that we have borrowed some laws from India, and now we are trying to get rid of some laws that we borrowed some time ago. There is no doubt about it, we cannot welcome laws as far back as 1877; but, Sir, I think it is a fundamental mistake to try to borrow laws from England, no matter how modern they may be, because in most cases they are very difficult to adapt to a population consisting of Europeans, Indians and natives.

I suppose a Select Committee will be appointed to go through the details of this Bill, but in order to give just one illustration of the difficulties and disadvantages of the Indian Act being dispensed with, I would mention that there is one section: if I remember rightly, in the Indian Limitation Act where protection is given for twenty years, and in the case where a man pawn his jewellery with a pawnbroker he could file an action for the redemption of his property up to thirty years. It was evidently intended to apply to a population who are not all educated, and who are not all au fait with modern laws. Similarly, Your Excellency, the proper thing when introducing any laws into a country like this is that we should borrow from England all that is modern and capable of application to this Colony, but take into consideration the vast Indian population and also the Asiatic population of this Colony. We should make laws which would suit that class of population as well; and also, Your Excellency, we should blend these laws in such a manner that the native should not be taught to take technical advantages of these legal expedients of limitation and so on.

I am in favour of this law being revised, but I am certainly against the Bill being based on English law *in toto*. Owing to the acoustics of this room being so bad, I could not quite get the example of the Attorney General about a man going on leave, but I think that point has been met by the hon. Member for Nairobi South.

HIS EXCELLENCY : If no other hon. Member wishes to speak, I will call upon the hon. mover to reply.

THE HON. THE ATTORNEY GENERAL : Your Excellency, as everyone is probably aware, all the points raised in the debate are questions of detail for the Select Committee.

I am glad that every speaker who has spoken on this measure has in fact supported the Bill. I am not quite sure of the position of the hon. Mr. Shamsud-Deen in that I understood him to say that he was supporting the Bill, but that he would not support a Bill based on English law. Well, I am afraid that in the main, though there are a few provisions from India—in the main this Bill is, in fact, English law.

There is only one point which I think I need reply to at this stage, and that is in regard to what I think the hon. Member for Nairobi South said about reviving statute barred debts. As he pointed out, it would be quite easy in Committee, if the Committee decide that this should not be done, to make the necessary amendment; but I would like hon. Members to consider very carefully whether there is any equity in saying that because you have been fortunate enough to escape for three years, and the three years was up the day before yesterday, without having given an admission of your debt to your creditor, that you should be permitted to plead this Act. It does seem to have been a technical defence and not, if I may say so, an honourable one. It is on a par with pleading the Gaming Act, and I would ask hon. Members to consider seriously whether we should assist them in this way, and say, "Because you have managed to escape for three years it shall not be revived." I do not feel it is a matter of principle, and it is one in which I am sure we will be guided entirely by the feeling of Members of the House, but I can only express surprise that the Chamber of Commerce, in fact, support it. I must admit it was in my mind all along, but the hon. Member opposite has rather shattered me by telling me that the very people I thought would be helped by this particular clause had asked him to repudiate it.

I do not think there is any other point of general interest. There are one or two legal points which, without the Indian statute—I have not brought the Indian Applied Act with me, and without reference to that I would not like to speak.

THE HON. SHAMSUD-DEEN : On a point of order, Your Excellency, the old practice of reproducing on the left-hand side of any new Ordinance the old statute to which it relates has not been followed in this case; and that is one of the reasons why I have not been able to follow it clearly.

CAPT. THE HON. H. E. SCHWARTZ : Surely, Your Excellency, the practice referred to only applies to amending Ordinances. This relates to a new Ordinance and the repeal of an old Ordinance; and consequently it would be impossible to set it out on the left-hand side of the page.

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

The question was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

THE HON. THE ATTORNEY GENERAL: Your Excellency, may I move that this Bill be referred to a Select Committee, composed of the following:—

The Hon. the Attorney General (Chairman).

The Hon. T. D. H. Bruce.

The Hon. Member for Mombasa.

The Hon. Member for Nairobi South.

The Hon. J. B. Pandya.

THE HON. THE COLONIAL SECRETARY: I beg to second the motion.

The question was put and carried.

The Council adjourned for the usual interval.

On resuming.

THE IMMIGRATION RESTRICTION (AMENDMENT) BILL.

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

This amending Bill is very short, Sir, and does not affect any principle whatever, and the opportunity has been taken to clarify section 2 of the Principal Ordinance, where power was given to someone in 5 (d) to admit a person who might be a prohibited immigrant. It was never clear, who that someone was, although it was clear from the context that the Governor was meant. I am taking the opportunity of this Bill to insert the words "by the Governor" to make it clear, who is the authority whose duty it is to admit a prohibited immigrant or not.

The second point, and the only other point in the Bill, is extending the powers of the Governor to permit him to admit people who, under the Principal Ordinance, would be definitely prohibited immigrants, and therefore unable to enter this country. By this amendment, the Governor, subject to any conditions that he thinks fit to lay down, may allow those persons mentioned in paragraphs (a), (b), (c), (d), and (e) of the Principal Ordinance to enter the Colony under conditions.

I may say, with regard to this, that it is only bringing our legislation into line with that of neighbouring territories. To give a brief example: A man is a prohibited immigrant in Kenya, but is permitted by the Governor of Uganda to enter Uganda, let us say, under certain conditions, so that you have a man in Uganda who is a prohibited immigrant to Kenya, although he has to pass through our territory *en route*. I therefore thought it wise—and no doubt it will be used extremely sparingly—to permit the Governor to allow such a person to enter under conditions. Assuming again that you had someone who was not mentally fit, but who could be looked after by his people here—it might be relations—under the present law the immigration officer would have to say, "I am sorry, but I cannot allow him to enter." Now, such a person would be permitted to enter on condition and on the responsibility of the person undertaking to look after him.

THE HON. T. D. H. BRUCE: Your Excellency, I beg to second the motion.

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

MAJOR THE HON. P. W. CAVENDISH-BENTINCK: Your Excellency, the objects of this Bill are to facilitate, or rather to make possible, the entry into this Colony of certain people who are at present barred. I have nothing to say against the provisions of the Bill; and I support it; but I should like to take this opportunity of asking Government whether they could not also make it slightly easier for persons to come into this Colony, or conditions of entry easier—persons whose advent is eminently desirable. I am referring, Sir, to the deposit which has to be made by people before they are allowed to enter under, I believe, the provisions of the Principal Ordinance to which this small amending Bill refers. I am not suggesting, Sir, for one minute that that deposit or that the principle of deposit is an undesirable one; it is to my mind essential. But there have recently been cases in which settlers have arrived in this country and made their deposit, and have gone up-country and have purchased farms. They have used up all their available capital and resources in buying stock or furniture, or in making the various purchases necessary, and often it would help them very much indeed if they could get a return of the money that they have left at the Coast. Two instances have happened quite recently. In one case, a settler arrived, and he had to put down £100 for himself and his wife. As he had only English notes, he was made to pay the exchange. He had been out here before. Going up-country, he purchased his land, and now he is endeavouring to get back

that £100, but he was told that that was quite impossible unless somebody would sign a bond for him. He brought a person willing to sign, and was then told he had to sign it over a ten-shilling stamp. I am not saying these are not necessary provisions, but I think in the case of a substantial person who is acquiring property here Government might be a little more lenient. I am suggesting, Sir, that possibly in considering the whole question of immigration Government might assist these particular cases.

THE HON. SHAMSUD-DEEN: Your Excellency, with reference to the plea of the last speaker, I wish to suggest that Government should consider embodying a clause in this Bill which will make it less troublesome, less difficult for persons already enfranchised in the country to re-enter. I have known cases where taxpayers, people who are on the voters' list and are enfranchised, after going away for a short holiday, on their return have been subject to the same hardships as a newcomer. It would be worth while for Government to consider adding another clause making the entry into the Colony of such persons who have settled here much easier than it is at present.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, in view of the remarks made by the last two speakers, would you consider permitting this Bill to go to a Select Committee? It is not a matter which would take a great deal of time, and possibly some method might be found of inserting another clause which would meet everyone's wishes.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE: Your Excellency, I should like to say that if the two cases referred to really did occur, there seems to me a very grave necessity for an inquiry into this matter. I do not think the law as laid down does exact those penalties; it is not meant to, Sir.

THE HON. THE ATTORNEY GENERAL: Your Excellency, as hon. Members are probably well aware, an entirely new subject has been introduced into a very innocuous Bill. We propose to make certain amendments to section 6, and while everyone agrees to that, we are told it would be a good thing if at the same time we amended or repealed or replaced other sections which Government naturally has not considered. The question has never been brought up, as far as I know, in the form put by hon. Members who have spoken. I quite agree that there may be cases of hardship which departmental instructions might be sufficient to remove, or it may be necessary to amend the Ordinance in some respect. But I do seriously think that the public must be considered—we print a Bill so that they

may know what we propose to do fourteen days before it is brought into this Council—if this little innocuous amendment were referred to a Committee we might possibly make some amendment to the Immigration Ordinance which would alter the whole aspect of the immigration laws in this Colony. I think it would be extremely dangerous to permit a Select Committee to deal with what would have to be an entirely different point in the Bill. I do think, Sir, if what we have heard is correct, Government should inquire and see what steps to take, but it would be very wrong to introduce such a far-reaching amendment in the very innocuous and harmless amending Bill which is before us.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, on a point of order, would Your Excellency give an assurance that if we do not press for a Select Committee the Attorney General will be prepared to consider any recommendations put to him?

HIS EXCELLENCY: On a separate issue?

THE HON. THE ATTORNEY GENERAL: I will certainly give that undertaking, Sir.

HIS EXCELLENCY: I will put the second reading of this Bill which is really dealing with a minor point, and I will give the assurance that the hon. the Attorney General will deal with the other issues which have been raised.

The question was put and carried.

THE NORTHERN FRONTIER PROVINCE POLL TAX (AMENDMENT) BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to move that the Bill to amend the Northern Frontier Province Poll Tax Ordinance, 1930, be read a second time.

The reason for this amendment is that during the two and a half years during which the principal Ordinance has been in existence considerable difficulties have been experienced in its working. One of the main difficulties experienced by District Commissioners has been in the words of section 6, "in default of distress". District Commissioners have been hampered by those words because the necessity of executing a distress warrant before imprisonment has rendered the escape of tribesmen a very easy matter. When the extent of the area, the impenetrable nature of the bush, and the existence of frontiers adjacent to the Northern Frontier is remembered it will be realized that everything is in favour of

tribesmen who wish to evade their liabilities and escape while the distress warrant is being executed. The amendment enables a sentence of imprisonment to be imposed by the magistrate at his discretion when no reasonable excuse by the defaulter is forthcoming. The remaining amendments to sections 10 and 11 of the principal Ordinance reduce the period of grace allowed in the case of tribesmen or of truculent tribes whose tax has been commuted and also in the case of a lump sum fixed by the District Commissioner. Experience has proved that the period of grace previously allowed was too long and enabled the tribesmen concerned to escape across the frontier or to hide themselves to evade the payment of the tax. I commend these amendments, Sir, to the approval of the House, because this Bill is needed for the better administration and the more efficient collection of the tax in the Northern Frontier Province. It will be remembered by hon. Members of this House that this poll tax was imposed in recent years, and it is very important its efficient collection should be assured. I beg to move the second reading, Sir, of the Bill.

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

THE HON. SHAMSUD-DEEN: What arrangement has Government made or what arrangement has it in view as regards the frontiers—I believe I am right in calling them frontiers—between Tanganyika Territory and Kenya. I know, I have personal knowledge, that on the border of this Colony near the Wateia country this Ordinance would be useless.

HIS EXCELLENCY: Is not this a Bill to amend the Northern Frontier Poll Tax Ordinance?

THE HON. SHAMSUD-DEEN: The principle is the same, whether or not we extend it.

HIS EXCELLENCY: I think the Bill as it stands is the Northern Frontier Poll Tax (Amendment) Bill. I will put the question.

The question was put and carried.

THE HARRAGIN PENSION BILL.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to move the second reading of a Bill to make Special Provision in regard to the Pension of Walter Harragin.

The object of this Bill, as stated in the Objects and Reasons, is merely to secure the pension rights of my hon. friend the Attorney General. Owing to the circumstances

which necessitated his coming here to assume the duties of Attorney General before our late Attorney General, Mr. MacGregor, was actually off the pay of this Colony, a situation arose under which we had temporarily two Attorney Generals qualifying for pension in respect of the same office. It is laid down by Colonial Regulations that two officers cannot qualify for pension in respect of the same post at the same time, and in order to secure the ultimate pension rights of my hon. friend a special Ordinance is required to be passed by this House to secure his pension for that period during which he and his predecessor may be said to have overlapped. I beg, Sir, formally to move the second reading.

THE HON. THE TREASURER (Mr. G. WALSH): I beg to second the motion.

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

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I have no intention of opposing this Bill and I am sure none of us would wish to think there is any change of my hon. friend opposite being done out of £31 per annum, and I think all those who have had anything to do with the hon. and learned Member must agree that we are very fortunate in having such an able successor to our late Attorney General. The only point I wish to raise, Sir, is that it does seem wrong that this Colony should be landed, not only with this small extra amount, which is not very material, but that we should have to pay the full salaries of two Attorney Generals for a considerable period, and I do hope it will not be made a precedent for similar action in the future.

THE HON. THE COLONIAL SECRETARY: In reply to that statement, Sir, I would like to assure the House that this is a quite peculiar and extraordinary arrangement, due to special circumstances, and would not in any case create a precedent. It happened to be the case that the learned Solicitor General was also on leave at that period and he was not therefore available to act as Attorney General, as he would normally have done. We were therefore in the position of having two senior members of the Legal Department out of the Colony at the same time. That is the sort of thing which will probably happen once in a lifetime.

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

The question was put and carried.

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

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of a Bill to amend the Widows' and Orphans' Pension Ordinance.

This, Sir, is entirely a formal matter, which we are doing at the request of the Secretary of State. The first amendment is merely the correction of a typographical error, where the word "section" has to be inserted in the place of the word "scheme". The second is to remove an anomaly which exists under sections 27 and 28 of the Principal Ordinance. Under section 27 it is possible for a man who has been retrenched, even though he has had only five years service—to continue to contribute to this pension scheme. When we come to section 28 it says categorically that no one who has not had ten years' service shall be permitted to continue his contributions. The result is that there has been no continuity. No one has known exactly under which section he should come, and at the request of the Secretary of State the amendment is being made by adopting what is the law under section 28, namely, ten years in order to be able to subscribe to the

The other is a very small amendment which provides that certain retrenched officers might continue to contribute. Under the law as it stood there was some difficulty in regard to their right and while the discussion was going on between the Crown Agents, the Colonial Office and ourselves the period within which these officers had the right to exercise their option expired and it is necessary for us to make special provision in this Ordinance to permit them to continue their contributions.

THE HON. T. D. H. BRUCE: I beg to second the motion.

HIS EXCELLENCY: The question is that the Widows' and Orphans' Pension (Amendment) Bill be read a second time.

The question was put and carried.

THE POST OFFICE BILL.

THE HON. T. FITZGERALD: Your Excellency, I beg to move the second reading of a Bill to Provide for the Establishment and Regulation of Post Offices and the Conveyance of Mails.

As will be gathered, Sir, from the printed statement of Objects and Reasons which accompanies this Bill, its introduction is more or less a formal matter and will, I hope, be accepted as such. At the present time the Kenya Post Office operates under the authority of the Applied Indian Act and one of the objects of this Bill is to replace that Applied Act.

Another object is to consolidate the existing law on the subject and advantage has been taken of the opportunity to introduce such amendment as will simplify working procedure. I may say that Post Office law generally follows certain well accepted principles and this Bill in no way departs from any of those principles.

There are, Sir, I think, only two changes to which I need draw attention. One is that it is proposed to transfer from the Governor in Council to the Postmaster General the power to make some of the less important regulations regarding post office business. The principal rule-making powers, such as the fixing of rates, will still be reserved to the Governor in Council. Another change is that it is not proposed to retain the schedule to the present Indian Act which lays down maximum rates of postage in respect of the inland service, beyond which the Governor in Council, in fixing rates, may not go. I may say that the present maximum rates are so high that they are never likely to be exceeded and in any event I suggest the Governor in Council might be trusted with the fixing of rates. The Indian Act is the only post office law of which I am aware in which the legislature imposes any restriction on the actual rate-fixing authority.

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

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

The question was put and carried.

THE DIAMOND INDUSTRY PROTECTION BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES (MR. F. B. HOSKING): Your Excellency, I beg to move the second reading of a Bill to Provide for the Protection of the Diamond Industry.

The reason, Your Excellency, for the introduction of such a Bill at the present time is that the world's diamond market is entirely artificial and more difficult to control than any of the restricted industries, such as copper or tin. It is controlled at the present moment by a diamond syndicate which took over in recent years control of the diamond output from de Beers.

Diamonds are essentially a luxury article and luxury value has no relation to commercial value which diamonds also have. The commercial value is practically insignificant compared with luxury value. This diamond syndicate has world-wide control of the diamond industry. To each producing territory it allots a quota of diamonds and that territory sub-divides

that quota amongst its own producers. On the West Coast for instance the quota that they are allowed to sell comes out to about one in four of the actual diamonds that they produce. There is every possibility of some 3,000,000 carats being dumped into the sea some day on the West Coast of Africa. I might mention that one carat is a suitable stone for one engagement ring which will give some idea of the value of the carats.

The whole fabric of the diamond industry rests on the syndicate's ability to finance the world trade. The buyers of diamonds are also under the control of this syndicate and any buyer dealing with what one might call an unauthorized diamond producer is liable to be black-listed when he starts buying in the authorized market and if he has once bought outside the ring he would have great difficulty in being able to resume the normal channels of trade.

I think it is obvious that Government must have this power to negotiate with the diamond syndicate for the quota should we ever be able to produce diamonds that will in any way affect the world's markets. If you have a mass of individual prospectors trying to butt in to this very delicate situation they will cause great distress. Two things might happen if we do not have the quota system here. In the first place prospectors might produce enough diamonds to break the syndicate. That, judging from the experience of our neighbours, Tanganyika Territory and Uganda, is most unlikely; and incidentally, when they break the syndicate they will also break themselves, because the fictitious value of diamonds, which is maintained by the syndicate, would drop. The other alternative is that if we allow people to produce diamonds haphazard, without the quota, they will not be able to sell their produce. I can imagine nothing more disastrous than to have diamonds that you cannot sell. If you want to sell them I can assure you that the quota system is absolutely necessary for this Colony, and should we be in a position to produce diamonds, quite obviously the only control can be in the hands of Government. Government must arrange the quota and subdivide that quota among producers.

Turning to the Bill before us, this Bill has been taken from an Ordinance now in force in Tanganyika Territory, and it should be read with the Mining Ordinance, 1933, introduced towards the end of last year. "Authorized diamond miner" in the definition clause refers to section 14 of the Mining Ordinance. We issue a prospecting right to anyone over the age of 18 who understands the Ordinance for all minerals under our control with the exception of diamonds, and when the Commissioner has endorsed a man's prospecting right to prospect for diamonds he becomes an "authorized diamond miner" in the terms of the Bill before us.

The clauses of the Bill are drastic but are I consider entirely necessary. I think there is no reason for me to go into details—restrictions as to the possession of diamonds, the selling of diamonds and the buying of diamonds—but some of the most stringent clauses are qualified by clause 8, where it is stated that sections 4, 5, 6 and 7, dealing mainly with buying and selling, do not apply to transactions previously approved in writing by the Commissioner; and certain power is given to the Commissioner to temper the Ordinance and to adjust it to the circumstances of particular cases. I think, Sir, if the principle of Government control is admitted, that there should be no objection to the clauses in this Bill. Your Excellency, I beg to move the second reading.

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

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

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I should like to ask the hon. Member if he does not consider that the provisions of section 3 are not a little too drastic as it is worded now, with regard to the onus of proving that any diamond in your possession has been obtained lawfully. Probably there are hundreds of thousands of people who have had diamond rings given them many years ago or diamond tie pins that they wear on leave. They could not possibly prove . . .

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES: May I draw the attention of the hon. and learned Member to the definition of the word "diamond"?

CAPT. THE HON. H. E. SCHWARTZ: I apologize, Your Excellency, and am glad to have been caught out.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I am not rising to oppose this Bill, but this is an opportune moment to draw attention to the inconsistency of Government. The hon. mover has alluded to the system of a quota as regards diamonds. It is only quite recently that Government turned down a quota system regarding maize.

HIS EXCELLENCY: I must ask the hon. Member to confine himself to this Diamond Bill.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I am confining myself to the Bill before me and am comparing this morning's action to the action of the past, and hope that

what has been said by the hon. mover will be taken to heart by the Government. I realize the necessity of a severe law, and in many ways an objectionable law, but it is essential and necessary to keep up the artificial value of diamonds otherwise that value would collapse. I shall not oppose this Bill.

THE HON. ISHER DASS : Your Excellency I support the Bill, but I would simply ask the hon. mover for some light because I am not a legal man. Section 18 reads : " If, for any purpose under this Ordinance, the question is in issue as to whether any article is or is not a diamond, the burden of proof that such article is not a diamond shall be on the person who alleges that it is not a diamond; and, in the absence of such proof, such article shall be deemed to be a diamond." Your Excellency, this legislation provides that a man found in unlawful possession of a diamond has committed an offence, but, Your Excellency, in the case of a poor man found in possession of a certain stone, and it is considered a stone by the prosecution, it would be impossible for the poor man to provide expert evidence because he has no means to prove that it is not a diamond, and as the prosecution is bringing the case against him for unlawful possession it should be for them to prove that the article is a diamond. I am not a legal man, and if further information could be given by the hon. Member on this point I would be obliged.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES : Your Excellency, in reply to one point—when is a diamond not a diamond (laughter)—obviously the onus of saying whether it is a diamond or not must lie on someone. It is a matter of difficulty to say off hand what is a diamond and it is considered reasonable that the onus should lie on the person who says it is not. Supposing a parcel was travelling through the post, and was taken for examination and the sender said he called them crystals? According to the provision of the law it would be up to him to prove his contention that they were not diamonds when we have reasonable evidence before us that it is a parcel of diamonds that is being thus sent. I do not think, Sir, that it costs a poor man very much to prove whether it is a diamond or not a diamond. The tests for diamonds are pretty accurate and we have an excellent Assay Office at the Medical Laboratories here where for a small fee we shall be pleased to determine whether a stone is a diamond or not.

