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Description of Document LEGISLATIVE COUNCIL DEBATES VOL. I.

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24th December 1965

THURSDAY, 10th MAY, 1934

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Thursday, 10th May, 1934, His Excellency the Governor (BRIGADIER-GENERAL SIR JOSEPH ALOYSIUS BRINK, 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 9th May, 1934, were confirmed.

ORAL ANSWERS TO QUESTIONS.

TRANSFERS OF LEASES.

No. 24.—THE HON. J. B. PANDYA asked :—

In view of representation made by the Federation of Indian Chambers of Commerce regarding increasing difficulties in the case of both Europeans and Indians, will the Government state if it is their intention to amend the Crown Lands Ordinance so as to permit transfers of leases of subdivisions of agricultural lands created for industrial and commercial purposes from Europeans to Indians, and vice versa, without any restrictions?

THE HON. THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES (MR. E. B. HOSKING) : The answer is in the negative.

CREMATORIUM PLOTS FOR INDIAN COMMUNITIES.

No. 26.—THE HON. J. B. PANDYA asked :—

Is the Government aware that the Indian community at Karatina have not been granted plots of land for crematorium, though application for same was made by the Indian Association in the early part of 1933?

And if the answer be in the affirmative, will the Government issue instructions to make areas required available to Indians at an early date?

THE HON. THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES : The answer to the first part of the question is in the affirmative. The applications and objections thereto have been considered on two occasions by the Local Native Council and will come before the Local Land Board at its next meeting.

ALTERNATIVE REVENUE MEASURES.

No. 29.—THE HON. J. B. PANDYA asked :—

Will the Government give an assurance to this House that the Alternative Revenue Measures introduced last year are temporary and emergency measures, and that before any changes of a permanent nature are introduced Government will appoint a representative committee to review the whole fiscal system of this country, with a view to make taxation equitable on all communities.

THE HON. THE COLONIAL SECRETARY (MR. H. M.-M. MOONJ): The temporary character of certain of the Alternative Revenue Measures is expressly safeguarded in the form of the legislation enacting them, which falls to expire at the close of the current year.

It is not possible to state categorically whether it may be found necessary or desirable to prolong the life of all or any of these Ordinances. In any event, the present is not considered an opportune time for the appointment of a committee to review the whole fiscal system of this country in the manner proposed by the hon. Member.

COMMITTEE ON LICENSING ORDINANCE.

No. 13.—CAPT. THE HON. H. E. SCHWARTZ asked :—

Will Government appoint at the earliest moment possible a Committee to consider the provisions of the Licensing Ordinance, 1933, in the light of experience gained, and to suggest such amendments as may be considered necessary?

THE HON. THE TREASURER (MR. G. WALSH): The Government is prepared to appoint a Committee to consider the provisions of the Licensing Ordinance, 1933, during the course of the current year. Its appointment will be announced as soon as the Government has had time to consider the reports of the Licensing Commissioners on the workings of the present Ordinance.

CAPT. THE HON. H. E. SCHWARTZ: Arising out of that answer, is it the intention of Government to appoint a Select Committee, which is usual, of Members of this House? If that has not been decided yet, will Government consider that before to-morrow?

THE HON. THE COLONIAL SECRETARY: Government will give consideration to that point, Sir.

INDIAN REPRESENTATION ON UASIN GISHU DISTRICT COUNCIL.

No. 31.—THE HON. J. B. PANDYA asked :—

Whether the application from the Indian Association, Eldoret, for the appointment of one Indian member on the Uasin Gishu District Council has been granted by the Government?

If the answer be in the negative, will the Government state reasons thereof?

THE HON. THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES: It is proposed to appoint one Indian member of the Uasin Gishu District Council in due course.

VISITING JUSTICES FOR PRISONS.

No. 39.—THE HON. ISHER DASS asked :—

Will Government please state the number of—

- (a) European,
- (b) Indian, and
- (c) Arab,

visiting justices for prisons appointed under section 22 of Ordinance No. 37 of 1930?