HIS EXCELLENCY : The question is that the Diamond Industry Protection Bill be read a second time

The question was put and carried.

THE PENAL CODE (AMENDMENT) BILL.

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

I am sure that every hon. Member who has taken the trouble to read through the many amendments to the Penal Code proposed in the Bill before them, will agree that this is essentially a Bill for a Select Committee composed of those who have most to do with the law on this subject.

It may, Sir, be of interest to the House to know why this Bill is being moved at the present moment. You will remember that the Penal Code with the Criminal Procedure Code were introduced into this Colony about three years ago. For some considerable period it had been a question which had interested four or five of the East African colonies, it had been considered by the law societies, by the Chief Justices and Attorney Generals in the various colonies, it had been considered by experts in England, and eventually it fell to the lot of a predecessor of mine to draft and bring out the Penal Code and Procedure Code which is at present in force in Kenya. It was, however, realized at the time that no new work of this description could possibly be so perfect that it would not be necessary to have amendments in the comparatively near future. Anomalies and difficulties were bound to arise. The Secretary of State therefore directed that within a period of three years these laws should be reconsidered in the light of all the practical difficulties which had come out in the course of their working and that they should be considered at the Attorney Generals' Conference. This was done last year, in March, and a report has been laid and has been approved generally by the Government of this Colony. As a matter of interest I may say that since 1931 already further difficulties have arisen with regard to sections which perhaps at present we are not touching upon, but you must remember that our first duty in considering the Code in March last year was only to remove difficulties that had arisen then or obvious anomalies on the face of it and not to attempt to redraft the Codes generally. It was also essential that we should keep the Codes as uniform as possible in all the East African colonies. The necessity for uniformity must be apparent to everyone. It is impossible to have in colonies bordering on each other entirely different laws. Therefore I have confined myself in this Bill before you to the amendments which were agreed to by all the colonies through their Attorney Generals first at the conference and afterwards ratified by the Governments them-

selves. I may say, Sir, that they affect in no way any principle whatever, and no new principle is being introduced to-day that did not appear in the old Bill.

As an example of the sort of changes we are making, I will take two or three and assure hon. Members that as far as I know the other changes are of like character. First, we find in the Code as it exists to-day that there is no provision whereby a criminal who escapes can on recapture be made to serve the unexpired portion of his sentence. If he is sentenced to five years and escapes after two years and is not recaptured for four years, there is no provision whereby he shall serve the remaining period in addition to any punishment for escaping. We have remedied that anomaly.

Although contempts of court were dealt with under the principal Ordinance the procedure had to be gone through of laying information, although the contempt was actually committed in the face of the court itself. We have made a provision similar to that which exists everywhere else whereby a court may deal immediately with an offender.

Lastly, we have made provision that where a man receives property knowing it to have been stolen from over the border of Uganda or Tanganyika Territory we shall be able to proceed against him. As the law stands, it is impossible to proceed, as the original theft had taken place out of our jurisdiction. I do not think there is any alteration of principle whatever contained in the Bill before you, and although it will have to be carefully examined in Select Committee I do not think at this stage anyone could say that it does not warrant its second reading.

THE HON. T. D. H. BRUCE: Your Excellency, I beg to second the motion.

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

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I did at one time propose to go into this Bill in some detail, but in view of the fact that it is going to a Select Committee, it would be much better if I reserved my remarks for the Select Committee. But there are three points which I should like to refer to here. The first is section 6 of the Bill, which deals with a maximum period of imprisonment which can be inflicted in default of payment of a fine. This raises very considerable difficulties to which I will draw the attention of the Select Committee because, while one does not want to

give the right to magistrates to inflict very large and severe terms of imprisonment in default of payment of a fine, at the same time, it is obviously in the best interests of the Colony that such provision should be made as would, wherever possible, prevent people crowding the prisons and, in the case of people, natives especially, earning a small wage, if they are told that they can either pay Sh. 100 or go to prison for one month, it is perfectly obvious that they will elect to go to prison rather than pay a sum of money which may represent some six months wage, and it is at least worth considering whether it would not be possible to increase the maximum period so as to bring pressure to bear on the convicted offender to pay the money rather than be sent to and help to crowd the prisons. I admit the matter is one of very considerable difficulty and I am sure the Select Committee will consider it fully.

The next question is in connexion with lotteries, No. 163. In effect the only point I want to refer to there is that in effect it makes it an offence to publish a notice concerning any unauthorized lottery. Presumably this is following the provisions which appear in the Bill which has recently been introduced into the House of Commons at home. I speak subject to correction and it may be that "unauthorized lotteries" only refers to lotteries in this Colony; but if it means that no newspaper in this Colony can publish any notice about any established lotteries, such as the Calcutta or the Irish Sweepstake—cannot publish any reference to anyone at Mombasa, for instance, who has succeeded in winning it, or anything of that sort—then I do suggest we do not want that kind of grandmotherly legislation in this Colony. I certainly think the promoters of the Bill at home, the Government and the Royal Commission which sat on the subject, instead of taking a forward step, have taken a most retrograde step in their recommendations, and Parliament will be taking a most retrograde step if it passes the Bill. I do suggest, Your Excellency, and I ask you to consider whether it is necessary in a Colony like this to declare it to be a criminal offence for anyone to publish a telegram saying that Mr. Smith, of Mombasa, has won a prize in the Calcutta Sweep.

Lastly, there is the provision whereby power to order corporal punishment is deleted. I suggest that very serious consideration should be given by the Select Committee before they agree to that. You can trust your magistrates to apply the law in a reasonable spirit, and I think there are many cases in which it would be very much better, instead of sending a rogue or a vagabond to prison, that he should be given a good beating and allowed to go away.

THE HON. F. A. BEMPTEN: Your Excellency, I would not have intervened in this debate this morning except for the statement of the Attorney General that when a Bill goes to a Select Committee, that Select Committee can only deal with the proposals in the definite amending Bill. Further, Sir, he says that the amendments to this Bill were discussed by the Attorney Generals' Conference. And yet, Sir, when you look at section 147 of the original Ordinance you will find there, unamended, a question which has been before the Attorney Generals of the three territories for many years and one which the late Attorney General promised would be settled. I refer to sub-section 6, section 147 of the old Ordinance, and I contend, Sir, that this is a first class opportunity of amending such an offensive clause. I would even ask, Sir, that you give the Select Committee special permission to amend that clause, because to-day we have the advantage of the new Arab Member who can put the case very clearly to a Select Committee and it is a subject, Sir, which it is not advisable to discuss in public. I would particularly ask, Sir, that old section 147 may be considered in Select Committee in the hope of an amendment to sub-section (6).

With regard to section 23, which has already been mentioned by my hon. friend the Member for Nairobi South, I would suggest, Sir, that extension of power to grant permission to hold a lottery is hardly advisable as laid down in this amendment because it extends a power properly held by the higher authority in the Police Department. It is very difficult to say who carries out the old Ordinance because people hardly know what a lottery is, whether legal or illegal. For instance, we have in Mombasa a nursing home, which is a limited company for the purpose of keeping the property in the proper hands. It does not pay dividends; it is really a charitable organization, and it was intended to hold a lottery to assist the funds because the Government had decided to withdraw their subsidy. That lottery was not allowed because it was a limited company, yet, Sir, I come to Nairobi and I meet a slightly corpulent and opulent gentleman who has permission and carries on a lottery for realizing a motor car. Now, Sir, I do think there should be a little bit of give and take about this and if you allow that power to be handled by Assistant Inspectors of Police you are going to get a lot of temptation put before those fellows to allow lotteries which the Commissioner would not allow.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I should like to support the plea of the hon. Member for Mombasa which he has just put forward with reference to section 147, sub-section (6), and I trust Government will allow that to be considered in Select Committee.

With regard to the question of lotteries, I hope the opportunity will be taken to get them on a more practicable, sensible, and, as my hon. friend on my left (Captain the hon. H. E. Schwartze) said, less "grandmotherly" method.

THE REV. CANON THE HON. G. BURNS: Your Excellency, with regard to section 28 of the old Bill, and section 6 of the present Bill—that is, the maximum period of detention or imprisonment for non-payment of a fine—it has been suggested that instead of reducing the fine, that the period of detention be increased. For instance, if a person is fined Sh. 100 for an offence, instead of giving him one month, that should be increased to either two or three months. I should like, Your Excellency, to suggest to the Select Committee that will deal with this that another way of dealing with the thing is to reduce the fine a little bit. Instead of a fine of Sh. 100 and one month, why not Sh. 50 and one month? That seems to be more reasonable. If you give him two months, it must not be forgotten that the Government has to keep that prisoner for that extra month—or two months if the period is increased—and instead of gaining the amount of the fine which might otherwise have been received if the fine had been a little less—because there would have been a greater chance of the prisoner paying the fine and not going to prison—which would relieve the Commissioner of Prisons of some of the difficulties of overcrowding—I suggest that instead of increasing the fine, a reduction of time be taken into consideration.

THE HON. SIAMUSUD-DEEN: I agree with the principle of this Bill but I cannot agree with the Attorney General when he tells us that it consists of very minor changes. I think, if hon. Members go through the Bill, there are a number of entirely new features introduced into this Bill. I dare say many of them are very desirable indeed but it is not right for me to go into details on particular clauses. There are several new provisions, I think, to the Bill which will require very careful examination, and I submit, Sir, that this Bill should engage the attention of a special Select Committee, strongly representative of all interests. I find, apart from section 147 referred to by some hon. Members, that there are a number of other sections introducing entirely new features and therefore it is very necessary that there should be a very careful examination of them.

THE HON. SHERIFF ABDULLA BIN SALIM: I wish to associate myself with the remarks made by the hon. Member for Mombasa and stress the point, Sir, that Government should at this present juncture consider amendment of this section 147. Your Excellency is aware that my community

for a number of years has been imploring Government to remedy the stigma which is placed upon them, but in spite of all the promises of Government to enact a law to exclude them from such a classification as that contained in this section, no action has ever been taken by Government. Your Excellency, if section 147 stands as part of the Bill it will cause great annoyance to many Arabs and I shall be forced to the conclusion, Sir, that the Government has not the slightest intention of removing this stigma of inferiority. I can defy anyone to say that in the history of Kenya there has ever been a case of irregular conduct between an Arab and a white woman.

THE HON. ISHER DASS : Your Excellency, I support the Bill, and I wish to associate myself with the remarks of the hon. Member for Mombasa. Your Excellency, I appeal to you on one case only, and that is with regard to the classification of women. To my mind it appears unfortunate in the year 1934 that the fair sex belonging to any race should be referred to as white or black women, and I appeal to Your Excellency that the Select Committee should be instructed at least to put this section in better form. I hope that this is not much that I have asked you.

DR. THE HON. A. C. L. DE SOUSA : Your Excellency, I wonder if Government would allow some suggestion to improve the terms of section 147? I have been moved by what the hon. the Arab Elected Member has said; he is referring to his own community, and consider it a stigma that the Arabs should be classified as natives. It would appear that Government when framing the law were concerned only with European women. Such a distinction as is contained in this section would in any country constitute in itself an insult, and I consider that the prestige, modesty, and chastity of the Asian women is equally a matter of as great importance to Government as that of any other race. The opportunity has arisen, by the reference of this Bill to a Select Committee, seriously to consider the question of the inclusion of other women as well as European and especially Asian women.

THE HON. J. B. PANDYA : Your Excellency, the only point that I wish to make in this debate is to support the hon. Member for Mombasa in what he said in regard to section 147, the view point pressed by the hon. O. MUMBU MWINGI. I should also request the hon. the Attorney General to consider the view point pressed by the hon. Member, Dr. de Sousa. I associate myself with their remarks and I hope the fullest opportunity will be given in Select Committee to amend this section which will no doubt come before this House when the committee reports.

THE HON. THE ATTORNEY GENERAL : Your Excellency, I am glad of the opportunity of clearing up a little misunderstanding which has arisen regarding a statement of mine made earlier in a speech on another Bill. Far be it from me to say that where I am amending the law you are precluded from moving an amendment to a section or any part of it, but the point I wanted to make was in regard to an amendment entirely foreign to the principle of the draft amending Bill. We were amending in some small degree the section dealing with admission of certain prohibited immigrants under conditions laid down by the Governor himself, but we were not considering the whole question of whether or not the deposit should be paid and under what circumstances. I therefore asked the House to reserve that question to some future date. But it is a different matter to the question now before the House where I am amending line two or three of section 147 of the principal Ordinance. I could not possibly resist on technical grounds an application to amend a line further on in the same section. I think it only right, Sir, to tell hon. Members that of course this question which has been raised by the hon. Member representing the Arabs and others has been receiving the most serious consideration of Government. It has not been considered, I may say, with regard to its specific reference to this section of the Ordinance that we are amending, because it was not thought that my amendment would raise the question at all; as has been pointed out, I am only altering the word "unlawful" to "illicit", because "unlawful" has been held by the courts to give a wrong impression. However, the point has been raised, and I can assure hon. Members that the whole question of the status of the Arabs is being closely considered by the Government; in fact, there was a meeting only last week of the Provincial Commissioners who went into the question very closely, and no doubt you will hear in due course the result of their deliberations. Naturally, any result from that meeting will automatically affect a section such as this or any other and will be met by a further amendment. I therefore promise to consider the matter in Select Committee where members can give their views.

Another vexed question was raised by the hon. and learned Member for Nairobi South. This question of penalties in lieu of fines has been worrying the law officers of the Crown for at least four years. You will probably remember that we had another schedule which was amended, and now you have this. It is an extremely difficult question that we will have to go into carefully in Select Committee. I would only say at this stage that the present schedule is one which is in force in all other East African colonies, protectorates, mandated territories, and in a sense has been agreed to by the Secretary of State for the

Colonies. I do not know that at this stage I would be prepared to accept any radical amendment to it without further reference both to the colonies concerned and, if Your Excellency thought fit, to the Secretary of State. I do not know that the suggestion of the hon. and reverend member will exactly meet the case, because he suggested that by reducing the fine it might be possible to achieve the same end. Take a simple example: At present let us say the alternative for anything under £1 is one month. The magistrates have power now to say Sh. 5 or one month. What we want is the reverse. The hon. and learned Member for Nairobi South suggested exactly the opposite, and I do not think it would be quite as easy as the hon. and reverend member suggests. There is a good deal more in it than that. As the hon. and learned Member for Nairobi South quite rightly pointed out also, we are tightening up the law regarding lotteries on the basis on the report in England. Whether it is right or wrong is a question, and the manner in which we have done it will have to be considered in Select Committee. At least we have had the best brains of the Empire sitting on it, and as far as I am concerned I have put in a new section which at any rate has received the approbation of those who have considered it with great care in England.

Another point was made with regard to giving power to Assistant Superintendents under the section dealing with lotteries. I readily admit that I will be willing to reconsider that in the committee stage. The reason it was put in was because it was pointed out, when the particular section was being considered, that it might be impossible to get in touch in time if you wanted to get up a perfectly legitimate lottery in a hurry, with the head of the police or the authority recommended. However, that is a question for you, and if you wish to make it more difficult to hold lotteries I do not want to stand in your way.

I am afraid, Sir, that the point regarding section 147 being deleted does not really occur at this stage. I suggest that any amendment hon. Members like to suggest in the Select Committee will be considered, and I take it, if the majority are in favour, it will be duly reported to the House, or it will come up by way of a minority report.

The last point that I have to refer to is with regard to the whipping of vagabonds and rogues. It has been pointed out elsewhere that it is not right to prescribe whippings for vagabonds and rogues who are only entitled to a very small term of imprisonment; one does not find that a man is given a month's hard labour and in addition corporal punishment. That is reserved for more serious crime. Here you are only dealing

with very minor offences, and as pointed out it is not inconsistent for us to impose whipping for such offences as rape or crimes of violence and to then add rogues and vagabonds to the list. The opportunity has been taken to permit the imposition of a sentence of whipping in cases of serious assaults. If this is passed, in cases of serious bodily harm we shall be able to give a whipping.

I do not think there are any points that I can deal with usefully at this stage but I can assure you they will all be considered very carefully when the Bill is referred to a Select Committee.

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

The question was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

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

The hon. the Attorney General (Chairman).

The hon. the Chief Native Commissioner.

The hon. T. D. H. Bruce.

The hon. Member for Mombasa.

The hon. Member for Nairobi South.

The hon. N. B. Mangat.

The hon. Sir Ali bin Salim.

THE HON. THE COLONIAL SECRETARY: I beg to second the motion.

The question was put and carried.

*The Council adjourned till Thursday, 26th April,
1934, at 10 a.m.*

THURSDAY, 26th APRIL 1934

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Thursday, 26th April, 1934. THE COLONIAL SECRETARY (THE HON. H. M.-M. MOORE, C.M.G.), presiding.

The President opened the Council with prayer.

COMMUNICATION FROM THE CHAIR.

THE PRESIDENT: I regret to announce that His Excellency who, as hon. Members know, has been suffering from some slight indisposition lately, has asked me to take the Chair in his absence to-day. I should like it to be understood that there is no question of His Excellency being seriously unwell, but, as you know, he has before him the Governors' Conference next week and he is anxious to save himself as much as possible for that purpose. Owing to his absence I am asking the Treasurer to move the motion which stands in my name this morning.

MINUTES.

The minutes of the meeting of the 25th April, 1934, were confirmed.

ORAL ANSWERS TO QUESTIONS.

GIRLS' SECONDARY SCHOOL, NAIROBI.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, in view of the statement made by His Excellency in his opening address to Council, I will, with the leave of yourself and of the House, withdraw this question (No. 11).

The question was by leave withdrawn.

FEES FOR LICENSED VEHICLES.

THE HON. CONWAY HARVEY: Your Excellency, may I ask when I may expect an answer to a question of mine on the subject of progressively increasing fees on licensed vehicles which formed the subject of a recommendation of the Select Committee on draft Estimates, 1934?

THE PRESIDENT: I know that that question is receiving Government's attention. The papers have been before me and I hope to be able to give an answer during this session.

APPOINTMENT OF SELECT COMMITTEE.

THE PRESIDENT: Before we proceed to the motions, there is one announcement I should like to make with regard to the

composition of the Select Committee to inquire into the provisions of the Legislative Council Ordinances and the rules promulgated thereunder, and to report on such amendments thereto as may be considered necessary.

Hon. Members will remember that Government undertook to appoint such a Committee. The Committee will consist of the Attorney General as Chairman, the Solicitor General, the Acting Commissioner for Local Government, Lands, Settlement and Mines, the hon. Member for Nairobi North, the hon. Member for Nairobi South, the hon. Member for Kianaba and the hon. Indian Members, Messrs. Mangat and Pandya.

THE HON. SHAMSUD-DEEN : May I move, under Standing Orders, that the name of Mr. Isher Dass be added to the Committee?

THE PRESIDENT : I think that if I could talk to the hon. Member on this matter later I would prefer that. He would not be in order to move a motion of that kind at this moment without notice.

THE HON. SHAMSUD-DEEN : Standing Orders say that all committees, before they are appointed, are appointed by the vote of this House.

THE PRESIDENT : Yes.

MOTIONS.

SUPPLEMENTARY EXPENDITURE.

THE HON. THE TREASURER (MR. G. WALSH) : Mr. President, I beg to move :—

That Schedule of Additional Provision No. 5 of 1933 and Schedule of Additional Provision No. 1 of 1934 be referred to a Select Committee.

This purely formal motion, Sir, refers to the last Supplementary Estimates of 1933 and the first Supplementary Estimates of 1934. Explanation of the various items is given in the printed memoranda which are already in the hands of Members, and if this motion is approved any further details which hon. Members may require will be given in Select Committee, which I have your authority to say, Sir, will be the usual Estimates Committee of this Council.

THE HON. THE ATTORNEY GENERAL (MR. W. HARRAGIN) : I beg to second the motion.

THE PRESIDENT : The question is :—

That Schedule of Additional Provision No. 5 of 1933 and Schedule of Additional Provision No. 1 of 1934 be referred to a Select Committee.

The question was put and carried.

FAMINE RELIEF.

THE HON. THE CHIEF NATIVE COMMISSIONER (MR. S. H. LA FONTAINE) : Mr. President, I beg to move the motion standing in my name, which reads as follows :

Be it resolved that this Council approves the expenditure of a sum of £3,500 upon the purpose, specified in the Schedule hereto as a charge against the revenue and other funds of the Colony.

Schedule.

Administration Extraordinary—Famine Relief... £3,500.

Hon. Members will remember that at the last Session of Council £3,000 were voted by Government for the purpose of famine relief for the Coast area. This vote was supplemented by the generous donation of £1,000 by Sir Ali bin Salim, and in addition the Local Native Councils concerned voted £1,400.

Up to date the sum of £3,746 has been expended mainly on the purchase of maize while there remain actual and estimated liabilities to the extent of £3,858 in respect of maize orders placed, estimates of requirements after the end of June, based on the anticipation that the rains do not fall, and other items such as purchase of seed, foremen for the supervision of the work on roads, transport, etc.

An additional sum of £3,000 is now considered necessary which it is estimated will suffice until the end of the famine—provided normal rains fall in the interval—to cover the estimated liabilities to which I have referred.

I am prepared to give the House full details that may be required as to the relief works that have been instituted. These consist entirely of road-making and according to the report received, substantial improvements have been accomplished. Details are also available of the system of food distribution which is in force.

In addition to these requirements of the Provincial Commissioner of the Coast, an urgent message has been received from the Provincial Commissioner of Turkana asking for an additional sum of £1,500 which he considers will last him for the feeding of destitute Turkana until the end of the present

year. The position in the Turkana districts beggars description. Owing to the drought which has lasted for several seasons in succession, the country has become completely denuded of grass and resembles a desert. Large numbers of Turkana have lost every head of cattle they possessed and are completely destitute. Some of them eke out a precarious living by fishing along the shores of Lake Rudolf but for lack of proper fishing equipment only a limited number can so subsist and the number of destitutes dependent on famine relief to save them from complete starvation is daily increasing.

It is most regrettable that the grim conditions in the two areas concerned have made this further inroad into surplus balances an indispensable necessity; but I have no doubt that this House will not hesitate to approve the expenditure involved in the light of the facts I have quoted.

THE HON. THE TREASURER: I beg to second the motion.

THE PRESIDENT: The question is that the motion standing in the name of the Chief Native Commissioner be approved.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I should like to ask what is the intention of Government regarding Northern Turkana in view of the facts that have been stated, and which I know from my own knowledge to be correct. No rains have fallen in Turkana for a very long period, and the country is actually going back into a desert state. What is the intention of Government in regard to the natives living in that area? Are they to be withdrawn or arrangements made to move some part of the Turkana to where they can exist?

THE HON. THE CHIEF NATIVE COMMISSIONER: I can inform the hon. Member that the problem which he has referred to is receiving the very careful consideration of Government at the present time. I cannot say anything more than that at the moment.

THE PRESIDENT: The question is:—

“Be it resolved that this Council approves the expenditure of a sum of £3,500 upon the purpose specified in the schedule hereto as a charge against the revenue and other funds of the Colony:—

Schedule.

Administration Extraordinary.

Famine Relief £3,500.”

The question was put and carried.

BILLS.

FIRST READINGS.

THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.

THE COMPANIES (AMENDMENT) BILL.

On the motion of the hon. the Attorney General, the Criminal Procedure Code (Amendment) Bill and the Companies (Amendment) Bill were each read a first time.

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

SECOND READING.

THE JUVENILES BILL.

THE HON. THE ATTORNEY GENERAL (MR. W. HARRISON): Mr. President, I beg to move the second reading of a Bill relating to Juveniles.

This Bill is being introduced as the result of the recommendations of a very strong committee which sat during the last few months to consider the position of children and young persons in this Colony. For some time past, it has been perfectly obvious that some change was necessary. The two Ordinances which exist at the moment possess many anomalies, and the courts are finding it more and more difficult to administer the law. With this object in view, the committee sat, and in addition to making the usual recommendations with regard to removing anomalies they carefully considered the latest Acts at home on this particular subject. The Bill which hon. Members have before them to-day is the result of their deliberations.

I may say, at the outset, Sir, in order to remove any misunderstandings, that the Bill is to a great extent a permissive one, by which I mean, that although you see in the Bill, as drafted, power given to the Governor to establish schools, re-ward homes, appoint probation officers and so on, all over the country at large it is not imperative on Government to do so at once, for it would naturally cost a great deal of money. As you know the financial provisions relating to the spending of money in this Colony as well as I do, it is needless to tell you that any obligation of that sort will come before the usual bodies that control the finances of the Colony in the usual way. So far as the Bill itself is concerned, there is no need for us to spend one halfpenny more than you are at present spending, for you could in theory immediately declare existing reformatories to be approved schools under the Ordinance, and thereby, as far as I am concerned, establish the necessary schools. Actually, no doubt, as you will hear later on from the hon. Member seconding the motion, it is

possible that you will be asked to spend a certain amount on establishing further schools in view of the state of affairs at the moment. But as the Bill stands, it merely permits schools to be appointed on the assumption that they will be appointed when and if necessary.

As hon. Members will probably have noticed, the principal change in the Bill, and one to which I invite hon. Members' careful attention, is the raising of the age of young persons; under the Bill, it now rises to 18 years. This is actually one year short of the age recommended by the Committee, but Government considered that instead of 19, as recommended by the Committee, they would recommend in the Bill, which I was directed to draft, that the age should be 18 years. That is increasing the age by two years from the law as it stands at the present moment.

You have in the Bill all the usual provisions that you find all over the civilized world with regard to the treatment of little criminals, if I may use the word, and also those relating to children who are neglected and are living under such circumstances that it is necessary to remove them and take charge of them. You have the greatest care taken all through the Bill to see that no juvenile—and I include child and young person—is brought into contact with criminals. It has been proved time and time again that the greatest harm is done when by any possibility whatever a juvenile comes into contact with these old lags. You will therefore find that when first a juvenile comes up for remand that the magistrate is permitted to send him to a remand home established by the District Commissioner. I hope that the House will not envisage huge houses set up all over the country. I do not know that anything more will be required than a hut in the vicinity of the Court and possibly the man in charge of prisons or whoever it may be will have some place where the child can be overlooked by a grown-up, not in the actual vicinity of the prison yard itself.

You then have established approved schools No. 1. These are in no sense prisons. They will contain only young children who have been found under unfortunate circumstances—either owing to poverty or to the characters with whom they are living, or whatever the particular reason may be indicating that there is good reason for removing a child from its environment. Such a child will be sent to this particular approved school No. 1, which is a great advance, in my humble opinion, or anything done before, because as you know there has always been a stigma attached to any child who has been sent to a reformatory. So long as he is a thoroughly honest child, he will be sent to an approved school No. 1, yet in no way will he be stigmatized as a criminal.

We then provide for what you have known in the past as reformatories, in the name of approved schools Nos. 2 and 3. The only difference will be that in No. 2 the children will grow up to 16 years, and from 16 to 18 they will be transferred to an approved school No. 3.

The greatest care is taken to look after their religious persuasion. For instance, where provision is made for a child to be handed over to a probation officer it is made perfectly clear that if a child happens to be a Mohammedan, he would not be handed over to a Roman Catholic, and, if a Roman Catholic, he would not be handed over to a Mohammedan.

I think that you will all agree that the institution of probation officers also is an advance in the right direction. They will be persons, not necessarily Government officials, but probably people belonging to the various religious persuasions who are willing to undertake the task of looking after these children. Provision is, however, made with regard to class No. 1 approved school, that I mentioned earlier, that there shall be a board, quite a strong board, which will include among its members the Director of Education and the Chief Native Commissioner, to advise with regard to the welfare of the inmates of that class No. 1 approved school, so that in a sense we are removing it still further from the reformatory class to which I referred earlier.

Provision is further made for the removal from one school to another by the Governor where it is found that a child in one school is not happy or suitable in some way. The Governor then has the right to transfer him.

You will find the usual clauses which appear to make the Bill so long, though there is really little in them, as they relate to escapes, arrests, supervision, and so on. I suggest to hon. Members that this is in principle, so far as the second reading is concerned, a non-contentious Bill. It merely consolidates the law as it stands at the moment, removing anomalies, and inserts a few more up-to-date provisions taken from the English Act of 1931.

I am going to ask, Mr. President, that this Bill be referred to a Select Committee, because there are no doubt various small points that hon. Members would like to have considered. I think possibly that as far as the Select Committee is concerned it will be a very comprehensive one, and therefore no one need be afraid that all the aspects of the case will not be considered.

THE HON. T. D. H. BURCK: Mr. President, I beg to second the motion.

THE PRESIDENT: The question is that the Juveniles Bill be read a second time.

THE HON. THE CHIEF NATIVE COMMISSIONER: Mr. President, I beg to support the motion before the House. The Crime Committee appointed in 1932 to inquire into conditions which existed in Nairobi and in its vicinity recommended a detailed examination of the reformatory methods employed in England for the segregation of juvenile offenders, with a view to their possible application in Kenya. Their report bears striking witness to the need for action to deal with the problem in Nairobi and its surroundings, owing to the fact that the numbers of the juvenile population have rapidly increased in crime and have assumed serious proportions. The population in 1931 in Nairobi of juveniles was 3,416, and the conviction of juvenile offenders had increased from 154 in 1929 to 468 in 1931. As the result of their recommendations, a further committee was appointed in 1933, with the following terms of reference: "(a) To consider what measures should now be adopted to deal with the problem of juvenile crime in general, and to report accordingly; and (b) to make recommendations as to the future of Kabete Reformatory, bearing in mind that in both (a) and (b) no measures could be entertained by Government involving any considerable expenditure in the immediate future."

This report has now been laid on the table, and it will be seen, from an examination of its contents and a comparison of the terms of the Bill before you, that the majority of its recommendations, or a considerable proportion, have been embodied in the Bill. The financial recommendations in the report are a separate issue, which will receive discussion at the time with those of other urgent measures coming up for consideration or expenditure during the current year.

I need only touch, Sir, on a few matters which have been mentioned by my hon. and learned friend the mover of the Bill. Clauses 9, 5, 6, 7, 8, 11, 13, 14, 15, 16, 20, and 35 are identical or follow with slight modifications and additions the existing law. In regard to clause 17, it provides for the establishment of remand homes to which juveniles can be sent pending trial of their cases; in the majority of cases this would mean nothing more than the erection of a grass banda in an out-district, and would entail little or no cost, although in the major towns it is probable that in the not far distant future something more substantial and permanent would have to be established. Another important clause of the Bill which I might mention—

THE HON. SHAMSUDDIN: Mr. President, on a point of order, it is contrary to standing orders that details of any Bill should be discussed on the second reading of a Bill. It is only the principle that should then be discussed, and it is time enough when the House goes into committee for clauses and details to be discussed.

THE PRESIDENT: The point made by the hon. Member is perfectly correct, that on the second reading we are dealing with principles, but it is often essential to refer to details in order to explain the principles. It seems to me that at the moment the hon. Member has not gone beyond any detail of what is essential for a full appreciation of the measure.

THE HON. THE CHIEF NATIVE COMMISSIONER: Clause 28 of the Bill, Sir, which really involves an important principle, transfers the supervision of approved schools from the Commissioner of Police to the Commissioner of Prisons. This follows the English practice, and it is considered that the practice in England has been attended with remarkable success. I have had a short experience myself of that system during 1932 when I was on leave in England. It is obviously desirable that these institutions should be under the control of the Commissioner of Prisons, as pointed out by my hon. friend the mover of the Bill. Clauses 2 and 3 refer to schools which provide detention for criminal offences, and though Class 1 is concerned largely with the accommodation for juveniles who have not been convicted of a criminal offence, yet it is considered desirable that the control should be centralized in the hands of one officer.

Lastly, I would refer to the age limit, which has been increased—as pointed out by the Attorney General—from 16 to 18. The Juvenile Crime Committee, which I have mentioned, in recommending the extension of the age limit, were influenced by the following considerations: Firstly, the ages between which young persons in England can be sent to Borstal Schools are between the ages of 16 and 21. Taking the earlier maturity of Africans into account, it was thought first of all that 19 would be a suitable age, and this was further modified to 18. Secondly, I would remind hon. Members that the Bill is non-racial in character, and though need for schools for non-natives is not likely to arise in the immediate future or for many years to come, yet it is right that this contingency should be taken into account in any long-range legislation.

MAJOR THE HON. R. W. B. ROBERTSON-EQUESTER: Mr. President, I would first like to congratulate Government on the introduction of this Bill, which I consider has long been

delayed, and is a very necessary one. I can speak with a certain amount of authority in this matter, being a visiting justice of several of the jails, and having seen a good deal of the working and the effect the system has on juveniles.

I understand, Sir, this is a non-racial Bill, which naturally affects all communities, but I sincerely trust, as the hon. the Chief Native Commissioner has remarked, that it will not be necessary for many years to come to make it apply to any others except natives, and that we are only dealing with them at present.

In the Report, Sir, of the Committee, I entirely agree that the age limit should not be taken up to 19. A native of 10 is grown up. If it should ever affect other races, then it will be time to consider whether it should be necessary to raise it or not. At present, I do not think it should be raised.

With regard, Sir, to the proposal that the reformatory (the Government approved schools) and any training schools which may be established should come under the administrative command of the Commissioner of Prisons, that I do not think I can agree with. I do think that these schools, especially No. 1 and No. 2, should be entirely divorced from any association whatsoever with either Prisons or Police. I think it would be quite possible to start a school without any connexion with prisons at all. There are plenty of officers in the country who could quite easily look after these schools. Mr. La Fontaine in his report also advocated the appointment of a man to be brought out from home to take charge of these schools. I think, Sir, if there is a man available in this country—and I believe there is—who has a very good knowledge of the language—which is a matter of very great importance indeed—I think every effort should be made to obtain the services of that man.

With regard to Nairobi, Kisumu and Mombasa, we consider the remand problem should be solved by the erection of a remand house. That I consider is one of the excellent things that can be done. In Mombasa Jail I have frequently seen children and juveniles put in remand, and even put into jail itself, which I consider is very wrong. With a remand house and proper supervision—I do not refer to detention camps, because I do not think they do fulfil the duties they should do—but with a proper room set aside for remand prisoners, I think it is a course which should be adopted as soon as possible.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I do not pose as an expert in juvenile crime, and I am quite prepared to accept the recommendations of those who have given much more study to it, as represented in the Bill

before us. The hon. mover said, "This Bill permits schools to be appointed; that does not mean that they must be appointed." That is perfectly true, Sir, but at the same time I think the House should realize that in passing this Bill the natural corollary is that schools must be appointed, and that does as a consequence entail expenditure of funds.

Now, Sir, we must all agree that it is very necessary to take action which will improve the present method of dealing with these juveniles. At the same time, I do hope that we will not allow ourselves to be carried away by enthusiasm for an ideal, and so forget the fact, which was brought to our notice two days ago by His Excellency, that we are still living in an age of necessary frugality, and that, when consideration has to be taken as to the action to follow up this Bill, we shall take into consideration in proportion other necessary matters which will require expenditure of money. Already for famine relief and locust work we have probably exceeded most of our surplus in this year's Estimates.

The only other point, Sir, I should like to refer to is the question of age. Originally, the Report recommended 19. That has now been reduced to 18, and I think, when it comes to be considered in Committee that it will be—at any rate, I hope this age question will be still further considered as to whether the proper age should not be 16 instead of 18. As it stands, a youth at the age of 16 can be hanged, but he cannot be sent to prison, which seems somewhat anomalous; and I hope this question will be thoroughly discussed and considered when this Bill is considered in detail.

THE HON. SHAMSUDDIN: I think this is a Bill on which the Government ought to be congratulated, Sir. The principle is a very sound one, and we think it should really have been taken cognizance of much earlier than this. I notice that the whole Bill deals with children who are involved in some kind of offence or crime, but I have noticed that while the State makes all sorts of provision for people who are involved in crime and offences, it never gives a thought to the children of those people who have been sent to prison for certain crimes—the children of criminals who are being looked after by the State. Shelter is found for the convicts and food is provided, but for the children of those unfortunate persons who have been convicted, the State makes no provision whatever. I hope, Sir, when the Bill goes into Committee that the Committee will take that aspect of the position into consideration.

The only other observation I wish to make, Sir, is in regard to the religious needs of the children. Very great care will have to be taken that religious societies, no matter whatever denomination, do not exploit the pagan natives.

THE REV. CANON THE HON. G. BURNS: Mr. President, I rise to support this Bill, and also to congratulate Government very heartily indeed, and more particularly to congratulate the hon. and learned mover of this Bill for a very real attempt to meet one, in my opinion, of the most difficult problems—certainly in large centres such as Nairobi—that we are faced with at the present time.

I understand, Mr. President, that the Bill is going to be considered in detail by a Select Committee. There were several matters that I wanted to speak about, but perhaps it would be better to wait until it is in Select Committee.

I should like to associate myself very much with the Noble Lord the hon. Member for the Rift Valley with regard to the age. The age of 18 is a very, very difficult one from every point of view. The young African—I am speaking now, of course, entirely from the point of view of the African—the young African is initiated into his tribe between the ages of 12 and 14. He is given his *kipandi* at the age of 16, and yet, as the Noble Lord said, he can be hanged at 16, but cannot, under this Bill, be sent to prison until he is 18. That is a thing which should be seen to and inquired into when the Bill goes before the Select Committee.

There is one other aspect, Sir, that I should like to emphasize very much. I presume that when you speak of juveniles and young persons both sexes are included, because one of the difficulties of course that we have in Nairobi is—the boy is bad enough, but the girl is a still greater and more serious problem in every respect in such large centres as Nairobi. In the Bill, there is provision made that people who would do anything towards helping a young girl on her way down the scale should be severely dealt with. With that I entirely agree, but I do not except her mother. My experience in Nairobi for 26 years, Sir, is this: that the person we have the greatest need to be afraid of with regard to the downtrend of young girls in such a centre as this is the mother, a woman who herself has lived her life to a certain age, and now is looking to her children—legitimate children, or whatever you may call them—to support her in her old age. She is one of the greatest difficulties, one of the stumbling-blocks in any advance we are seeking to make in regard to the uplift of the people of this Colony.

There are other points one would like to mention—the fact that the parent will be held financially responsible for a young person. I have known fathers in Nairobi whose great trouble was that they could not control their sons after a certain age. It was of no use to try; they could not be controlled; and the

young person, knowing himself away from his father's control—to make the father financially responsible for such a young person, I think, Sir, is a provision which deserves to have a little further consideration given to it.

It is with real satisfaction that I support this Bill, and I hope that gradually, as the Committee deal with it, it will be brought to that state where it will be really useful, not only for Nairobi, but for the whole of Kenya Colony.

THE HON. J. B. PANDYA: Mr. President, I rise to support this Bill, and I should like to make one or two observations on some points which have come out in debate. The Noble Lord the Member for Rift Valley mentioned that the question of expenditure has got to be very carefully considered. I entirely agree that we have to watch that very carefully, and we must also be guided by the very sound advice which His Excellency has given us, namely, of frugality. But in this matter, I feel that the control of crime at a young age is an investment for the Colony. There are instances where frugality means extra and added expenditure, and in my view an expenditure on this kind of thing would save further expense in the future. In regard to the age, the point is worth considering as to whether the age of 18 for natives should not be left as it is. The point to be considered in this matter is that the Bill is a non-racial one, and unless we make the Bill racial I do not think the age-limit should be interfered with. I hope this point will be taken into consideration by the Select Committee. Sir, I congratulate Government on bringing in a Bill of this nature, and heartily support it.

THE HON. THE ATTORNEY GENERAL: Mr. President, there is very little for me to say, as hon. Members appear to realise the points they have raised are really points for the Select Committee. But there is just one small point that I might mention in closing the debate; it is with regard to the Commissioner of Prisons. Of course, the word sounds very harsh, and you at once associate it with prisons, and actually he will be the person, but he will not be called the Commissioner of Prisons when he goes abroad, but the Chief Inspector of Approved Schools, his real name under this Ordinance. I will admit that it is a distinction without a difference, except that it does remove the stigma of the prison from the particular communications that he signs. It is necessary for him to use it when dealing with this type of institution in an advisory capacity, as he will be when he inspects the schools. There is no suggestion that wardens from prisons will be transferred to the schools.

The next small point was raised by the hon. Member, Mr. Shamsud-Deen, with regard to neglected children. I was not quite clear what particular point in the Ordinance was being taken, but if I understood him correctly it was a legitimate plea for children whose parents had gone to prison. I take it that we might class those children as neglected children, and if the hon. Member will look at section 19 of the Bill he will see that provision is made for putting neglected children into Class 1 approved schools. If the hon. Member has any further points and he will see me afterwards, I shall be glad to give them my full consideration before we go into Committee. I do not think, Sir, there will be any useful purpose served in pursuing now the other points raised.

THE PRESIDENT: The question is that the Juveniles Bill be read a second time.

The question was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

THE HON. THE ATTORNEY GENERAL: Mr. President, I beg to move that the Juveniles Bill be referred to a Select Committee, the members of which will be notified from the chair later.

THE HON. T. D. H. BRUCE: Mr. President, I beg to second the motion.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, I rise on this motion of the hon. and learned Attorney General, as an opportunity will not otherwise be afforded me to refer to the point raised by the hon. Member, Mr. Shamsud-Deen, earlier in to-day's sitting in connexion with your announcement of the appointment of a Select Committee appointed as the result of a promise given by Government in answer to a question of mine yesterday.

It has been, Sir, the practice of the House for a very large number of years that Select Committees appointed in answer to a question and a promise by Government should be appointed, as has been done to-day, by an announcement by the President of the House, and that on a motion put, as has just been moved by the hon. and learned Attorney General, the personnel should in nearly every case by agreement be also later announced. But that practice has now been challenged, Sir, by the hon. Member, Mr. Shamsud-Deen, and that challenge I am afraid has to be faced.

It would appear that the practice which has been accepted by all sides of the House cannot be continued if no longer accepted; because, by virtue of Standing Order No. 54, "A Select Committee shall be appointed on motion made and question put, and shall consist of such members as may be chosen by the Council or committee of the whole Council."

I regret that this point has been raised, although the hon. Member has a perfect right to raise it. That being so, I would suggest to you, Sir, and to the hon. and learned Attorney General that in future the actual personnel of Select Committees will have to be appointed by vote of this Council, and, moreover, the Select Committee announced earlier this morning regarding the Legislative Council Ordinance and Rules will have to be appointed by motion made and question put. As it is very important that that committee should be appointed before the Council adjourns to-morrow, I would ask you, Sir, and the hon. and learned Attorney General, that the hon. the Attorney General should, after the interval, give notice of motion to be moved to-morrow to appoint that committee with the personnel already announced by you, Sir, and then it would be competent for the hon. Member, Mr. Shamsud-Deen, or any other Member to move an amendment to add or subtract from the personnel suggested.

I hope you think, Sir, that this is the proper time to raise this matter, and as the point taken by the hon. Member appears to me to be a correct one, the established practice will no longer be acceptable, and we must abide by the Rules and Standing Orders so long as they remain in force.