If the answer to (b) be in the negative, will the Government state reasons for this discriminatory measure, and will Government now consider the question of appointing Indian visiting justices for the prisons in all the districts in the Colony and Protectorate?

THE HON. THE COLONIAL SECRETARY: (a) Male, 44; female, 5. (b) Nil. (c) 3.

2. Mr. Abdul Wahid, as a Member of Executive Council, is an *ex officio* visiting justice in accordance with section 22 (2) of Ordinance No. 37 of 1930, and I would refer the hon. Member to page 1051, Vol. II of the 1925 *Hansard* for the reasons why any additional Indian visiting justices were then considered unnecessary.

The answer to the third part of the hon. Member's question is in the negative, but if he will state a case for the appointment of an Indian visiting justice to any particular prison or prisons it will receive careful consideration.

MOTIONS.

EUROPEAN LOCAL CIVIL SERVICE.

The debate on the Local European Civil Service motion was continued.

THE HON. SHAMSUD-DIEN: Your Excellency, I have not got much more to say on this subject. I merely wish to conclude my speech which I began yesterday with a few remarks. If I was to give my acquiescence to this measure, I would to all intents and purposes, Sir, be consenting to all these posts that are mentioned in Appendix II being exclusively reserved for Europeans and my countrymen being deprived permanently of any of them. As I said yesterday, I do not feel called upon to discuss the details of these proposed scales, but to my mind, when it is proposed to give salaries of £500 and £600 to office assistants, I think the amount is fabulous as compared with the amount paid to other persons of the same order in commercial centres. The amount to be paid to an assistant clerk is out of all proportion with the capability of this Colony to pay, Sir. One of the hon. Members yesterday referred to an Indian Member as a tub-thumper. I think it is probably difficult for those hon. Members to realize that if a Bill of a similar nature or a measure of similar kind were brought in by which Europeans would be excluded from entering a Service of this sort—I can well imagine the House rocking with roaring speeches from the left wing. You have to make allowance for a Member giving vent to his emotions, because this measure is actually branding one section of the community for the benefit of the other.

Your Excellency, there are some Members of the House who do not realize the importance of this Bill. They think it is a piece of routine work, but I can assure the House that the heartburnings it leaves behind will have very far-reaching effects. I should not be surprised to see repercussions in other parts of the Empire. I do not think, Your Excellency, that I can usefully take up the time of the House by adding any more to what has been said, except that if we are taking up the time of the House we should be excused for trying to make up for the silence that has long been characteristic of this corner of the House for the last seven or eight years.

DR. THE HON. A. C. L. DE SOUSA: Your Excellency, I am perhaps the last Member in this part of the House to speak on this subject, but it is my duty to join forces with the hon. the Indian Members in not agreeing to the principles and the practice of this measure. I wish that I and my colleagues had been in the same position as the representatives of Government and the European community. The European Members

have shown their satisfaction at this measure, and I am very, very sorry that we cannot have that same satisfaction, inasmuch as this measure provides in a service considered subordinate for discrimination to be made between Asians, Africans and Europeans. I excuse Your Excellency's agents who have put up this measure before us if they had desired to keep these distinctions in the higher appointments. As you know yourself, Sir, you were present at the interview given the other day by the Secretary of State for the Colonies to the then Indian Elected Members, in which he emphatically said there were higher posts of the Service that were not going to be given out by him to anyone except perhaps Europeans. I will quote you, Sir, from the report as it was printed; he was very emphatic as far as the Local Civil Service was concerned. He said: "So far as the Local Services are concerned, I am entirely prepared to leave those matters in the hands of the local Government, knowing that they will pursue one consideration only, and that is the interests of the country and the efficiency of the service with which they are charged." I submit, Sir, from this corner of the House that a case has not been made out by the Government spokesman whereby it is shown that in the interests of the country and especially the interests of the community generally there is a necessity for these posts to be divided into water-tight compartments and based on racial discrimination. I am not so much concerned, Sir, with the difference made and the value put on the colour of a man's skin. I am not concerned with that. There was also some talk yesterday about the necessities of life—the difference in the different races. I am not going into that either. But I do consider the matter on merits only, and if it is the intention of Your Excellency's Government to pay for merit only, then I submit that this measure put before us is unfair and unjust to us, to say the least of it. And while I am anxious to safeguard the interests of not only the Indians and Asians generally, but also of the Africans—while I am anxious to do that, I do realize the difficulties which face Government when introducing measures of this kind. It has been accepted from the very beginning perhaps of colonial life that certain posts have got to be reserved, and I understood that the case made out yesterday by the Government spokesman was in accordance with this accepted practice, though I notice that he said that a similar Bill was going to be introduced for Asians perhaps on different principles. I think, Sir, that much of the opposition from this side would have been minimized if all the Bills affecting the Europeans, Asians and Africans had been placed before the House at the same time, so that we could have seen the relative difficulties that were met in the provision of these services for the three different races.