THE HON. THE ATTORNEY GENERAL: Mr. President, it is perfectly true what the hon. and learned Member for Nairobi South has said, with regard to Rule 54, but you will see that provision is made in Rule 55 that "In the event of the members of a Select Committee not having been chosen before the Council adjourns, it shall be competent for the Governor to select members of the Council to serve on the Select Committee so appointed on motion." The object of the motion now before the House was to get the House to agree to a Select Committee. As the personnel had not been finally fixed at the moment, I was going to use Rule 55 in aid, and in due course the Governor would have announced the personnel. In a sense, the Council would have agreed to that being done by accepting my motion that a Select Committee be appointed the personnel of which would be announced later. That would have allowed Rule 55 to come into force, and an announcement could have been made by the Governor. Actually, I may say,

I have no objection to the point taken by the hon. Member, that in the ordinary way a Select Committee should be appointed as was done, you will remember, yesterday, when we were appointing Select Committees for one or two Bills; there we actually appointed them in Council. To-day, the point is, as I have said before, that it is not quite certain who will be able to serve on this Committee, and therefore I moved that the Bill be referred to a Select Committee, and if the House agrees I will call in Rule 55 in aid, and in due course the Governor would appoint the Select Committee. If hon. Members object to that course, they should oppose the motion as it stands, which is that a Select Committee be appointed, the personnel to be announced later.

CAPT. THE HON. H. F. SCHWARTZ: Mr. President, on a point of explanation—and I hope the hon. and learned Member does not think that I am trying to be obstructive—I would much prefer the old procedure. But as the point has been raised it has got to be faced. In further explanation, I do not consider that Rule 55 means that you can pass a resolution appointing a Committee and that between the adjournment of the Council at one o'clock to-day and its meeting at ten o'clock to-morrow the Governor can appoint the members of that Committee. It must obviously mean when the Council adjourns to the next session; at least, I submit to the hon. and learned Attorney General that that is so. But I really raise the point in order to put right before we adjourn to-day the question for the Select Committee, otherwise it will mean that only notice of motion can be given to-morrow, and we shall not be able to discuss it until after the Council meets again on the 8th May.

THE PRESIDENT: The point raised by the hon. Member, Mr. Shamsud-Deen, is a perfectly correct one under the Standing Orders. It was for that reason that I suggested that perhaps I could see him later, and then make an announcement for the reason just given by the hon. and learned Member for Nairobi South, that whatever may be actually in Standing Orders, it has been the practice—at least during my period in this Council—to adopt the procedure that was adopted in that case, where we have been able to get a Committee appointed, as is believed, by agreement. Although I had not the opportunity of consulting all the Indian Members on the question of the composition of the Committee, at least two whom I consulted expressed their willingness to serve, and I thought they would be adequately representative of Indian opinion. As, however, the point has been taken, it is important that we should get this matter cleared up, and on the

immediate question of the appointment of this Committee now before the House. I would suggest that the House make the usual adjournment now, and I will welcome the opportunity of a discussion during the adjournment with Members, so that we could if necessary amend the Standing Orders, because this House, in the last resort, is the master of its own procedure.

The Council adjourned for the usual interval.

On resuming.

THE PRESIDENT: During the interval, I have had the opportunity of seeing Mr. Shamsud-Deen, and explaining to him the procedure which has been customary in this Council in the past, at the same time also explaining to him that the point he has taken on the matter of Standing Orders is a proper one. I understand him to say that in the circumstances he wishes to withdraw any objection which he made as regards the personnel and method of appointment of the Committee which I announced, and I should like in this connexion to make it clear that in the past we have always with Unofficial Members been fortunate in being able to arrive at agreement with them as to the composition of committees, and it would be a very good thing indeed if Indian Members could also arrange among themselves, so that there should be no suggestion among the Indian community as a whole that one or other of the Indian Elected Members was figuring more on Select Committee than another. As, however, this point has been raised, it seems to me important that we should get our Standing Orders in proper form, and I have therefore agreed to the hon. Member for Nairobi South giving notice of motion for the appointment of a Select Committee to consider these Standing Orders. That being so, the position is that, as regards the Committee I have already announced, that stands.

I will now call upon the Attorney General to move that the Bill relating to Juveniles be referred to a Select Committee and to state the composition of the Committee.

THE HON. NGB. MANGAT: Mr. President, on a point of explanation, may I say that your remarks may give the impression that Indian Members cannot agree among themselves. I understood that my hon. friend wanted an additional Member on that Committee. If that is so, I agree with him, but it should not be presumed that the five Indian Members cannot agree over the constitution of the Committee as far as they are concerned.

THE PRESIDENT: I am very glad to hear that that is the case.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Juveniles Bill be referred to a Select Committee of this Council consisting of the following personnel:—

The Hon. the Attorney General (Chairman).

The Hon. the Chief Native Commissioner.

The Hon. the Director of Education.

The Hon. Member for Kiambu.

The Hon. Member for Ukamba.

The Hon. Shamsud-Deen.

The Rev. Canon the Hon. G. Burns.

THE HON. T. D. H. BRUCE: I beg to second the motion.

The question was put and carried.

NOTICE OF MOTION.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, I beg to give notice of motion as follows:—

"That a Select Committee of Council be appointed to consider the Standing Rules and Orders of the Council, and to report on such amendments as may be considered necessary, with the same personnel as that appointed to consider the Legislative Council Ordinance and Rules."

THE HON. THE ATTORNEY GENERAL: I beg to move that the Council resolve itself into a Committee of the whole Council to consider the following Bills clause by clause:—

The Special Districts (Administration) Bill.

The Immigration Restriction (Amendment) Bill.

The Northern Frontier Province Poll Tax (Amendment) Bill.

The Harragin Pension Bill.

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

The Post Office Bill.

The Diamond Industry Protection Bill.

THE HON. T. D. H. BRUCE: I beg to second the motion.

The question was put and carried.

The Council went into Committee.

In Committee.

THE SPECIAL DISTRICTS (ADMINISTRATION) BILL.

The Bill was considered clause by clause.

Clause 3.—Relation of Ordinance to other enactments.

THE HON. THE ATTORNEY GENERAL: I beg to move that clause 3 as it stands be deleted. It has been pointed out that it has been taken from the Indian Act, and it is very difficult of interpretation. It is suggested therefore that a very simple form which we have in other Ordinances be inserted in lieu thereof. I therefore move that clause 3 be deleted and the following substituted therefor:—

"The powers conferred by this Ordinance shall be in addition to and not in derogation of the powers conferred by any other law for the time being in force."

The question was put and carried.

Clause 25.—Finality of orders.

THE HON. N. S. MANGAT: I beg to move that this clause be amended by substituting the words "Supreme Court" for the word "Governor" in sub-section (2), line 5.

THE HON. THE ATTORNEY GENERAL: I cannot accept this amendment on behalf of Government. Council is aware of the reasons; I gave the reasons in my reply to the hon. Member on the second reading.

The question was put and lost.

THE IMMIGRATION RESTRICTION (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 2.—Amendment of section 5 of the Principal Ordinance.

LT.-COL. THE HON. LORD FRANCIS SCOTT: On a point of order, in clause 2, sub-section (1), it says "after the word 'deemed' in the fifth line". It should be the sixth line.

THE HON. THE ATTORNEY GENERAL: I think I can explain that. As it is printed in the Bill, the hon. Member is perfectly right; but as it is printed in the Revised Edition of the Laws it is line 5.

It has been pointed out that there is a misprint in line 2 of sub-clause (1). I therefore move the deletion of the word "after" and the substitution therefor of the word "after".

LT.-COL. THE HON. J. C. KIRKWOOD: Yesterday, unfortunately, I was out of the House when this Bill was discussed, but the point was brought to my notice whereby an immigrant deposits £100.

THE PRESIDENT: That point was dealt with during the course of the debate, and the Government undertook to make inquiry into the matter.

LT.-COL. THE HON. J. C. KIRKWOOD: Could I give the details to the Attorney General?

THE PRESIDENT: Thank you, if you would.

The question is that the word "after" in line 2 of sub-clause (1) be deleted, and the word "after" substituted therefor.

The question was put and carried.

THE NORTHERN FRONTIER PROVINCE POLL TAX (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 5.—Amendment of section 11 of the Principal Ordinance.

THE HON. THE ATTORNEY GENERAL: I beg to move that clause 5 be deleted and the following substituted therefor:

"5. Sub-section (2) of section 11 of the Principal Ordinance is hereby amended by deleting the words 'within three months from the date of such communication' in the fourth and fifth lines thereof, and substituting therefor the words 'within such period as the Governor shall consider reasonable (which period shall be communicated to the tribe at the same time as the above-mentioned communication)'"

The reason for this amendment is that as it stands at present it says that the Governor may "within a reasonable period". Well, "reasonable period" is such an elastic term that it would be awfully difficult for the courts to say what was a reasonable period in the circumstances. It is therefore thought fairer and better to everybody concerned that, when the Governor makes his announcement, payment should be made within a certain time which should be stated there and then.

The question was put and carried.

THE HARRAGIN PENSION BILL.

The Bill was considered clause by clause.

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

The Bill was considered clause by clause.

THE POST OFFICE BILL.

The Bill was considered clause by clause.

Clause 10.—Power to detain postal articles to which fictitious stamps have been affixed.

THE HON. T. FITZGERALD: There is a small alteration in sub-section (2). I beg to move that the word "and" in line 6 of sub-section (2) be deleted and the word "or" substituted therefor.

THE PRESIDENT: Will you read it out?

THE HON. T. FITZGERALD: It is the last "and" in line 6. It should then read, "bears the address and the fictitious or previously used stamp".

The question was put and carried.

THE DIAMOND INDUSTRY PROTECTION BILL.

The Bill was considered clause by clause.

Clause 7.—No buying or selling at night or on Sundays.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, might I ask the Commissioner for Local Government, Lands, Settlement and Mines not, why we should not buy a diamond on a Sunday, and, if we should not, why we should be able to buy one on Good Friday or Christmas Day?

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES (MR. P. H. HOSKING): The whole idea of selling diamonds, I have no objection to the inclusion of Christmas Day or Good Friday, or any other special holiday, but I do not think it is very necessary.

CAPT. THE HON. H. E. SCHWARTZ: I do not want to press the point, especially as Christmas Day would probably be a very good day on which to buy a diamond.

Clause 13.—Forfeiture of diamond without an apparent owner.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, I am not rising on a silly point, but it is a matter which was brought up in a Select Committee, and we were informed it could not be altered because the Bill was printed. I refer to the method in which the printer spells "connection". It is not the correct English way of spelling the word, and the sooner we spell it correctly the better; and if I may be allowed I should like to move the substitution of the letters "ct" for the letter "c" in "connection" in sub-clause (2).

The question was put and carried.

Clause 18.—Burden of proof as to diamonds.

THE HON. ISHER DASS: I move that the word "not" be deleted in line 4, after the words "that it is". It should then read, "who alleges that it is a diamond".

THE PRESIDENT: May I just get your amendment?

The question is that clause 18 be amended by the deletion of the word "not" in line 4.

CAPT. THE HON. H. E. SCHWARTZ: Should not both "nots" come out?

THE HON. ISHER DASS: Yes, both "nots".

THE HON. THE ATTORNEY GENERAL: I would point out that in that case the whole section would have to be re-drafted. Look at the last two lines, assuming the amendment went in!

THE PRESIDENT: Unless you want to add to your amendment, Mr. Dass, I will put the amendment to the Council as you have given it to me.

The question was put and lost.

Clause 20.—Power to detain diamonds sent by post.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, the same amendment as before in regard to the word "connection".

THE PRESIDENT: The question is that the word "connection" in line 4 be deleted, and the word "connection" substituted therefor.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: I beg to move that the following Bills be reported to Council without amendment:—

The Harragin Pension Bill;

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

and that the following Bills be reported to Council with amendment:—

The Special Districts (Administration) Bill;

The Immigration Restriction (Amendment) Bill;

The Northern Frontier Province Poll Tax (Amendment) Bill;

The Post Office Bill;

The Diamond Industry Protection Bill.

The question was put and carried.

Council resumed its sitting.

THE PRESIDENT: I have to inform Council that—

The Harragin Pension Bill, and

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

have been considered clause by clause in Committee of the whole Council, and have been reported to Council without amendment, and that—

- The Special Districts (Administration) Bill;
- The Immigration Restriction (Amendment) Bill;
- The Northern Frontier Province Poll Tax (Amendment) Bill;
- The Post Office Bill, and
- The Diamond Industry Protection Bill,

have been considered clause by clause in Committee of the whole Council and have been reported to Council with certain amendments.

THIRD READINGS.

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

- The Harragin Pension Bill;
- The Special Districts (Administration) Bill;
- The Immigration Restriction (Amendment) Bill;
- The Northern Frontier Province Poll Tax (Amendment) Bill;
- The Post Office Bill;
- The Diamond Industry Protection Bill, and
- The Widows' and Orphans' Pension (Amendment) Bill,

be each read a third time and passed.

THE HON. T. D. H. BAUCK: I beg to second the motion.

- The question was put and carried.
- The Harragin Pension Bill;
- The Special Districts (Administration) Bill;
- The Immigration Restriction (Amendment) Bill;
- The Northern Frontier Province Poll Tax (Amendment) Bill;
- The Post Office Bill;
- The Diamond Industry Protection Bill, and
- The Widows' and Orphans' Pension (Amendment) Bill,

were each read a third time and passed.

The Council adjourned till 10 a.m. on Friday,
the 27th April, 1934.

FRIDAY, 27th APRIL, 1934

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Friday, 27th April, 1934, the Colonial Secretary (THE HON. E. M.-M. MOORE, C.M.G.) presiding.

The President opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 26th April, 1934, were confirmed.

PAPERS LAID ON THE TABLE.

The following paper was laid on the table:—

By THE HON. THE TREASURER (MR. G. WALSH):

Sessional Paper No. 1 of 1934: European Local Civil Service.

ORAL ANSWERS TO QUESTIONS.

STATUS OF ARABS.

No. 15.—MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE asked:—

In view of the continually expressed grievances by the Arab communities on the Coast, would Government consider the advisability of appointing a commission to inquire into these, with special reference to status of Arabs, land tenure, land titles, etc.?

THE HON. THE CHIEF NATIVE COMMISSIONER (MR. S. H. LA FONTAINE): In view of the fact that Government has at present under consideration a Bill defining the status of Arabs, that land tenure on the Coast is the subject of recommendations by the Kenya Land Commission, and that the question of land titles is at present under inquiry by a special *ad hoc* committee, Government does not consider that any useful purpose would be served by appointing a further commission to examine these questions.

FEES ON LICENSED VEHICLES.

No. 16.—THE HON. CONWAY HARVEY asked:—

What action has Government taken in connexion with para. 11 of the Report of the Select Committee on the Draft Estimates, 1934, in which the Committee recommends that Government should examine the desirability of reviewing that part of the Traffic Ordinance which deals with the payment of annually increasing fees on vehicles

(other than rickshaws, bicycles, or other vehicles exempted by the Governor) with metal tyres less than 4 inches in width?

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES (MR. E. B. HOSKING): The matter is under submission to the Central Roads and Traffic Board, and will be considered at the next meeting.

THE HON. CONWAY HARVEY: Arising out of that answer, Mr. President, will Government issue instructions that this extra taxation shall not be collected pending the report of the Roads and Traffic Committee, which is a very good body to make valuable recommendations?

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES: I can give no direct assurance on that point, but it is a matter, I think, which should receive due consideration.

THE PRESIDENT: The Government will look into that suggestion. I am not prepared to give an answer at the moment.

RECORDS OF PROBATE AND ADMINISTRATION CAUSES.

No. 32.—**THE HON. J. B. PANDYA** asked:—

Has the Government received representations from the Mombasa Law Society to keep all files of probate and administration causes relating to Mombasa and Coast Arabs and Africans at Mombasa, and to make provision for necessary staff for the purpose?

If the answer be in the affirmative, will the Government state what steps are being taken to give facilities to the public in that behalf?

THE HON. THE ATTORNEY GENERAL (MR. W. HARRAGIN): Representations from the Mombasa Law Society on the lines indicated have been received by Government, and the Law Society has been informed that the financial situation precludes the provision of additional staff necessary for the amplification of the work at the Public Trustee's office at Mombasa in connexion with estate administration.

THE HON. J. B. PANDYA: Arising out of that answer, may I ask if the Attorney General can give an assurance that financial provision will be made in the next budget of the Estimates.

THE HON. THE ATTORNEY GENERAL: The answer to that is in the negative.

MOTIONS.

STANDING RULES AND ORDERS OF THE LEGISLATIVE COUNCIL.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, I beg leave to move the motion standing in my name:

"That a Select Committee of Council be appointed to consider the Standing Rules and Orders of the Council and to report on such amendments as may be considered necessary, with the same personnel as that appointed to consider the Legislative Council Ordinance and Rules."

I do not propose to take up the time of the Council by speaking at any length on this motion because it will be within the recollection of hon. Members that the reasons for this motion were given yesterday. I do, however, wish to make it clear that, in proposing this motion, it is not my intention to suggest that the Standing Orders of this House, taken as a whole, require any drastic amendment. They were gone into very carefully many years ago, the labour involved, as I know to my cost, was very great, and I think it may be said that they have on the whole worked remarkably well. I also wish to make it clear that my object in suggesting that the personnel of the Select Committee should be the same as the personnel of the Select Committee appointed yesterday to deal with the Legislative Council Ordinance and Rules was merely because it appeared to me that to a great extent the minds of the two Select Committees would be working in much the same orbit. The one deals with the procedure to get into the House, and the other with the procedure when you have got into Council; and I can give an assurance, from something said to me this morning, that there is no suggestion whatever in my motion of wishing to prefer one Indian member on this Committee to another. I hope that they will accept that assurance.

THE HON. SHAMS-U-DEEN: Mr. President, I wish to second the motion. I wish to say that these Standing Orders were made something like seven years ago and I think Members will find there are quite a few clauses which require overhauling again. For instance, yesterday I saw that in the Committee stage you had to put the question whether this particular clause should stand part of the Bill. That, in accordance with Standing Orders had to be done throughout, but you saw yourself, Sir, what a cumbersome job it was. That is merely one of my suggestions, that in revising Standing Orders it may be arranged so that His Excellency the Governor, or the Member presiding, would simply call out a particular clause and save endless trouble by the question having to be put in respect of every clause. That is merely an illustration, Sir, and it is not unreasonable to ask for a revision

of these Standing Orders after seven or eight years. I remember I was a member of that Committee when these Standing Orders were revised last and we feel that after seven or eight years experience it is time they were revised again.

As regards personnel, Sir, I may state the agreement of Indian members among ourselves that Mr. Pandya and Dr. de Sousa should be appointed on the Select Committee if the motion is carried.

THE PRESIDENT: The question is that the motion standing in the name of Capt. the hon. H. E. Schwartz be approved.

There is just one point I should like to get clear in view of the remarks of the last speaker. The terms of the motion are: "with the same personnel as that appointed to consider the Legislative Council Ordinance and Rules". I understood the hon. Member was seconding that motion. In the last few words of his speech he seemed to suggest a different personnel and I should like to get it clear whether that is so.

THE HON. SHAMSUD-DEEN: Mr. President, I was going to ask the hon. mover if he would kindly embody the suggestion I have made in his resolution.

THE PRESIDENT: For formal purposes you are seconding the motion.

THE HON. SHAMSUD-DEEN: Yes, Sir.

CAPT. THE HON. H. E. SCHWARTZ: On a point of order, Mr. President, I have no objection in the least, of course, as to what Indian members compose the personnel, but unless some hon. member moves an amendment to this, and does it quickly, this will go through with the same personnel as the other Select Committee.

THE HON. SHAMSUD-DEEN: I will move that amendment, Sir.

THE PRESIDENT: But you have already seconded the substantive motion.

THE HON. N. S. MANGAT: I beg to move that amendment, Sir—that the name of Dr. de Sousa be substituted for that of myself.

THE HON. ISHER DARS: I beg to second the amendment.

THE PRESIDENT: The amendment is before the House that the motion should be in the terms stated with the alteration in the personnel.

THE HON. THE ATTORNEY GENERAL: Mr. President, I do not wish to intervene to any extent in this debate. As you have already said, the motion is going to be accepted by Government in some form or other, but I would like to point out to hon. Members the difficulty of a Chairman who will be sitting and considering practically the same thing with two committees. We want to be able to sit with the same committee right through. I do suggest we should arrange the same committee somehow or other, as was originally suggested by the hon. mover.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Mr. President, I should extremely loath to vote in opposition to what the hon. Indian members may put up and desire in this matter; but at the same time, there is great force in what the Attorney General has just said and I would like to appeal to the hon. Indian members to see if they could not agree to have the same committee.

THE HON. N. S. MANGAT: May I be allowed to say that with the leave of the House the amendment is withdrawn and that we agree to the same committee.

THE PRESIDENT: The amendment, with the leave of the House, is withdrawn. The substantive motion is now before the House and I will now put the question.

The question was put and carried.

BILLS.

SECOND READINGS.

THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL.

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

As hon. Members are well aware this Code follows in the footsteps of the one which we considered two days ago. This is the Procedure Code, whereas the day before yesterday we were considering the Penal Code; and any general remarks I made in regard to the history of the Penal Code is equally true of the Bill now before the House, so I will not tire you with repetition.

Again I say that, in my humble opinion, there is no deviation from the original principle of the Ordinance as it stands at present. Naturally, it is a matter of opinion what is or what is not principle. I was taken to task in the last debate because it was suggested that one or two amendments might be considered amendments of principle. Well, as I

said, it is impossible to lay down definitely what is or what is not principle, but I will give you one example in the present Bill in order to make clear my point. In the present Bill you will see that there is a suggestion that juries—the numbers of jurors be altered from twelve to nine, and from nine to five in appropriate cases. It may be said that this is an alteration in principle. Personally, I would consider the abolition of juries to be an alteration of principle, but a variation of numbers to be a matter of detail. However, I can assure you that that type of amendment is quite the most serious that you have to consider in this Bill to-day, and as I have mentioned that amendment I think I ought to give you the reason for it. It was suggested by the late Chief Justice that it was in the interests of economy—for instance, in murder cases—that juries should be reduced from twelve to nine. Exactly the same principle of the jury system is preserved. The effect of the amendment is merely that instead of having twelve men sitting for a very long time you will only have nine sitting. Again, in out-districts, as hon. Members well know, it is extremely difficult if you have many cases, to get juries of twelve frequently sitting without it becoming a very onerous task indeed, and for these reasons at the Conference it was considered that an amendment on these lines—which has already been adopted in the only other Protectorate which has a jury system—should be adopted.