I agree with practically everything that has been said by the European Elected Members who have spoken during this debate. I am surprised that the medical facilities have been offered to the wives and families of Government servants under this Bill, having regard to the recommendations made by the Terms of Service Committee. The medical benefits and services to wives and children should be abolished, and I hope it is not Government's intention to force that through, and that it is going, at least in Select Committee of the whole House, to give some consideration to that question. I am also in favour of a Civil Service Board being appointed. I think it is a very wise suggestion, and a very sound one, and I hope eventually it will be adopted by Government.

It is not clear to me, Sir, some of these details. I see "Chief Inspector" under the Police Department, "£500—£20—£600". I do not know whether "Chief Inspector" is a new post, but I do know there are two Sub-Superintendents in the Colony who cannot get beyond £900, and I should have thought that annually should have been removed before other posts were put up to that amount. I have also been informed, two days ago, by a gentleman who professes to know what he is talking about, that there are holders of many posts at the moment at the rate of £25 a month who will be able to transfer to this Service and immediately go up to £30. I am not going to argue whether that is right or fair—I have no doubt consideration has been given to the fact that there is no pension—it is a contributory scheme—but it must also be remembered that Government is also contributing to that scheme, and I suggest that those more fitted to deal with those items will tackle them in Select Committee.

Generally, Your Excellency, I think it is an excellent move. It has been long overdue, and naturally I welcome the Bill before the House, which will, as I have prophesied, give opportunity to the rising generation of Kenya.

Government from time to time have asked for the co-operation of Members of this House. I would just like to go into that question, just for one moment.

HIS EXCELLENCY: Has that got any reference to this Local Civil Service?

MR. COE, THE HON. J. G. KIRKWOOD: It has a reference to this extent, Your Excellency: When this Committee was appointed, there were two Elected Members on that Committee. The Merrick Committee was then appointed, and after that the Civil Service Board, which issued four interim reports. There were no Elected Members on that last Committee and

Government did not get the benefit of their advice and co-operation; and I hope in the future that this point will be borne in mind, and the value of the advice to be got from this side of the House will not only be sought but will be made use of by Government.

There is only just one question I should like to spend a moment on, and that is the racial issue that has been raised during this debate. I am quite sure that practically everybody in this House regrets the attitude of certain hon. Members on this question. The Bill, or Sessional Paper, clearly lays down that it is a European Local Civil Service. Personally, I do not take that as being racial at all, and I very much regret this has been raised. An assurance has already been given that another Ordinance will be brought into force dealing with the Asian branch of the Service, and I am quite certain that the European Elected Members will review that in a sympathetic way and see that they get justice and a fair deal.

One hon. Indian Member apparently used the word "international" and gave me the impression that he was an International Communist, rightly or wrongly. I suggest, if that is his idea, that if his idea was implemented in this Colony—and it was open to all races throughout the world, that the Indian and Asiatic Members in this House would be the first to regret it.

It would seem to me, Sir, speaking for myself, that this racial question was raised in the last Council, and there is every indication it is going to be raised in future Councils; and that is an attitude that I also deeply regret. I would appeal to the Indian Elected Members and others on this question to let it drop. We have not raised the question at all, and I do appeal to them, if they want the co-operation of the European Elected Members they will have to take a different line. Without the co-operation of the whole of this House we are not going to get the benefit from the deliberations of this Council that we ought to get. I hope my words will not fall on deaf ears.