There are other small amendments, such as the provision made for inter-pleader action in small criminal cases. As you well know, many fines may be levied by distress under the Ordinance and it has happened in the past that when the policeman or the officer goes to levy on the property of a man who has been convicted, he unfortunately sometimes takes the property which is not the property of the convicted man; and there is at present no simple procedure for the man who has had his property taken in error getting before the courts. We have, therefore, provided for an enlargement of the Ordinance to permit of easy application being made to the courts.

There is one other section which I think I should mention and that deals with the trial of Europeans by magistrates. It frequently happens that where offences have been committed the person charged is only too anxious to plead guilty before a magistrate and be finished with it. The magistrate himself is perfectly satisfied that a small fine, or imprisonment up to six months, would well meet the case, but unfortunately, as the law is worded at present, he has no jurisdiction in the matter. In the amendment hon. Members must realize we are not giving the magistrate jurisdiction if the accused does not consent. It entirely depends on the accused consenting

and the magistrate being satisfied that a sentence of six months' imprisonment or less would adequately meet the case. It is only if the accused consents that he is able to be tried by the magistrate.

There is very little else that I can say, except that this is essentially a Select Committee Bill; in Select Committee I shall be able to put before the members some valuable contributions from the two law societies on small minor points arising out of the Bill, but no useful purpose can be served by wasting the time of the House in discussing it now clause by clause.

THE HON. T. D. H. BRUCE: Mr. President, I beg to second the motion.

THE PRESIDENT: The question is, that the Bill to amend the Criminal Procedure Code be read a second time.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, as with the Penal Code (Amendment) Bill, there are necessarily a large number of small points to be discussed by the Select Committee which it would be inopportune to discuss here. There are, however, three points which I wish to bring up, and I know they will receive full consideration by the Select Committee when that body meets. The first is with regard to the question of numbers of jurors. I am dealing now only with juries in cases of murder and treason which at present number twelve jurors, and I have the authority of hon. members on this side to say that they unanimously support what I am going to say with regard to that, and also the law society. We feel very strongly indeed that in the case of murder or treason (though we can leave the latter out as it is not likely there will be many prosecutions for that, at least I hope not), but in the case of trials for murder the jury should remain at twelve.

With regard to other juries, there are a very large number of cases throughout the Colony in the course of a year—I will not say a large number, but a certain number of cases other than murder or treason for which at present the jury number is nine. We realize that it is a great inconvenience to citizens to have to attend all sorts of juries at such trials, and that the expense is very considerable, because it is a question often of increasing the panel of jurors to be summoned. Although those people are not actually called on to serve on a jury; they have to leave their farms and where they live to attend court where they are balloted for; so that we can accept the position with regard to the suggested amendment to reduce the number of jurors from nine to five with a saving in expense and a lessening of inconvenience. But I do hope, Sir, that the Select

Committee will accept our unanimous wish that in trials of Europeans for murder or treason—an event which is very rare I am glad to say, in this Colony—they will allow juries to remain at twelve as it is at home, realizing that the extra expense involved throughout the course of a year will really be infinitesimal. If that amendment is made to the present amending Bill it will automatically connote that the rate of challenges in those cases where the jury is twelve will remain at six.

Those hon. Members who were in the Council when the Criminal Procedure Code was passed will remember that there was considerable discussion with regard to the number of challenges without reasons assigned. In the Bill brought before the House it was three, but at my request and of other members the hon. and learned Attorney General put it at six. If a jury is reduced from nine to five, it is obvious there is not the same necessity for the same number of challenges without reason assigned. Therefore we are prepared to accept a reduction of challenges from six to three in cases where there is a jury of five instead of nine but ask that in a trial for murder or treason the challenges should remain at six.

The second point is section 42 of the amending Bill, to which we attach great importance. It reads: "The following section is hereby inserted in the Principal Ordinance as section 287A:—'287A. (1) The deposition of a medical officer or other medical witness taken and attested by a magistrate in the presence of the accused person, may be read as evidence, although the deponent is not called as a witness. (2) The court may, if it thinks fit, summon and examine such deponent, as to the subject-matter of the deposition.'"

Hon. Members will see that if this amending clause is introduced it will deprive an accused person or his counsel of the opportunity of cross-examining a medical witness who is called for the Crown for although the court has the right to call the witness the court must examine him, and there is no compulsion on the court to call such witness unless it wishes. There is no power given the accused person or his counsel to insist on that medical witness appearing to face a cross-examination. It is not difficult to realize what that may mean if carried out to a strict interpretation. Anyone who had the good fortune to witness the duel of wits between the late Sir Edward Marshall Hall and Sir William Wilcockes in the Seddon poisoning case will remember that the cross-examination of the latter lasted for three or four hours and was on highly medical technical detail, and to a great extent the conviction or acquittal of the accused person abided by the result of that cross-examination. It is unthinkable that in a poisoning case or in many other cases the Crown should have the

right to put in the signed statement of a medical officer and that there should be no power for him to be cross-examined. A case arose in this Colony a few months ago in which Mr. Figgis was appearing for the accused person charged with murder, and I have his authority for stating these facts to be correct. A report was sent in by a young medical officer to the effect that certain stains on a certain garment were human bloodstains. The police or the Crown were not completely satisfied that that report was necessarily correct, and they very fairly had the garment sent for analysis to the laboratory. The result of the report was that most of the stains were not blood at all, and if it was blood it was not human blood. That is a very serious thing. I do not know the facts of the case, Sir, but Mr. Figgis informed me that, if these stains had turned out to be human blood, in all probability the accused person would have been convicted and hanged. It will be argued, and fairly, that one does not want to stop a medical officer going on leave or to bring him down from upcountry at great expense merely to say: "I examined so and so, and he had a contused wound on his cheek one and a half inches long." I suggest, Sir, that this clause should be amended to give the right to an accused person or his advocate to demand the presence of a medical officer should he think fit. I think that the hon. and learned Attorney General will agree with me there is no reason to suppose that in criminal cases a member of the Bar in this country will abuse that right, and call people down just for the sake of putting them to inconvenience.

The third and last point is one that does not appear in the Bill at all but is a point that has arisen quite recently. It has been the practice ever since the original Criminal Procedure Code was brought into force in this country, that upon an accused person being convicted on trial in the Supreme Court application could be made to the trial judge for bail pending appeal. That was done in many cases of my own if I made application for bail immediately on conviction, and in every case it was granted. I made such an application in a case about six months ago and it was again granted, but it was only discovered quite by accident later that the High Court had no power to grant bail. The position now is that when a person is convicted before the Supreme Court he cannot be admitted to bail until such time as application is made to the Court of Appeal for Eastern Africa which means that he has to go before two judges in court. The result is that if a person is convicted upcountry or at Mombasa he cannot be released but must be held in custody until such time as application is made to the Court of Appeal, and two judges found to make application for. It means considerable extra expense being involved having to brief counsel in Nairobi to make the application in the Court of Appeal. The law was probably put like this, because when

a magistrate convicts he has no power to grant bail pending appeal to the Supreme Court. That is not a provision I wish to alter because naturally, many magistrates in this country are not legally qualified men, but it is a different position when one comes to a conviction by the Supreme Court. There you have a Supreme Court judge trying the case, and if he thinks fit to grant bail pending appeal there is no reason why he should not be given that power. On that point again I would ask the serious consideration of the Select Committee.

I think, Mr. President, those are the main points, but there are several points of detail I shall raise at a later stage in Select Committee.

THE HON. SHAMSUD-DEEN: I do not propose to go into various sections, which bring about some very desirable alterations, Sir, but I think I would be failing in my duty to my constituents if I did not raise my voice against this system of trial by jury. I am sure at this juncture you will allow me to ask the House to consider the abolition of the system of trial by jury altogether where a person of one race is charged with the murder of a person of another race. I shall probably be ruled out of order, but, Sir, I do submit that this very principle of trial by jury is based upon the fact that a person accused of some crime or deed, especially of another, should be tried by his own countrymen—a perfectly good system in a country populated by members of the same race of people, but in a country like this, Sir, where one person may be accused—I do not refer to any particular race—where a person of one race is accused of having taken the life of a person of another race, that principle acts absolutely in the opposite direction. In such a case, unless the jury are people of super-human nature, the tendency always is for racial feelings to prevail.

I know, Sir, I am up against a very difficult task if I were to ask this House not to perpetuate the law which has been in force in the past whereby we have been provided with two sets of laws for different races, but I cannot possibly sit down here and be a party to further perpetuation of that law without raising my voice—that if the system of trial by jury is to be further endorsed and sanctioned by this House, that that system should apply to all races. The Indian community, Sir, have in the past consistently tried to bring this point before Government. Promises were made on several occasions that they would be taken into consideration, but unfortunately nothing has materialized, and I would request members of the Select Committee to take that point into consideration—whether the system of trial by jury cannot be extended to Indian subjects. Personally, I am of opinion that in the case of murder, there ought to be no trial by jury where a person is accused of having taken the life of a member of another race.

There are so many points I do not wish to take up (the time of this Council by referring to, but I may perhaps state that to the best of my information there is no such system prevailing in the adjoining territories of Uganda and Tanganyika. As far as trial by assessors is concerned, Sir, I think that if the decision is left to the presiding judge, who has not only a sense of law but also a sense of duty to his Sovereign, I think the consequences will be much more desirable. There have been cases in this Colony in the past—I do not cast any reflection on the jury in those cases—but the feeling certainly is that it is almost super-human to expect any jury to sentence a person of their own race for having killed a person of another race.

THE PRESIDENT: If no other hon. Member wishes to address the House I will call upon the Attorney General to reply.

THE HON. THE ATTORNEY GENERAL: If I may, I will deal with the last point, raised by the hon. Shamsud-Deen. I mentioned in my opening, as a matter of explanation, that if I were seeking to abolish juries I would consider that it was altering the Bill in principle; and that is exactly what the hon. Member is asking me to do in this Bill now. I say here and now that I would never dream of inserting such a clause in Select Committee when hon. Members and the public in general would not have had fourteen days in which to consider the alteration of such an enormous principle.

With regard to the three points made by the hon. and learned Member for Nairobi South, of course there is a lot to be said for them. As I said, the object of the reduction of the number of jurors was in the interests of economy and convenience, and if the Elected Members are of the opinion as a whole that in murder cases it is desirable to retain the number at twelve, I do not feel that on the part of Government I would attempt to force a reduction down their throats. It is entirely a matter in my opinion for them to consider. I personally, if it were a free vote, would say that nine is sufficient, but it is not a question that any of us I suppose feel very deeply about, and if the feeling is in Select Committee that they prefer twelve, as far as I am concerned I shall be prepared to accept it.

With regard to the depositions of medical witnesses also, that I think is a point of importance, and the hon. Member made the most of it in quoting the case in which the late Mr. Marshall Hall distinguished himself so much in his cross-examination of a medical witness; but it is unthinkable that in a similar case the judge would solemnly permit the Crown to say: "Well, you need not call this most important witness." However, I can assure the hon. Member—who I trust

will also be a member of the Select Committee—that it will receive very serious consideration. Again, as you probably realize, this has been done entirely in the interests of economy and convenience. The point also comes up in regard to uniformity in regard to other East African colonies. We must not be hide bound and occasionally points differ here from Uganda and Tanganyika, but it was in order to avoid the necessity for a medical witness having to travel 500 or 600 miles in order to say that a man was suffering from a confused wound one and a half inches long that this clause was inserted.

The last point which the hon. Member made is one which has been worrying me for the last three months—that is, in regard to the giving of bail. The only reason you do not see some provision for that in the Bill before you is that actually this Bill is in a sense an agreed Bill of all the East African colonies, and although other points will have arisen which we will have to legislate for later, I was anxious to get this off the stocks. At the present moment draft amendments incorporating to a great extent the amendment of the hon. Member for Nairobi South are being considered by the Attorney Generals of the other colonies and I am expecting an answer at any moment, so that, even if you do not see the provision put into the present Bill, I can assure you you will see a similar provision in the very near future in another Bill.

THE PRESIDENT: The question is that the Criminal Procedure Code (Amendment) Bill be read a second time.

The question was put and carried.

APPOINTMENT OF SELECT COMMITTEE.

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

The hon. the Attorney General (Chairman).

The hon. T. D. H. Bruce.

The hon. Member for Mombasa.

The hon. Member for Nairobi South.

The hon. N. S. Mangat.

The hon. Sir Ali bin Salim.

THE HON. T. D. H. BRUCE: I beg to second the motion.

The question was put and carried.

27th April, 1953

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THE COMPANIES (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Mr. President, I beg to move the second reading of a Bill to amend the Companies Ordinance.

This Bill is an extremely short one and at least one point will require very little consideration by you. The first amendment deals with an obvious mistake made by the original draughtsman in that he provided twice in the same Ordinance for the same type of person. These anomalies will creep in and it might be interesting to the House if I told you how it happened. This Bill was taken from the latest English Act and for some reason in England they deal differently with foreign companies and home companies formed at home—and when I say "home" I mean England, because there is a special clause dealing with those in Scotland and Ireland; and when the draughtsman here found these provisions dealing with Scotland and Ireland separately he hastily cut these out and put in the words "any other country" and so brought them into line with the people already provided for: so you need have no qualms about deleting that sub-section.

The next is rather more interesting and I feel rather like a referee who is going to put the ball into the middle of the ground and leave it to various teams to kick. The position at the moment is that if a company wishes to escape the necessity of having the full names of its directors, etc., on all its bill-heads, letters, and so on, they have to make an application to the Supreme Court. In the English Act the Supreme Court is not used but the Board of Trade, and the draughtsman not unnaturally thought that the best authority to go to here was the Supreme Court; but I do not think he realized the financial implications involved by just putting in the Supreme Court instead of the Board of Trade, because to my horror I received a deputation from business men a few weeks ago who assured me that in order to get the necessary permission—which incidentally was immediately granted through the Supreme Court—in one way or another it had cost them £30 or £40. This was never intended to be a taxing Ordinance and it was never intended that it should cost the companies that amount; and for that reason, at their suggestion, I have made, as you see, the necessary authority to be the Registrar.

The Registrar, as you know, is a legal man and he has great experience in dealing with companies, and also, as you know, an application by a registered company to the Registrar will not necessarily require the presence of any one of my learned brothers. At home at the Board of Trade what happens is that a man fills up a form and leaves it with the Board of Trade, which, although there is a legal officer there to assist them, is a non-legal body. It grants or refuses the

application and it costs very little. The only question for you to consider to-day is whether you should "delete" the word "Registrar" where I have placed it and insert the words "Judge in Chambers". I am prepared to admit that the difference between the cost of going before a Judge in Chambers and going before a judge in open court is very considerable indeed, but there is no comparison between the amount of going before a judge of the Supreme Court and making an application in your own handwriting, signed by your manager or secretary, or whatever he may be and going before the Registrar in his office.

THE HON. T. D. H. BRUCE: I beg to second the motion.

THE PRESIDENT: The question is that the Companies (Amendment) Bill be read a second time.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, my only point so to speak is to kick the football which the hon. and learned gentleman has just thrown in to what the hon. member on my left once called the industrial arena! The question is to whether these applications should be made to the Registrar of Companies or to a judge in chambers is not such a simple one as it appears. We are all agreed that an application of this sort should no longer have to be by petition to the Supreme Court. That is a very cumbersome and expensive method, though I should not have thought it would cost £40. Personally, I have never had to make one, so that I cannot tell you what the cost is. We agree, everyone agrees, I think, that companies wishing to make these applications for exemption should not be put to a large expenditure in so doing. But I do want this House to remember this, that these exemptions are by no means formal exemptions. If they were, there would be no object in having the provisions in the Ordinance relating to the necessity of putting on paper the particulars required. These applications have to be carefully examined, and exemption is only granted for general specified reasons. At home it is done by the Board of Trade. The Board of Trade is a very big organization and has very experienced officers controlling it, and they have so many of these things to deal with that they can work on clearly defined principles. If application is to be made to the Registrar of Companies I suggest that inevitably—I will even prophesy here and now—that it is inevitable the time will come, and come very soon, when the very commercial people of this country now pressing for applications for exemption to be made to the Registrar of Companies will regret they did so, and will ask for an amendment, because I am certain that the officer who acts as Registrar of Companies—and who has to act in so many other

capacities that he can be described quite fairly as the Pool-Bah of the Government service—will not have the time properly to consider the various applications put before him. Inevitably he will be inclined to grant exemption as a matter of form, and the whole evil that the provisions with regard to inserting particulars were put in the Bill during war time at home to safeguard the commercial community against will be revived. It may not be said in this House, because members are probably too polite, but it will be said and thought in other places, not least by the hon. member on my left, that as a member of the Law Society I want, or the Law Society wants, applications to be made to a judge in chambers so that we can take a few more fees. I do not think this House will believe that the history of the Law Society of the Colony is such as to justify any such accusation being made against it, or even hinted at. The Law Society has put the matter up because it believes genuinely that it is in the interests of the commercial community that a judicial mind should be brought to bear on application for exemptions, and the whole question of cost practically disappears if application is only made to a judge in chambers, which costs very little. I suggest that most companies which wish to make application for exemption would be just as likely to engage counsel to argue cases for exemption before the Registrar as they would before a judge in chambers. I believe the difference in cost will be infinitesimal, and there is no doubt whatever that the result will be very much better if application is made to a judge in chambers. It may be that if we have a man as experienced in his work as the present Registrar of Companies the evil which I have foreshadowed will not arise, but in due course someone else may take his place; but unless it is someone with a very large experience of the way in which the Board of Trade work and who has generally had experience of company law, it is inevitable that these exemptions will be more and more granted as a matter of course. Hon. Members who speak later will no doubt state that the questionnaire sent out by the Board of Trade at home can also be sent out here. An examination of that questionnaire is completely unhelpful, as it merely gives the ordinary details when a company is formed, the number of directors and so on, and asks the ground of exemption. Until we have it definitely laid down by legal decisions on what grounds exemptions should be granted trouble will arise and it will end up by being much more expensive than people imagine. I am not prone to prophesy and I will not take up the time of the House any more, because I believe I speak as one man against ten colleagues on this side and I am very unlikely to score a goal, at all events in this match. But in time to come, when the ball is again thrown down, I think I shall have a proper number for a football team, namely, eleven! (Laughter.)

THE HON. J. B. PANDYA : Mr. President, with regard to this section 140, if I remember rightly, it was introduced as a war measure, for people wanted to know who were the directors of the different companies. I cannot think it is of such great importance that application for exemption from putting names on circulars or letter heads should go before the Supreme Court or even before a judge in chambers. I have just heard the views of the hon. and learned Member for Nairobi South, who considers it of great importance, and he is afraid that if exemption becomes a matter of form it would be a very great hardship on the commercial community. I also happen to belong to the commercial community, and I may say it would be a great boon instead of a hardship if these exemptions in cases where there is a necessity for getting them were a matter of form and it should be done practically without any cost. It is one of the things where it is absolutely essential that the cost should be very low. There is another point, Sir. I could understand the necessity of having the names of directors of public companies printed because the names of these companies are such that they do require a little bit of information as to who really controls these companies, but I do feel in the case of private companies that it is not necessary to have this measure of control. In Select Committee or at the time the Bill is before the Committee of the whole House I should like to move that this clause be amended so as not to apply to private companies. I think, Sir, as I said before that this exemption will not inconvenience the commercial community and I am sure it will be greatly appreciated.

MAJOR THE HON. F. W. CAVENDISH-BENTINCK : Mr. President, I rise to support that portion of this amending Ordinance which deals with section 140. As has been pointed out, this legislation was originally imposed during the war, and I am a little bit doubtful whether such legislation is necessary really in a country of this kind. At the same time, I have no objection to it, but I do think it is only fair that all companies should be allowed to apply in the cheapest and simplest possible form. As originally suggested, one had to make application to the Supreme Court. That, as pointed out by the hon. and learned Attorney General, was an extremely expensive procedure. He proposes to simplify that by having application made to the Registrar of Companies. It is now suggested that that is not enough, that one must apply to somebody with legal training and experience such as a judge in chambers. I think, Sir, that the Registrar will always be an official of great legal experience and training, and it will be quite sufficient to make our applications to him. I might add that the Chambers of Commerce have discussed this matter at great length, and they unanimously support the view I am putting forward.

THE HON. CONWAY HARVEY : Mr. President, I sincerely trust that the House as a whole will associate itself with any support of the commercial view in this matter. We all feel very strongly, especially agriculturists, in these days particularly, that all legal processes should be in these days particularly, as possible consistent with reasonable efficiency. I feel quite sure, Sir, that the learned gentleman on my right in this matter will prove to be a false prophet, but my personal regard for him prompts me to express the hope that he will not suffer the fate we know many false prophets have suffered in the past. (Laughter.) I think we are very fortunate in having such an efficient Pooch-Bah in charge of this omnibus department up on the hill, and there is not one shred of evidence to show he is unable to shoulder the trifling extra burden which may be imposed if this Bill becomes law in the form introduced by the hon. member. A natural inference, Sir, to draw from the remarks of my learned friend would be that some judges of the Supreme Court have a certain amount of spare time on their hands. I sincerely trust that that will engage the attention of those whose business it is to look into such matters. (Laughter.)

THE HON. THE ATTORNEY GENERAL : Mr. President, it is a very awkward position in having to oppose my learned friend and also the society which has given me such assistance in the past and I am sure will in the future. But I took the trouble before coming here to inquire of those who know how much it would cost to make a chamber application. It is in no sense in the vicinity of £30 or £40, but my learned friend can take it from me that it is in the vicinity of £5. It therefore seems to me it is a matter for your serious consideration whether we should ask a company, a company which incidentally is registered with the Registrar and has already had to give the details about itself to him—which you can find but if you are sufficiently interested—to pay another £5 in order not to put down the Christian name and surname of all its directors. Of what interest it is to the majority of us I do not know, but it would also include "the former Christian name and surnames; his nationality if not British; his nationality of origin, if his nationality is not the nationality of origin;" and so on in respect of each director. Well, I am not really very versed in company law—I have had very little to do with it—but it does seem to me that however necessary it may have been during the war in England, when things naturally were in a state of comparative chaos, it is quite unnecessary in a quiet settled community like ours here, where, incidentally, the majority of us know who the directors are and what their Christian names are, and whether they were originally British or not—and if we do not we can go and pay a shilling if we are curious enough and inspect the records at the Registrar's office.

The point in regard to the experience of the Registrar and the respective experience of the judges is an interesting one, and in the main of course I must agree with the hon. Member for Nairobi South. It has to be accepted that, if an application were to go before the Chief Justice, or a first or second puisne judge, of long experience perhaps in company law, they might know more than the Registrar; but I wonder if hon. Members realize that it may well be that, instead of going before a gentleman who has spent his life as registrar of companies, studying companies, the applicant might go before an unfortunate but extremely able person, who has been an acting judge and who has spent his life so far in administering very ably the penal laws in force in the land. He is made a judge and, through no fault of his own, has probably never seen anything in regard to companies of this description. It may well be that that situation only arises occasionally but compare him with the Registrar of Companies, who must of necessity have spent half his life in dealing with questions of this description.

Whilst on this point I have also taken the trouble to get hold of the sort of application which can be filled up by the secretary of a company. There are ten questions. He signs his name and it is handed in to the Registrar's office and in due course he hears the result. If you like to compare that with what will in all probability be his fate should he have to go before a judge in chambers I suggest that he would have to do at least half the following things. He would have to instruct an advocate to appear for him; it is unlikely that he would agree to appear himself before a judge in chambers for anything of consequence. For that no doubt he would be charged a fee of Sh. 20. Then there will be an affidavit, Sh. 10; spare copy, Sh. 2; drawing up the application, Sh. 10; copy for the court, Sh. 2; attending court for filing, Sh. 10; attending before the judge, Sh. 30.

THE PRESIDENT: The question is that the Companies (Amendment) Bill be read a second time.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Council resolve itself into a Committee of the whole Council to consider the Companies (Amendment) Bill clause by clause.

THE HON. T. D. H. BRUCE: I beg to second the motion.

The question was put and carried.

The Council went into Committee.

In Committee.

THE COMPANIES (AMENDMENT) BILL.

The Bill was considered clause by clause.

Clause 2.—Amendment of section 70 of the Principal Ordinance.

THE HON. THE ATTORNEY GENERAL: I beg to move a formal amendment here in order to save trouble in the future. My amendment is that a full stop be inserted after the word "thereof" in line 2, clause 2, and that the remaining words of the clause be deleted.

The object of this amendment is to save the renumbering of all the remaining sub-sections. If, for example, some act has been done or rule drawn up under what is at present sub-section (6), by renumbering it may cause trouble in the future, and it is therefore just as well that sub-section (6) should be deleted as it stands.

The question was put and carried.

Clause 3.—Particulars with respect to directors in trade catalogues, circulars, etc.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, I wish to move an amendment to alter the word "Registrar" where it appears in the proviso to "a judge of the Supreme Court sitting in Chambers". I propose to move this amendment—which I propose to withdraw almost immediately—because it is the only opportunity I have flatly to contradict the figures given by the Attorney General. I only wish to say, if his figures are correct, we should all of us have retired in affluence long ago, instead of eking out our existence as best we may. I beg to withdraw the amendment.

THE HON. J. B. PANDYA: I beg to move that clause 3 be amended by the addition at the end of the clause of the words "Provided that this section shall not apply to private companies." I do not want to take up the time of the House, Sir, but as I have said, I do not think private companies do require the directors' names to be printed.

THE HON. THE ATTORNEY GENERAL: I am afraid, Sir, without any more reasons being given, I am unable to accept this amendment, because, on the face of it, it is preferable for private companies to show rather more detail than public companies that we know all about.

The question was put and lost.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Companies (Amendment) Bill be reported to Council with amendment.

The question was put and carried.

The Council resumed its sitting.

THE PRESIDENT: I have to report that the Companies (Amendment) Bill has been considered clause by clause in Committee of the whole Council and has been reported to Council with amendments.

THIRD READING.

THE COMPANIES (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Companies (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE : I beg to second the motion.
The question was put and carried.

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

THE PRESIDENT : That closes our business for this morning. If it would suit the convenience of hon. Member I should like now to go into Select Committee on the two Schedules of Additional Provision which have been tabled. If that is agreeable I will adjourn Council till Tuesday, 8th May, at 11 o'clock.

LT.-COL. THE HON. LORD FRANCIS SCOTT : If it is equally convenient to Government, Sir, it would be more convenient to Elected Members on this side if Council could be adjourned till the 9th. I do not know if that will inconvenience Government or not.

THE PRESIDENT : I have not had an opportunity of consulting His Excellency in the matter, but I will formally adjourn Council till the 9th May at 11 o'clock.

*The Council adjourned till 11 a.m. on
Wednesday, 9th May, 1934.*

WEDNESDAY, 9th MAY, 1934

The Council assembled at 11 a.m. at the Memorial Hall, Nairobi, on Wednesday, 9th May, 1934, His Excellency **THE GOVERNOR (BRIGADIER-GENERAL SIR JOSEPH ALOYSIUS BYRNE, G.C.M.G., K.B.E., C.B.)**, presiding.

His Excellency opened the Council with prayer.

ADMINISTRATION OF THE OATH.

The Oath of Allegiance was administered to:—

Nominated Official Member :

COLONEL ROGER WILKINSON, D.S.O., Officer Commanding Northern Brigade, King's African Rifles.

European Elected Member (Acting) :

WILLIAM GILBERT LILLYWHITE, Acting Member for the Coast Electoral Area.

MINUTES.

The minutes of the meeting of the 37th April, 1934, 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 the Select Committee appointed to consider the Fifth Supplementary Estimates, 1933, and First Supplementary Estimates, 1934.

BY THE HON. THE ATTORNEY GENERAL (MR. W. HARRISON) :

Report of the Select Committee appointed to consider the Juveniles Bill.

Report of the Select Committee appointed to consider the Limitation Bill.

Report of the Select Committee appointed to consider the Penal Code (Amendment) Bill.

Report of the Select Committee appointed to consider the Criminal Procedure Code (Amendment) Bill.

BY THE HON. THE TREASURER (MR. G. WALSH) :

Colonial Loans statement submitted to Legislative Council in May, 1934.

By THE HON. THE CHIEF NATIVE COMMISSIONER (MR. S. H. LA FONTAINE):

Native Affairs Department Annual Report, 1932.

By THE HON. THE DIRECTOR OF EDUCATION (MR. H. B. WATERS):

Report of the Advisory Council on European Education.

NOTICE OF MOTION.

THE HON. IBER DASS: Your Excellency, I beg to give notice of the following motion:

"In the opinion of this House, the Report submitted by the Unemployment Committee does not reflect the true position of and the distress among the unemployed of the Colony, and that the remedy suggested by the Unemployment Committee is both inadequate and unsatisfactory."

ORAL ANSWERS TO QUESTIONS.

COAST FERRIES.

No. 14.—THE HON. W. G. LILLYWHITE asked:

"Will Government please state what is their intention regarding the coast ferries, whether they are to be free, or a reduced charge made."

THE HON. THE ACTING DIRECTOR OF PUBLIC WORKS: The cost of running the Kilifi and Shimo-la-Tewa ferries as a free service is estimated at £675 per annum.

The revenue derived from them at present is not more than sufficient to cover expenditure, inclusive of renewals.

It is hoped that it will be possible to reduce the charges substantially in 1934 in the interest of coast producers.

THE HON. CONWAY HARVEY: Arising out of that answer, Your Excellency, may I ask whether Government has received any representations in regard to ferries which have been established in competition with the Nyali Bridge?

HIS EXCELLENCY: This question refers to the Shimo-la-Tewa and Kilifi ferries. I think the hon. Member will have to give notice in regard to questions about other ferries.

THE HON. CONWAY HARVEY: On a point of order, Sir, I thought the question referred to coast ferries generally.

HIS EXCELLENCY: No, this refers only to the two ferries mentioned.

LT.-COL. THE HON. LORD FRANCIS SCOTT: On a point of order, it does say "coast ferries" in the question.

HIS EXCELLENCY: Which ferry was the hon. Member referring to?

THE HON. CONWAY HARVEY: Various ferries, Your Excellency, which have been established in competition with and in close proximity to the Nyali Bridge.

HIS EXCELLENCY: I do not know whether the hon. Member wishes to give notice of that.

THE HON. THE COLONIAL SECRETARY: It is of no interest to the hon. Member, Sir, the answer is in the affirmative.

ASIAN WIDOWS' AND ORPHANS' PENSION SCHEME.

No. 17.—THE HON. J. B. PANDYA asked:

Will the Government state total amount of contributions collected and total payments made up to 31st December, 1933, to Widows and Orphans under the Asian Civil Servants Widows' and Orphans' Scheme?

Has the Government any intention to alter or improve this scheme?

THE HON. THE TREASURER: The total contributions to the fund up to the 31st December, 1933, amounted to £42,101/3/45, and the total sum paid to the Widows and Orphans during that period amounted to £4,100/0/05.

A sum of £8,158/10/79 on account of interest on investments has also been credited to the fund, which, as a result of an appreciation in the securities held, totalled £48,371 on the 31st December last.

With regard to the second part of the question, section 80 of the Ordinance allows for a revision of the rates of contribution and amount of pension payable, after a period of ten years, after an investigation by an actuary appointed by the Secretary of State. The fund has only been in existence some six-and-a-half years.

INDIAN MEDICAL OFFICERS.

No. 10.—THE HON. J. B. PANDYA asked:

Is it a fact that in Government publications, namely, annual reports of the Medical Department or Blue Book names of Assistant and Sub-Assistant Surgeons or of other Indian Medical Officers are not mentioned?

If the answer be in the affirmative will the Government state why it is so? and whether these names will be included in the annual reports and in the Blue Book in future?

THE HON. THE COLONIAL SECRETARY: The reply to the first part of the question is in the affirmative.

In 1915 it was decided (with the approval of the Secretary of State) on the ground solely of economy to reduce the bulk of Departmental Annual Reports and the Blue Book by adopting the practice followed in Uganda of omitting lists of non-European staff. In view of the considerable additional cost of compilation and printing which a departure from the practice, now uniform in the East African territories, would necessitate, it is considered that there are insufficient grounds for making any change at the present time. As regards the Annual Medical Report a decision has already been taken in accordance with the recommendation in paragraph 325 of the Report of the Expenditure Advisory Committee, to omit in future all names from the report, other than those of Senior Officers of the Department.

REPORT OF THE NATIVE MARKETING ADVISORY COUNCIL.

No. 20.—**THE HON. J. B. PANDYA** asked:

Is it the intention of the Government to make the Report of the Native Marketing Advisory Council available to the public? If the answer be in the negative, will the Government state reasons therefor?

THE HON. THE CHIEF NATIVE COMMISSIONER: No Report by the Native Marketing Advisory Council has been submitted to Government. Certain recommendations, however, of the majority of that body, together with a memorandum dissenting therefrom by the Indian Member of the Council, are now being considered by Government.

ALLOCATION OF REVENUE BETWEEN COMMUNITIES.

No. 21.—**THE HON. J. B. PANDYA** asked:

Will the Government state figures of the amounts contributed by Europeans and Indians by way of (a) Education Tax, and (b) Wines and Spirits Tax, for the years 1927, 1928, 1929, 1930, 1931, 1932, and 1933, and state the basis on which the division of revenue derived from Wines and Spirits Tax has been made between the two communities?

Is the Government aware that the Indian community has challenged the arbitrary division of Wines and Spirit Tax and if the reply be in the affirmative what action the Government proposes to take to ensure just and fair division of this revenue?

THE HON. THE DIRECTOR OF EDUCATION (MR. H. S. SCOTT): The figures asked for by the hon. Member have been circulated for the information of hon. Members.

It should be understood that this allocation of revenues from the Wines and Spirits Tax as between the two communities has been based on the population figures of 1928. As the hon. Member is no doubt aware the European population since that year has increased considerably while the Indian population has decreased. The allocation shown in the table is therefore probably somewhat in favour of the Indian contribution.

With regard to the second part of the question a statement showing the method by which the Government statistician arrived at the proportion of revenue to be credited to the two communities was put before the Advisory Council on Indian Education in May, 1933, and the Advisory Council recorded the view that the allocation was not susceptible of definite criticism save in one unimportant respect. In effect the Advisory Council admitted the fairness of the allocation.

ALLOCATION OF EDUCATIONAL EXPENDITURE BETWEEN COMMUNITIES.

No. 22.—**THE HON. J. B. PANDYA** asked:

Will the Government state figures of the amounts spent in (a) Housing, (b) Pensions, and (c) Loan Charges, for (a) Europeans, and (b) Indians, for educational purposes during the years 1927, 1928, 1929, 1930, 1931, 1932, and 1933?

THE HON. THE DIRECTOR OF EDUCATION: It is regretted that it is not possible to provide the figures asked for by the hon. Member.

INDIAN REPRESENTATION ON LEGISLATIVE COUNCIL.

No. 23.—**THE HON. J. B. PANDYA** asked:

Will Government state if the representations made by the Eastern Africa Indian National Congress on the increase of Indian representation on the Legislative Council of Kenya have been considered and if so what decision has been arrived at by the Government in this matter?

THE HON. THE COLONIAL SECRETARY: I would refer the hon. Member to the Secretary of State's published despatch No. 499 of 13th July, 1933, and to the published record of the interview of the Secretary of State with the Indian Elected Member of the former Council on the 14th February, 1934.

REPRESENTATION OF AFRICAN COMMUNITY ON LEGISLATIVE COUNCIL.

No. 28.—**THE HON. J. B. PANDYA** asked:

In view of the provisions contained in paragraphs XV and XIX of Royal Instructions dated 29th March, 1934, to nominate two unofficial members to represent the interests of the African community, is it the intention of the Government to appoint a suitable person without prejudice of race or colour?

If the reply be in the affirmative, will the Government consider sympathetically appointment of an Indian who may have special knowledge of natives in reserves and who may be interested in the furtherance of African interest.

THE HON. THE COLONIAL SECRETARY: With reference to the first part of the question, I would refer the hon. Member to His Excellency's Communication from the Chair on Tuesday, 24th April, 1934, at the opening of this session.

2. As the appointment has already been made, the second part of the question does not arise.

INDIAN REPRESENTATION ON RAILWAY ADVISORY COUNCIL.

No. 30.—**THE HON. J. B. PANDYA** asked:

In view of the representations made by the Federation of the Indian Chambers of Commerce will the Government state if, and when they wish to take steps for amending the Kenya and Uganda Railway (Transport) Order in Council with a view to admit of appointment of Indian Members on the Railway Advisory Council and Port Advisory Board?

THE HON. THE COLONIAL SECRETARY: The views of the Secretary of State on the proceedings of the Governors' Conference, at which the constitution of the Railway Advisory Board was considered in the light of the Gibb Report, have not yet been received and the Government is therefore not in a position to make a final pronouncement on the subject at this date.

The constitution of the Port Advisory Board provides for full representation of all interests primarily concerned in the administration of the Port; and the Government considers that no useful purpose would be served by amending the Order in Council to provide for representation on a racial basis.

AGRICULTURAL MORTGAGES COMMITTEE.

No. 33.—**THE HON. E. H. WRIGHT** asked:

Whether it is the intention of Government to implement at an early date the special legislative measures recommended by the Agricultural Mortgage Committee?

THE HON. THE COLONIAL SECRETARY: The Bill was referred to the Secretary of State for consideration in accordance with the statement made by His Excellency the Governor on the 5th December last. A telegram has now been received from the Secretary of State approving the Bill in principle, and the Government hopes to be able to proceed further in the matter as soon as the detailed observations of the Secretary of State on the Bill have been received by despatch.

REPORT OF ADVISORY COUNCIL ON EUROPEAN EDUCATION.

No. 34.—**LT.-COL. THE HON. LORD FRANCIS SCOTT:** In view of the fact that the Report asked for has been laid on the Table this morning, I beg leave to withdraw Question No. 34.

MOTION.

EUROPEAN LOCAL CIVIL SERVICE.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to move the motion standing in my name:

"Be it resolved that the proposals for the inauguration of the European Local Civil Service contained in Sessional Paper No. 1 of 1934 be approved."

I think that hon. Members will consider that on a motion of this sort, in view of the past history that has attended the matter, I should be unnecessarily taking up the time of the House if I were anything but very brief. This question has been considered exhaustively by a series of committees. The first committee, the Fitzgerald Committee, reported in October, 1931; the Merrick Committee reported in October, 1932. Since then there have been four interim reports on this subject by the Civil Service Board—one in February, 1933; another in June, 1933; another in November, 1933; and a fourth in December, 1933. All those reports have been laid on the Table of this Council and have been in the hands of Members of the Legislative Council, and therefore, all those of them who take a live interest in this matter have had every opportunity of going into the details of the proposals and appreciating the practical difficulties that have been encountered from

time to time in the inauguration of this Service. It was for that reason, Sir, and because so many committees have considered this question, and, in certain cases, the recommendations made have not been always unanimous, that the Government considered the simplest way of putting the proposals in a comprehensive form before Council was to publish this somewhat brief Sessional Paper, No. 1 of 1934, which is in your hands to-day.

If I might for a moment just make clear the procedure that it is proposed to adopt it is this. We are tabling this Sessional Paper to-day in accordance with a pledge given by the Government during last session to, I think the hon. Member for Plateau South, that, when the Government have formulated what might be called final proposals for the inauguration of this Service, this Council will be given full opportunity of considering and debating them. It is in accordance with that pledge, Sir, that the motion now before the House is being debated to-day.

It may be said that there has been a somewhat long delay in dealing with this matter and that, in fact, it has been on the stocks since 1931. While that delay is in a sense regrettable, I do feel that in this case, had we tried to act otherwise, it might have been a case of more haste less speed. The reasons for my saying that, Sir, are these: Were we merely concerned—which had been, I think the underlying intention of the parent committee, if I may so call the Fitzgerald Committee—with formulating local terms of service and applying them only to future entrants, the matter would have been a comparatively simple one; but as time went on and as the financial depression came upon us, the Government were impressed by representations made—and we ourselves as a Government were only too anxious to work in the same direction—that every possible step should be taken to reduce our overhead expenditure, our recurrent expenditure, if that could be done without hardship and injustice to serving officers. The problem, therefore, developed from the simple problem of devising suitable local terms of service for future entrants to see how these terms of service could also be made suitable for the transfer of serving officers to those terms.

The further point that presented difficulty was this, that, again owing to a pledge that this Government had given to Legislative Council—I think it went back as far as 1926, when the question of pensions generally was agitating the country, and at that time we were dealing really with the overseas service—there was no local service as such—the Government gave a guarantee that until we could get some definite decision on this matter no additional posts to the overseas pensionable establishment would be made, at least without reference to the

Legislative Council. The result was that many officers, who, in accordance with ordinary colonial practice when recruited for departmental purposes, came out originally on what is known as a one-year agreement, had every reasonable hope to expect that, provided their services were satisfactory, they would at the end of that agreement be confirmed in their appointment and made pensionable. Such officers were kept in suspense, as it were, and no definite decision was given either for or against them. When, therefore, we came to consider the question of who should and who should not form a part of this local service, we were confronted with the problem that we had many officers on agreement, but they did not all fall precisely into the same category. We had certain officers who definitely, from the nature of their appointments—temporary in character—had really no expectation of pension. We had other officers who were equally serving on agreements but who, in the Government's view at any rate—and, I believe, in the view of many hon. Members opposite—it would be improper to deprive of their reasonable pension rights, because, for the reasons which I have just explained, they had not been put on a pensionable basis. That, Sir, explains why the inauguration of this Service has proved so complicated a matter.

Now, Sir, we have tried to reduce our proposals to their simplest form, and probably the easiest way for me to put them before the House is to refer to the Sessional Paper which is in your hands. It will be seen that, as an appendix to that Sessional Paper are set out, first in Appendix I, the proposed salary scales for the clerical service, and secondly, in Appendix II, the proposed salary scales for non-clerical posts. Those salary scales have been evolved by the Civil Service Board after a very full examination of these different reports to which I have just referred; and I should like to emphasize this point—that I think perhaps in the minds of some hon. Members it may be felt that the work of these earlier committees, the Fitzgerald Committee and the Merrick Committee, has been wasted and, in certain cases, disregarded, and another Board set to work to do the work which they had already done. I should like to emphasize the point that that original spade work was not wasted at all. If you turn to the first of the interim reports of the Civil Service Board you will find these words:

"The Board's salary proposals are based on the general terms and conditions of service suggested by the Merrick Report, including concessions of leave, passage allowance and free medical attendance".

In other words, that careful work which had been done in the earlier stages by these committees has formed the basis

of these recommendations, but in the light of experience and further examination, and detailed criticism by Heads of Departments, to whom all these proposals were sent, the Board came to the conclusion that certain modifications were necessary. I would like to stress that point, Sir, because we as a Government are fully alive to the hard work which was put into these committees by certain members, and I should not like them to go away with the idea that that work has been wasted.

Let me turn now to the scales. The clerical scales are shown in Appendix I, and there is just one point I would like to emphasize, and that is—I know there are pros and cons: there are different opinions held on this question—but we have definitely here differentiated in scales between men and women. Personally, I think, conditions being such as they are in this Colony, that that differentiation is quite a reasonable one, though I saw only the other day in the *London Times* that the latest tendency is to assimilate male and female scales in England. But I submit our conditions here are rather different from those at home.

Then, as regards Appendix II, which are the non-clerical scales, these have been exhaustively gone into by these committees, by the Board and by the Heads of Departments. It may be that in one or two minor particulars some modification may be required. For example, a note is made in the case of the Education Department, on which, owing to the particular problems and multifarious number of scales at the moment, some adjustment may be required; and similarly, it may be that when these final proposals are sent home to the Secretary of State there will be some slight modifications; but I would like to emphasize that the general principle that those scales embody is accepted by the local Government. There is no intention of asking your approval to them to-day and then to-morrow raising them by 60 per cent, or anything of that sort. If there are modifications they will be of a minor character, and naturally, when they come to be embodied in the Estimates under the appropriate departmental heads, you will have full opportunity of alluding to the fact if you think any alteration has been made.

So much, Sir, for the salary scales. The next points of importance are the questions of leave, passages, quarters, and so on. In dealing with them you will see that we have definitely had to differentiate between future entrants and certain serving officers, and if you turn to paragraph 5 of the memorandum you will see set out the terms, what may be regarded as the basic terms proposed for this service in the case of future entrants.

In the case of leave, provision is made for 18 days local leave, and vacation leave *pro rata* on the basis of 10 days per quarter, to which may be accumulated the last 18 days local leave due, all leave to be inclusive of the voyage and no officer to be absent from duty for more than 100 days. The object of putting the leave in that way was this. I think the basis underlying, anyway in certain quarters, the demand for a local service was that as increasingly we obtained local recruits in the true sense for this Service, it was not essential that they should go home on grounds of health every two, three or four years. At the same time it was suggested that, apart from health reasons—and also very likely on account of health reasons—it might be desirable for these officers to have the opportunity of going home and broadening their ideas from time to time. The provision therefore made it that after four years, an officer will ordinarily have earned—a free return passage for himself and will also have qualified for six months leave, less actually two days. The ideas underlying these arrangements are these: that probably normally an officer, if he goes home at all, will not go home till the end of the fourth year, but if for any reason he wishes to go home earlier, and if the Head of his Department can spare him, there is no reason why he should not go home at an earlier period than four years; but in that case the amount of leave he will earn will be proportionately less, and also the amount of passage earned will be proportionately less; while, unless he has served for his four years, the family passage allowance of £35 will not be available. As regards quarters, normally no quarters are to be provided. Medical attention is to be provided free to officers and their families. The reason for that is this: It is considered that, in view of the low rate of salary provided in these scales on the whole, plus the contributions that an officer has got to make both to Provident Fund and to the Widows' and Orphans' Pensions Scheme, this medical concession is not unreasonable, while on the Government side we have been assured by the Medical Department that the economics, if any, to be effected in the departmental vote by the elimination of this privilege will be very little. As regards pension, no pension is to be provided, but a Provident Fund to which contributions will be compulsory is to be initiated instead. As I am moving the second reading of the Provident Fund later, I will not say any more on that point at the moment. The age of retirement is normally 55 years, and in no case later than 60 years, with a modification in the case of women that the age of retirement is to be reduced by 5 years. Those are the normal terms that will be provided for future entrants. We now come to the very practical difficulties to which I have referred, as to how to deal with officers now in the Service. After full consideration, it was considered that

officers who had had six years or more service required special consideration, and the manner in which it is proposed to deal with them is set out in paragraph 3 of this Report. I do not think it is necessary for me, Sir, unless it is going to be challenged later in debate, to repeat the principles which are contained in Appendix III by which Government has been guided in dealing with these officers. Naturally, as a signatory to the Report, I think these principles are fair and just, and I hope they will be endorsed by hon. Members of this House. If these principles are so endorsed, the placing of individual officers into their appropriate categories in accordance with these principles becomes a more or less automatic proceeding.

At the outset I referred to the difficulty of these serving officers and how we were to deal with them, and it may be of interest to say that at the moment the number of officers who will fall to be incorporated in this Local Service and who really can be called local recruits, is very small indeed. A close analysis was made of the 729 officers who on the 1st of January, 1933, were serving in posts that had been scheduled for the Local Service; of that number I think approximately 7 per cent were locally born or locally educated. That means to say that at present, and for some time to come, either we are going to recruit directly from home for this Local Service or we shall take in, as we have frequently done, people who have come to Kenya for one reason or another, but who were not locally educated or Kenya born, and incorporate them in the Service. For that reason I think you will agree that it is not unreasonable to make some provision for leave and passage out of the Colony for officers many of whose homes cannot at present in any sense be said to be in Kenya.

I think, Sir, I have said enough generally to outline the principles which Government has followed in putting these proposals forward. I would only like to say this: I hope hon. Members will realize that these proposals form part of one comprehensive whole, with the Provident Fund Bill which comes later on, and that any criticisms which would result in seriously altering the rates and scales of salary or the rates of contributions to the Provident Fund will only mean a further delay in inauguration of this Service which I believe all members of this House are only too anxious to see started at the earliest possible date. I beg, Sir, formally to move the motion standing in my name.

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

HIS EXCELLENCY: The question is that the motion just proposed by the Hon. the Colonial Secretary be approved.

LR.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I may say that I welcome this opportunity which has now arrived of seeing the question of the European Local Civil Service become an actual fact by the laying of this seasonal paper and the discussions which are taking place to-day. This question has been the subject of discussion for many years now, and has been very urgently pressed for by Members on this side of the House. No doubt in this world we can never expect to achieve perfection, and there may be a few points in these proposals which will not meet with universal approval; but, in spite of that, I trust, Sir, that this Service will now be instituted, that it will be found to contain as few anomalies as possible, and that in the course of time those anomalies may be rectified and that the Service may become a practical part of the administration of this country, Sir.

Before I go on to any discussion of the actual motion before the House, Your Excellency, I should just like to ask if the Hon. the Colonial Secretary in his reply would tell us what would be the future procedure as these proposals are put into actual effect. He did say that we would have an opportunity of seeing any alterations made from time to time, but I think Members on this side would be grateful if any alterations to be made could be laid in the form of a paper so that everyone would know exactly what modifications had been instituted.

Now, Sir, if you go back to the origin of the demand for this Local Civil Service, it was based firmly on the need for economy. I think it was generally agreed that the cost of the whole Service in this country was very high in proportion to the income of the Colony. What particularly alarmed us was to see this growing pensions list, and how much it might amount to in the future. That was one main idea, to get on to some basis of a contributory pension scheme or provident fund similar to that which is now embodied in these proposals. The next point was, to give definite openings to the local people of the country who could have a career before them which they could go into. The third point, which the hon. Member has referred to, was to try and work up a scheme which would achieve economy and which would give a decent prospect of a livelihood to the people we are thinking of. Now, Sir, it did raise great difficulties, and it was not an easy matter to adjust the various points of view, but I do believe that in general this report is a workable and fair proposition.

I do not propose to go into any details of the rates proposed; they have been discussed by so many bodies, and the European Elected Members are not asking for a Select Committee, because they feel there would only be a further

delay and further discussions, as everybody has different views on such matters. But I should just like to refer to one point which arises, the question of leave and passage. I think I am right in saying that in the original reports the proposals for leave and passages were not quite so generous as are shown here. In fact, I think in one case it would have taken any officer six years to earn his leave. Personally, Sir, I support the proposals before the House to-day. I think they are very fair; even if they are more generous than was originally supposed, I think it is wise from the point of view of the efficiency of the Service and the good of the country. The only point, Sir, which I am not quite in agreement with—and I hope in the course of debate I may be convinced that I am wrong—is with regard to medical attention.

It is contrary to what has been recommended in other reports in so far as medical attention is being extended to the families of officers and that drugs and dressings shall be free to them. The hon. mover has said that the cost to Government would be negligible and therefore there was no object in not doing so. I trust that this is so, and that the hon. the Director of Medical Services will put up a case to show that it is so, because it must be within the knowledge of hon. Members that his predecessor held very different views.

I think it is generally admitted that in certain cases these privileges are apt to be abused, and I notice here that it says drugs and dressings are to be free if prescribed by a doctor. That, I believe, is meant as a safeguard against such an abuse. But I do trust that if these privileges are granted there will be a check to see that there is no abuse of this particular privilege.

I do not think, Sir, there is any more that I wish to say for these questions of detail are not so materially important as to justify any further delay. I trust that before very long we may actually have a European Local Civil Service in existence, Sir.

THE HON. J. B. PANDYA: Your Excellency, I oppose this motion because it involves the principle of racial discrimination in the Civil Service in this Colony. In my view the paper which has been laid before us . . .

THE HON. THE COLONIAL SECRETARY: On a point of explanation, Sir—I do not wish to interrupt the hon. Member, but it might save the time of the House if I informed him that the proposals are that there should be an Asian local clerical service on substantially the same lines as this. We are only waiting to get this matter cleared out of the way before that can be brought in; so any suggestion that there is

racial discrimination and that Asiatic members will not be permitted to take part in the clerical service of the Colony is illusory.

THE HON. J. B. PANDYA: Your Excellency, I was discussing this from the point of view of the principle involved. I quite realize that the Asian civil service motion also will come before this House, but I was on this point raising the question of whether appointing Civil Servants of various races in this Colony and reserving for them certain special emoluments or posts was the right way for a Colony of this kind. What should be in its place is one Kenya Civil Service without any discrimination as regards race or colour and, as is practised in various other countries, a central Civil Service Board, who should hold examinations for various grades and posts, which should be given to those who pass those examinations and at the pay laid down, without any racial prejudice. That principle, Sir, is the one which the Government of this Colony should desire to adopt at this stage, before we go further in accepting in this country a division on the basis of race or colour.

I could perhaps realize under existing circumstances the need for certain higher posts being reserved for Europeans, but I cannot imagine, and I have not heard any arguments here this morning to convince me that there is any justification whatever for the reservation of subordinate posts for Europeans. All posts scheduled in this Sessional Paper are subordinate posts and in my opinion should be thrown open for competition as I have said before.

When we refer to the scales for the clerical posts we find that Appendix No. I shows a grade from £150 to £600 per annum, and although from £600 onwards it is a special grade, I personally could not think of any justification for these higher salaries and grades for clerical jobs. If we turn to the conditions existing outside Government service—and I think in regard to the Local Civil Service we must bear in mind that scales of salary should be based on the rate of remuneration in other services outside Government, such as mercantile houses and other places—I do feel that on enquiry the Government would find that the scales for clerical jobs are far in excess of what they are in the mercantile service, for which I see no justification. I think it is a wrong principle that the Government service should be so highly paid, which will reflect not only on the taxpayers but on services in other spheres or occupations in the country.

The demand for this local service was, as the Noble Lord the Member for Rift Valley said, based on grounds of economy firstly, and secondly, on the grounds of providing openings for the local youth.

I shall first take the ground of economy. May I ask what actual saving the Government proposes to make as a result of this scheme; and if it was intended that a local service would lessen the burden to the taxpayer, I should like to ask whether these proposals fulfil those expectations? On the other hand, what do we find? The hidden emoluments, such as house allowance and pensions, have been added to the consolidated pay and the country will have to foot the same bill.

The policy of increasing Europeans in clerical posts has been put into force since 1921 and as a result of this the following facts would be interesting.

In 1921 there were 285 subordinate posts filled by Europeans at a total cost to the country of £59,015, whereas in 1933 there were 562 subordinate posts filled by Europeans at a total cost to the country of £186,202. The average cost per post in 1921 was £207/1, which rose in 1933 to £370/18.

In 1921 there were twelve accountants and assistant accountants, costing a total of £9,619, whereas in 1933 there were nineteen of these posts, costing a total of £10,583. This shows that during these twelve years the posts have increased by 50 per cent but the cost has increased by 300 per cent.

In 1921 there were forty-two European clerks, costing the country a total of £7,268, whereas in 1933 there were 116 European clerks, costing the country a total of £45,500. This shows that while the number of posts during this period was increased three-and-a-half times, the cost during the period was increased by six-and-a-quarter times.

I have got here figures and details of a number of such posts which show similar disparity, but I think these instances should be quite sufficient to prove my contention that, apart from higher salaries, these European subordinate posts cost the country a good deal more than necessary.

According to the present terms, when hidden emoluments in the form of house allowances, passage, leave, medical treatment, local travelling and pensions, etc., are added, we arrive at the cost of these clerical services. A post of £300 per annum would cost the country £500 per annum, and a post of £400 would cost £625, and a post of £500 would cost £750 per annum.

Now, Sir, if it is contended that these consolidated salaries now before us is a saving to the country, I should very definitely like to contradict that statement. Turning to the new scales we find that the hidden emoluments are all provided for, with the exception of house allowance and pension. As regards house allowance, rent for Government quarters will be charged at the rate of 5 per cent on salaries. As an instance, a European subordinate in receipt of a salary of £300 per annum who occupies Government quarters will have to pay to the Government £15 per annum or 5s. 2s. 6d. per month. Having regard to the accommodation in these quarters, I should say that at this rate the quarters are given almost free, because for this rent of 5s. 2s. 6d. per month not even a small room would be available in any part of the town. May I ask what is this if it is not again a sort of hidden allowance? Where are we making in the scale of everything inclusive? According to this the actual saving by withdrawing the privilege of house allowance would be not 15 per cent; as it would appear to be at first sight, but it will be not more than 5 per cent. With regard to pension, there would be a provident fund in lieu of pension to which officers would be required to contribute at the rate of 5 per cent, so that even after taking into consideration other minor adjustments, such as family passage allowances, shorter periods of leave, etc., the total savings on hidden emoluments would not exceed 15 per cent in comparison to the present basis.

This saving of 15 per cent is more than wiped out when we look into the consolidated scale suggested in these proposals. According to present terms, the maximum for European clerical posts was £500 per annum, whereas in this new scheme the maximum suggested is £660, a rise of 32 per cent. Even if all are not promoted to the special grade, they will normally rise to the maximum of first grade, i.e. £800 per annum, a rise of 20 per cent. If we take an example of non-clerical staff, a second grade Assistant Inspector of Police rises at present to £300. In future he will get £360 per annum, an increase of 20 per cent. A reader in the Government Press at present on the scale of £300 by £18 to £500 will be placed in the new terms at £360 by £90 to £540, a rise of 20 per cent at the start, an increased rate of annual increment, and a rise of 10 per cent on the maximum.

The rates of annual increments have been raised in these new proposals, which means an officer will reach his maximum scale of salary earlier than at present and then draw higher rate of salary for the remaining period of his service. I am afraid I could not find any material savings in these new

proposals and if, therefore, the idea in organizing this Local Civil Service was economy I do not think it is fulfilled by these proposals.

In my view, however, a considerable amount could be saved if these posts are thrown open to competition by all races. At present these subordinate posts could be efficiently and economically filled by Asians. The average cost per post for Europeans quoted by me earlier, namely, in 1921 £207/1 and in 1933 £370/18, would increase yearly as posts reach their maximum. Now, Sir, if these posts, or the majority of them, are filled on a basis of merit and qualifications through examinations, I am quite sure that a large number of them could be creditably filled by Asians, and a reasonable grade necessary to attract a good type of man would be much lower than the scale mentioned in these proposals. If we add hidden emoluments on an average of 50 per cent. the cost per post of Europeans would be £356/7, whereas if these posts were filled by Asians the cost would be £270 per post. What an enormous amount of saving would this be to the finances of the country? The saving would be approximately £100,000 per annum, and if this policy was followed since 1921, the country would have saved by this time about one-and-a-quarter millions sterling, and there should have been no necessity for fresh taxation in these hard times.

May I ask on what grounds this deliberate extra cost for the administration of the country can be justified, and whether it is not yet clear that, having regard to the present circumstances and economic depression, the country cannot afford to bear this burden. Could anyone think of, either at home or in any other country, the basic principle of Civil Service on racial discrimination or even on a basis of cost of living, which is bound to differ even among the people of the same race?

It may be argued, Sir, as it has been before, that the question of efficiency should be considered when appointments are made. In regard to the question of efficiency, I should like to say that the experience of Government has been that the Asian clerks have been found quite efficient, and I should like to read to the House some extracts from debates which took place in 1921, in this Council. The late Mr. Kenney, the then Treasurer, said: "From his own experience he had clerks with many years experience who were certainly more useful and more competent than European clerks would be on a higher rate of pay". Col. Notley, the then Colonial Secretary, was even more definite. On the strength of the figures compiled by him with great care he asserted that Asian allowances were smaller than those of Europeans and that on the basis of the same qualifications a European in

the first ten years would cost the Government £4,023 as against £2,346 for a non-European. He quoted an instance of an Asian clerk who was shortly retiring, and said if this post costing £312 to Government when occupied by an Asian was to be filled by a European as suggested by the Elected Members it would have to be done by a European on a scale of pay of an office superintendent. Sir Edward Northey, the then Governor, said he had examined the question of Asiatic salaries right through the country and he did not think they were out of the way in view of the fact that they were extraordinarily efficient and earned their pay all the time. This testimony, Your Excellency, should be quite enough to prove that the charge of inefficiency against Asian clerks cannot be substantiated and that in fact they are very efficient. There is another instance of efficiency, for as late as 1931 the Wade-Mayer Report which was issued that year is a tribute to the Asian staff. It describes the number of posts that could be filled by Asians with less expenditure and with equal efficiency. From lengthy details I shall only mention one instance; they said: "Forty-eight European have been shown employed as postal clerks and telegraphists in the Post and Telegraphs Department. It will be observed that a number of Asians have been and are carrying out the duties of postmasters at various post offices in the Colony; and we feel that these junior posts could likewise be safely filled by Asians." If the Government, Your Excellency, follows the policy laid down in these proposals—that is, the inauguration of this Local Civil Service—it will cost the Government very heavily, and I, as representing a large section of the taxpayers should certainly take this opportunity of opposing such a measure.

The second thing in regard to this scheme has been that it is an opportunity for providing an opening for local youth born and bred in this country. Now, Sir, with regard to that, I feel that although in the beginning it may look as if a certain provision had been made for people born in the country, ultimately I am sure this country must remove those racial barriers in regard to the Civil Service, and unless that comes about the difficulties will be greater. As time goes on there will be a difficulty in getting the same efficiency from the Europeans in these small subordinate posts, and not only would the Service suffer, but it will be a sort of detriment to Kenya. Another thing which has been said many times is that by appointments in subordinate offices of Europeans a certain saving is easily made. I should like to say that in my experience this has not been the case. As soon as a clerical job has been found for a subordinate in any department, immediately, or within a short time, it is found that the work of that branch of the department has increased, and that means that more

Asian and African clerks have to be engaged. For many years the practice of increasing the European staff has not resulted in any appreciable saving. I do not know, Sir, if my hon. friend the Principal Medical Officer knows of a disease which has crept up in this Colony; I have seen no mention of it in his annual reports, which are very admirable, but the germ of the disease, according to my experience, occurs among Europeans, and is called the "superiority complex" (laughter). And, Sir, that disease has been the cause and the reason of this increased demand for Asian clerks and Africans. The precedent is set that in this country it is not possible for a European to work in any capacity except as a "boss", and that reason, Sir, is not only increasing the cost to the country of these commitments, but it does increase the total cost all round. I should like to say, Sir, that this matter in regard to the subordinate posts should receive the very careful consideration of all before this scheme is accepted.

Now, Sir, there is one point here that I should like to make, and that is in regard to home leave and passages. It has been said by hon. members on this side of the House and by Government, that Kenya is such a beautiful country and so healthy that you do not require a change; that you want white settlement here and you ask for Colonial loans to increase that settlement. But when we refer to this scheme we find that local Europeans, those bred and born in the country, do require a change every three years. I should like to ask which of these two statements is right? Is Kenya a healthy country or is it not; and, if it is healthy, then why should we put this privilege in the Local Service? There is another argument advanced, Sir, by the hon. the mover, that these home passages and leave are necessary under the peculiar circumstances of this country to enable Civil Servants I suppose to have a wider vision of the world. I should like to ask, Sir, in which part of the world is there a country which provides its Civil Servants such an opportunity of having a wider vision? It is not so provided in England, I should think, and they stand in very great need of it so far as the Empire goes, although I should like to see most of those officers coming here to see the conditions under which people live. If that is so, I cannot understand why this country is so generous that it wishes to have such a scheme as is provided here. I could understand that in special circumstances a particular officer should be recommended for that kind of treatment, but I can never imagine a wholesale adoption of this large expenditure when it is not necessary. The criticisms I have made just now I know are not perhaps given much consideration on the official benches because they come

from an Indian member. I am very sorry if that is the attitude adopted, Sir, but I am going to support the statement I have just made by a quotation from a quarter which cannot be complained of and which has no prejudice against this Colony or against white settlement. I should like to read, Sir, a small extract from a paper which is called *East Africa*, published in London. In its issue of the 6th of April of this year it says: "The 1932 return of vital statistics of European officials in East Africa from Somaliland to Northern Rhodesia inclusive, has just been published. Perhaps the most interesting feature is the numerical strength. The three largest territories show these figures:—

Kenya 1,730 (males 1,455, females 275),

Tanganyika 1,384 (males 1,333, females 51), and

Northern Rhodesia 793 (males 651, females 141).

Making every allowance for the difference in area, conditions and population, white and coloured, we fail to find reasons for such striking disparities. Why Kenya should require nearly a thousand more European officials than Northern Rhodesia—the railway staffs being excluded in both cases—is beyond our comprehension. As a matter of fact, the comparison is really more to Kenya's detriment than it appears at first sight, for in that Colony Indians and Goans do some of the work which is done by Europeans in Northern Rhodesia. The statistics indicate one obvious direction in which something can be done to lighten the budget burden without fresh taxation." That, in a nutshell, Sir, agrees with what I have said and the points of opposition which I have raised to this scheme have been justified on the grounds of policy, economy, and efficiency of the services.

HON. CONWAY HARVEY: Your Excellency, first of all I should like to thank the hon. mover for his gracious reference to the work of the early committees which dealt with this subject. As a member of the Fitzgerald Committee, Sir, which may be regarded as the chief parent of this lusty baby, and as one of those very keenly interested in the inauguration of this Service, I should like to express my personal gratification that the majority of the recommendations of the Fitzgerald Committee have been accepted and incorporated in this scheme. In spite of the fact, Sir, that the report of the earlier committee was in very grave danger of suffocation by a plethora of subsequent committees, the last of which dropped reports like leaves in Vollambrosa, those recommendations survived, and we have a most admirable scheme subjected for our consideration to-day.

In answer to one point only which the last speaker attempted to make, the Fitzgerald Committee was satisfied, after a most intensive consideration of the subject and very careful comparisons of finance of every sort and kind and description, that with the introduction of this scheme there would be an eventual saving in the fairly near future in public expenditure of no less a sum than £38,000 a year.

Now, Sir, there was one very important recommendation of this committee which was not accepted. The Noble Lord made a brief allusion to the continuation of medical facilities and I wish to slightly elaborate what my noble friend said about that, Your Excellency. The Fitzgerald Committee in regard to medical attendance on page 10 of the report, reported as follows:—

"The Committee were reluctantly compelled to reject a proposal that the privilege of free medical attendance should be withdrawn; but on evidence before them that the present privilege is exploited to the point of abuse, they are strongly of the opinion that the present scope of the privilege should be revised. They recommend, for instance, that the privilege should be withdrawn from the wives and families of officers and confined to the officers themselves, and that officers should, even in their own case, be called upon to pay for drugs and dressings supplied."

I suggest that a recommendation of that nature, which appears over the signature of such responsible people as my hon. friend the Postmaster General, Dr. Gilks, with nearly three decades of medical service in Kenya, with nearly Mr. Wade, Chief Native Commissioner, should be treated with reasonable respect, and it is a matter of very great surprise and disappointment to me, Your Excellency, that the recommendation of those gentlemen, based—and let me emphasize this, Sir—on the most careful enquiry, and based on a mass of evidence which was received at the time—facts and figures and definite details—I think it a very serious matter indeed that that should be rejected by Government at this stage, and I sincerely trust, Sir, that the matter will come under review.

Now one very important phase of this scheme which appeals to me and to all of us, Your Excellency, is that we have for many years urged the principle of consolidation in the matter of Service remuneration, and this, Sir, is the first substantial advance that has been made in that direction. There are very few hidden emoluments in this scheme and we shall see at a glance exactly what we are paying for the services in the various schedules.

Now, Sir, there was one matter that the hon. mover did not mention. It formed the subject of a very special recommendation in clause 18. I think, on page 14 of the Fitzgerald Committee Report. I refer, Sir, to the recommendation, to which that representative committee attached very great importance, namely, Sir, the establishment of a Civil Service Board. We should all be very grateful, Sir, if the hon. mover would let us know Government's intentions in regard to this matter in his reply. The function of such a Board, Sir, in my opinion would be to regulate admission to the Service, to determine the standard of education for various grades and the qualifications required for promotion from one grade to another, and this Board, Sir, would also bring about co-operation between the Education and other departments as to the courses of technical training, with a view to opening up as many avenues as possible for the employment of local youths. We consider, Sir, that the personnel of this Board, which we feel certain will be established, should be very, very carefully selected and should not consist solely of members of the Civil Service. For instance, I would like to suggest for the consideration of Government, a suggestion that has already been made, that at least one highly respected commercial man should serve on this committee, and such a man, in my opinion, Sir, should have been identified with public affairs; he should have spent a long period of time in the Colony and shown his interest in this very important matter.

Now, Sir, I do quite definitely, in expressing complete agreement with everything the Noble Lord said, and in spite of the minor criticisms I have made on the subject of medical facilities, most heartily support this motion. Unlike the last speaker, Sir, I do honestly believe it to be based on thoroughly sound principles, and I believe it will prove to be of inestimable benefit to the Colony in a dozen different ways.

THE HON. ISIDOR DARR: Your Excellency, in the beginning I have to congratulate the hon. mover and second; I must congratulate those who in the course of their duties prepared this report and presented it. It involves great labour and hardship. Thirdly, I should congratulate the Government Printer also for printing it and in twelve pages actually deciding the fate of very many people and their future life.

Your Excellency, in view of the fact that time after time there have been statements made by yourself, by other Government officials and by the Secretary of State for the Colonies on different occasions that there should be co-operation among all races residing in the Colony for the development of this Colony as a whole—in view of those statements coming from the Government and the Secretary of State for the Colonies,

and also from the Noble Lord the Member for Rift-Valley in his speeches, I am really surprised that to-day we have been presented with this Bill and asked to approve it.

I personally cannot congratulate the mover on one thing, and that is in presenting it with the words "European Local Civil Service". If it was simply "Local Civil Service" I would be the first man to congratulate him.

Your Excellency, some of the hon. Members on the other side will probably think that I criticize on a racial basis. Those who know me personally know very well that I stand for internationalism and not on any racial denomination. Your Excellency, if I am permitted to, and if I may be excused, I will refer to one statement made in connexion with Sir Samuel Wilson's visit to this Colony in 1929. In an interview at Government House on the question of a common roll and some other things I made a statement to Sir Samuel Wilson, and that is this: "that up to this time no honest move has ever been made by the local Government or the Imperial Government or any other official to bring all the different races residing in the Colony together for the peaceful development of the Colony as a whole". Now this statement, Your Excellency, Sir Samuel Wilson, then Permanent Under Secretary for the Colonies, was good enough to put in his report, and it is on page 9 or 10. That has never been answered up to this time. If we are here all residing in the interests of peaceful development of the whole Colony, and not for any particular race or section or class of people domiciled in or having come to the country; but only for future generations, then let us get together. I do not mind, Your Excellency, in the least those who will be benefited, because after all I belong myself to a labour class—a class of poor—but I must say there is a higher principle involved. Some hon. Members on the other side might say that it is absolutely wrong to talk of racial questions here, but there will be a day when the future generations, whether Europeans, Asiatics or others, who have grown up in a different atmosphere will look back to this unfortunate day when racial discrimination was introduced into this country. Take the future of those youths—not as Europeans, Indians, or Asians. Taking that into consideration I must very strongly oppose the word "European" in this Bill. If it is removed it has my whole-hearted support. It is not very far back, in 1916, when there was no question of racial discrimination or superiority complex. We, as members of the British Empire, were asked to fight shoulder to shoulder. If we were good enough to be included as one then; and if we were encouraged to call this

British Empire a commonwealth of nations, then, Your Excellency, each member residing in that commonwealth of nations has to be treated equally.

I am sure that the constitution in a country is run by subordinates and not by high officials. All those who work and sell their labour will have to be paid. If that is the case, and if those who are working for the good of the country should be efficient and should possess such educational qualifications as are required to fill those posts, then, Your Excellency, why should the word "European" be added to this Bill? All those who pass the examinations should be entitled to be included in this. If a European, Indian, Asiatic or anybody else, does not possess sufficient qualifications to pass, then automatically he goes out and if he is fit to pass the test he comes in. Then, Your Excellency, where comes the justice of employing simply Europeans? The Service will demand educational qualifications. I do not see any reason for differentiation. Europeans are not asked to have higher qualifications. If that is the case, where comes the question of racial discrimination? If in the interests of the country we have to run this Government on a purely business basis, then may I ask if there is a business house outside this Council chamber which has such a wonderful system of emoluments for its staff. Business houses are not run on a racial basis outside.

There is one thing I wish to say now before I conclude my remarks. Last year, in 1932, the hon. Member for Nairobi South, in the course of his speech on taxation in opposing the introduction of income tax into this country mentioned—for I am definite about it—that that incidence of taxation does not fall equally on all races because, in his opinion the standard of living of one race was not equal to the standard of living of another race. He put it in those words, that the standard of living of Asians was lower than the standard of living of Europeans. Now probably in the Bill to follow, the Asian Civil Service Bill—and I am definite about it—the emoluments of the Asian Civil Servant will not be exactly the same, and if I am wrong I may point out that the local leave here is eighteen days, while in the Asian Civil Service it will be fourteen days only. The people getting better wages, and better accommodation, should also have better health, and they should need less leave; and people who have less facilities, they should need more leave in the year. But that is not so. This Bill means we are providing a higher standard of living to one race and at the same moment we are providing a lower standard of existence to a different race residing in the same Colony. And

then people suggest that the standard of living of one race is lower than the standard of living of the other. We like those higher standards as much as other people. To-day I was absolutely surprised to hear from members on the other side, and particularly from the leader of the unofficial European community, who from time to time has asked us to work for the peaceful development of the Colony—Your Excellency, I was surprised to hear the statement made in this House that if the standard of living is lower the people should be given a low wage, which means that in practice we are forced into a poorer standard of living. When the question arises later we shall be told that the standard of living of one race is lower than the standard of living of another race.

Your Excellency, I do not want to go into the details of the Bill, but as I have said I belong to a class of clerks myself, and I assure you that there is one thing which I am very anxious to find out here, whether in time to come, if there is any more trouble in the British Empire or in the United Kingdom, will we be asked as Indians to step behind with inferior complexes and a standard of living—

HIS EXCELLENCY: That is going a bit beyond the subject matter of the motion. You must keep more to the point. I do not like interrupting you, but you must keep to the point.

THE HON. ISHER DASS: Your Excellency, as I have said, my colleague has explained in detail about the different items in this Bill, and all I have to say is this: when I congratulate those at least who will benefit by this Bill, because they will not be rich people but clerks in life, I will strongly request Your Excellency, before this Bill is approved, to have something done to remove this racial discrimination. Just because, if you do honestly believe, and you have from time to time said so, that we should work together in the peaceful development of this country, then Your Excellency, all I ask is that that principle should be put into practice and that there should be no racial discrimination in the Civil Service, whose members are supposed to be public servants and who are supposed to work in the interests of the people here. If this Service is brought into existence with that principle of racial discrimination, Your Excellency, you cannot expect that those people will not carry racial discrimination; it will be better for us, in order that we should co-operate and work harmoniously in the peaceful development of the country, that no such legislation should be imposed, and that in the interests of economy also and with a view to equal qualification and equal service and everything that is demanded from a

public servant. I cannot support this Bill. It should be a Local Service Bill and should not discriminate in the way it does.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, the hon. Member Mr. Pandya in his speech quoted extracts and recommendations to the effect that in the interests of true economy the large numbers of posts at present held by Europeans should be filled instead by Asians, because the Asians, owing to their receiving a smaller scale of salary than Europeans, would make it possible for large economies to be effected. The hon. Member Mr. Isher Dass, on the other hand, states that it is quite wrong that Asians should receive lower salaries than Europeans. I would suggest to this House, Sir, that it is quite impossible to make those two points of view dovetail, and for myself I am content to let the one cancel the other and think no more about it.

The only other thing that I have to say after listening to the hon. Member Mr. Isher Dass, is to respectfully suggest that the Clerk of the Council should see that his chair is removed and that a tub is placed there instead. (Laughter.)

I had not proposed, Your Excellency, prior to the receipt of a communication from the Civil Servants Association, to intervene in this debate, because everything that the Noble Lord has said has met with the approval of myself and of the other European Elected Members. It was only yesterday afternoon, however, that I received a copy of a letter which had been despatched to the hon. the Colonial Secretary by the Civil Servants Association. It is a short letter, Your Excellency, and deals with certain points of detail. The points raised in this letter have not been discussed by the elected members as a whole, as it was received, I am sorry to say, too late, but I have had the opportunity of discussing it with three or four of my colleagues, and I think that while they will agree with what I am about to say I must of course be taken as speaking for myself.

There are three points in the letter with which I wish to deal, Sir. The first is, they refer to the provision in this Sessional Paper which provides that quarters be charged for at the rate of 5 per cent and 7½ per cent respectively of the salary. They ask that these quarters should be interpreted as meaning quarters within the accepted sense of the word; that is to say, quarters which appear on the Public Works schedule of houses, and that if an officer is given a tent or a bungalow in some outstation he will not be charged 5 per cent of his salary. That is a reasonable suggestion, and I am quite sure that the hon. the Colonial Secretary will have no difficulty in giving an assurance to that effect in his reply.

The next point deals with the question of junior laboratory assistants in the Agricultural Department, which appears on page 6 of this report, the last item under Agricultural Department. It is pointed out that officers holding these posts are really of a specialized class, and that their training in these posts will probably not fit them for work of a different character in the Agricultural Department. Their scale stops at £360. It is suggested that if that figure remains the local youths desirous of accepting such posts in the Local Service will not be attracted to that branch if they know that in all probability their utmost hope in the future is a salary of £360 a year. It is therefore suggested that the scale might be carried on to a longer scale. That, I think, is a matter of detail which might be carefully considered by Government.

The only other point on much the same lines, concerns two people on page 8, Appendix II, "Learners (apprentices, professional)" of the Public Works Department and the Survey Department. Their scale stops at £165, and the jump as far as I can see to any other post in those Departments is at £300. It is pointed out by the Association of Civil Servants that that jump is really too big to be made from £165 to £300. I understand that their suggestion is there should be some kind of senior junior post which would enable that gulf to be bridged in two moves rather than in one, which is such a big one from £165 to £300. No doubt if I have misinterpreted the views of the Association as expressed in this letter, the hon. gentleman who is still President of the Association will correct me.

The final point is that there is a differentiation between the maximum for stenographers who operate in the Legislative Council and those who operate in the Judicial Department. They start at the same salary, the efficiency point is the same point, but whereas the stenographers of the Council go to £660 the Judicial Department stenographers stop at £600. I seriously suggest, Your Excellency, to Government stated with truth, that the stenographers who work in the Legislative Council have to work at very much higher speed because there are not the same interruptions such as witnesses going out and other witnesses taking their place, as in court, that it is more or less continuous work, which is not the case in the Judicial Department proceedings. At the same time, the qualifications required are similar, and I do not think it can be said that the importance of the work of the Judicial stenographers in taking down what is said at trials is any less important than the work of the Council stenographers in taking down the words of wisdom which continually flood this hall. (Laughter.) I would suggest, Sir, that Government consider altering the scale for the Judicial stenographers to

that of the Legislative Council stenographers. That deals with the points put up the Civil Servants Association which I have thought proper to deal with, and the hon. Member for Nairobi-North is going to deal with one or two other points arising on the letter.

There are two main further points that, with your permission, Sir, I should like briefly to refer to. The first is this question of local leave. I would like to have seen in this Sessional Paper some reference to Government's determination that local leave was not just put down there but that it was really intended it should be taken. It is in my opinion of the greatest possible importance for people in this country, especially when they are doing a tour of four years, to take regular local leave. I do trust that instructions will be given to Heads of Departments to see that wherever humanly possible this 18 days local leave shall be taken by Members of the Local Civil Service.

While on the question of local leave, might I even suggest that local leave could with advantage be taken more often even by people in the overseas service and especially by Heads of Departments. I know my hon. friend the mover is one of the most self-sacrificing culprits in this way, but let us hope that as a result of my remarks he will shortly proceed on local leave.

Finally, on the subject of the Civil Service Board—the matter was referred to by the hon. Member for Nyanza—I would like to say that I think we all on this side of the House feel these two points about the Civil Service Board: first of all, it is essential that it should be a very small Board. I do not think there will be two opinions about that. If it is to work efficiently and properly it should be as small as it conveniently can be, and, while I agree with the suggestion put forward by my hon. friend regarding a commercial man of standing and experience, I think we all feel on this side of the House that one member of the Board should be one of the European Elected Members.

THE HON. SHAMSUD-DIN: Your Excellency, I can see that hon. Members of this House are showing signs of being bored with Members in this part of the House speaking. I dare say some hon. Members think that Indian Members are wasting the time of the House, but the only privilege enjoyed by Indian Members in this House is to be able to put forward their views in as definite a manner as they possibly can. I think we should be confirmed optimists if ever we thought that any resolutions by Indian Members had any chance of ever passing this House. The constitution of this Council, Sir, as we know at the present moment, is

that the official majority, which has the reputation of being a "steam roller", has always the right to pass whatever measures they like. When any racial legislation, such as we have before us this morning, Sir, comes up, the "steam roller" becomes a "Pug Mill" and any representations from this side of the House are ground to pulp. In view therefore of the microscopic Indian minority, I hope Members will give us a certain amount of indulgence when we stand up to make our voices heard, and that a certain amount of patience will be given to us.

To be candid and frank, this bill is of absolutely no interest to me. It has nothing to do with the community by which I was returned to this House. I wish the hon. the Colonial Secretary had embodied or submitted at the same time, the terms of service that he proposes to extend to the Asian staff, but in that event even, it would not have ameliorated the hardships that are bound to occur by reason of two separate terms of service in this Colony. If, as the hon. member tried to assure us this morning, the privileges are going to be equal, then may I ask with all due respect, Sir, where is the necessity for presenting to this House two separate bills? I do not think, Sir, that we can be accused of seizing the opportunity for raising racial questions because this very bill in itself is a racial measure, for which we cannot be blamed. The whole theory of economy upon which this bill is based was exploded by the statement of the hon. Colonial Secretary himself when he said that the number of servants employed locally to whom this bill was going to be applied was very small indeed. It is merely an effort to prune the expenditure which has been so lavishly incurred in the past in employing the Service from overseas.

I have always consistently maintained, Your Excellency, that there is only one policy which can be economically and practically pursued if this Colony is going to remain solvent, and that is, if we want any service, advertise for it—throw it open to the public of this Colony—make it the subject of most stringent examination or test if you like, but after that of no question of any racial considerations should enter; I think all of us like in our own homes to have servants of our own race but for the sake of economy how many European households are there in the country who have European servants? They all employ natives for the sake of economy. I submit the same should be done in the public service. It is absurd to say that Indians cannot fill the higher posts efficiently. We have most recent examples of Indians occupying posts as high as the Governor, and as high posts as can be offered in the British Empire to any British subject have been very effectively filled by Indians. In view of these facts I think it is absurd to say that Indians cannot fill even higher clerical posts.

I am very glad that, as stated by Mr. Pandya, it has been proved that when the Secretary of State made a statement that it was not a fact that Indians were being replaced by Europeans he was wrong. If the figures given by my hon. friend are right that shows that the statement of the Secretary of State was wrong and that there has been a tendency during the last ten or twelve years in this Colony to increase the white population by replacing Indians by Europeans.

I must associate myself with Mr. Isher Dass also—the word "European" is very galling indeed. If you wanted to perpetuate racial legislation the word "British", for instance

THE HON. THE COLONIAL SECRETARY: On a point of order, Your Excellency, the hon. Member has suggested that perhaps Members of this House are bored when listening to Indian Members and he has said, very properly, that in taking the opportunity of fully ventilating their views the House might listen to them with patience. With that we all entirely agree, but I would suggest that those views must be ventilated in accordance with Standing Orders, and Standing Orders provide that Members should speak according to the rules of the debate. If we are to give the patience that we all desire to give in listening to their views they should confine themselves to the motion before the House.

THE HON. SHAMS-UD-DEEN: I am strictly within the rules of the House according to Standing Orders when I object to the word "European" in "European Local Civil Service". This Colony is not a hunting ground for Europeans and Asians. It is for British people and if you want to make it exclusively for British people the word "British" should be substituted for the word "European". I do not see how that can be irrelevant.

As far as the real object of the bill is concerned, as I understood it, it was one of economy, and secondly it was to give an opportunity to local youths. The first of these objects can hardly be serious because the Colonial Secretary has told us that it affects only a very small number of present Government servants, and I doubt very much—unless this House has before it a comparative statement as to rates of salary paid prior to the introduction of this measure—whether there is much object so far as economy is concerned.

I do hope, Sir, that the statement made by the Colonial Secretary as regards these privileges being equally applicable to the British Indian staff will be implemented before long.

THE HON. THE COLONIAL SECRETARY: On a point of explanation, Sir, I did not say "equally applicable". I said there were provisions—that it was the intention of the Government to provide suitable terms of service for a Local Asian Service, which would include a contributory pension fund. I did not state that all the terms would be identical and I should not like the hon. Member to have any misapprehension on that point.

THE HON. SHAMS-UD-DEEN: I thought it was too good to be true, Sir, and that I had misunderstood the Colonial Secretary, because the term "equality" is a rare term in this Colony. The only treatment in which we enjoy equality is as far as taxation is concerned.

HIS EXCELLENCY: We are discussing now the Local Civil Service. I do not want the debate to range beyond that.

THE HON. SHAMS-UD-DEEN: I only mention there ought to be equality of treatment so far as the Local Civil Service is concerned. The most economical and equitable form in which to introduce any system of local service is to make it equally applicable to all the subjects of this Colony.

I do not think this would be an inopportune moment for me, Your Excellency, to state that in the past theoretically I think everybody in this Colony has agreed that every opportunity should be given to local youths. There have been after-care committees—I am talking now about Indian schools—to give an opportunity to local youth, but the fact remains that the local youths very seldom get any opportunity. As a rule, it is only after a vacancy has been filled that a local youth gets to know of any vacancy. I submit, Your Excellency, it should form part and parcel of the policy of this Colony that whenever a vacancy occurs, under no circumstances should a person overseas be employed, and it should be advertised and thrown open for competition. Unless some special measures in that respect are taken the Local Civil Service will remain a Local Civil Service only on paper.

As far as leave conditions are concerned, I cannot see any reasons for granting overseas leave after two, three or four years. Many Europeans have been in the Colony for sixteen or twenty years and they have as good health as anybody going home after three or four years. The climate of this Colony is very good. I think, if we are to be constant we ought to cancel and wipe off overseas leave altogether. That, I think, is one of the strong points in favour of a Local Service.

I can hardly see, Sir, any change which has been introduced in these new terms of service. The only change which appears to be provided for appears to be doing away with house allowance and quarters. No government quarters are to be given to employees, but instead of that there is an allowance. Do the ordinary servants in the commercial sphere get similar privileges?

HIS EXCELLENCY: Does the hon. Member propose to speak further at any length now?

THE HON. SHAMS-UD-DEEN: Yes, Sir, I have a lot of points to make.

HIS EXCELLENCY: I do not want to curtail you, but if you are going to speak at any length I will adjourn this debate till to-morrow.

BILLS.

FIRST READING.

THE CROWN LANDS (AMENDMENT) BILL.

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

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

*The Council adjourned till 10 a.m. on
Thursday, 10th May, 1934.*

KENYA GOVERNMENT ARCHIVES
PHOTOGRAPHIC SERVICE

SECTION 7.

CONTINUED ON
REEL No.

7
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KENYA GOVERNMENT ARCHIVES
PHOTOGRAPHIC SERVICE

SECTION 7.

END

OF REEL NO.6.....