THE HON. CHAS. THE HON. G. BUNN: Your Excellency, I rise to support this Bill, and I do so for two reasons; or should I put it perhaps in a negative way. Were it not that I am convinced that this Bill does not aim at cutting out anybody from any post he is fitted to fill in the future, whether Asian or African, I certainly for one would be the first to oppose the Bill. But I certainly do not think such an idea is in the minds of those who brought this Bill, long overdue in my opinion, into existence. It does not say that any of these posts here, as far as I can read them, are new posts, specially brought into being for the benefit of people that are to fill

those posts. It has been a rearrangement, as far as I understand the position, to try and get the Colony on a more economical basis than it has been hitherto; and instead of pensions and all that sort of thing, which everybody in the House was deploring, they have sought by just means to make the Government of this Colony more economical and at the same time not to depreciate its efficiency. For those reasons, Sir, I believe, when the Africans whom I have the honour to represent in this House are ready to fill posts in the Government, the Government will see that those Africans are put into those posts.

With regard to the Indian friends, one does not want to speak about these sorts of things, but I regret very much—I cannot say how much—that these racial questions have been brought into this House. We are living in a Colony where all classes of the community have to live together, and it is up to us—whether Europeans, Asians or Africans—to so arrange our matters that we may live amicably together and the Government of this country go forward in a just way, which I believe is the real desire of the Government in bringing in this Bill.

THE HON. THE DIRECTOR OF MEDICAL SERVICES (DR. A. R. PATERSON): Your Excellency, one of the proposals contained in this Sessional Paper is that free medical attention should be given to officers and their families, subject to re-consideration in the case of families in the event of the present system as applied to members of the overseas service being modified; and I have been asked by the hon. Member for the Rift Valley to assure him that the retention of this privilege—and I presume he is referring to the privilege of free medical attention to wives and families—will not involve any considerable additional expenditure. It will not involve any considerable additional expenditure because at the present time most of those people, according to their agreements—not necessarily an agreement that goes into the future, but their present agreements—are entitled to and are getting it. Therefore it would cost no additional expenditure. Alternatively, I think he would ask me to confirm the statement made by the Colonial Secretary that by omitting this privilege there would be no appreciable saving. That also I can assure him is the case. The number of officers involved is, I think, 723, or somewhere about that. They are the junior branch of the service in certain ways, and they are not all married; perhaps half of them are—I do not know. Bill 300 wives and families normally would not constitute a practice for an ordinary medical practitioner. It would do so more or less, when the people are scattered all over the country. The majority of them are in Nairobi, but a large number are in other places. By the elimination of this privilege you would not be able to reduce

the medical service by a single officer. I cannot say that giving his attention costs nothing. Undoubtedly it does, but you would make no appreciable saving. That is as regards that point.

The second point is that raised by the hon. Member for Nyanza when he quoted the Fitzgerald Committee. I think he referred to the question of principle. I cannot discuss principle; they must discuss that for themselves, but there were two points made. The first was that the Fitzgerald Committee had not been able to make a recommendation that this privilege should be continued because they had evidence before them to the effect that it had been exploited to the point of abuse. Well, when you have what for the moment I will call a "privilege", and you have a very large body of people who have that privilege, you will always, human nature being what it is, find one or two who will endeavour to exploit a privilege. I can say nothing in regard to the abuse; all that I can say is, when I was asked for my opinion in this matter on a previous occasion, I made inquiries of my colleagues; and I am very glad of the opportunity of saying that I can find no evidence of any general exploitation or abuse of this privilege. I should be extremely sorry if there were. There may be some people who like to get more than they are entitled to, but speaking generally, there is no exploitation or abuse to-day. It appears to be my business and the business of my officers to ensure that there is no abuse.

Just now I called it a "privilege", Sir, but there is this consideration: People on small salaries cannot afford to spend a very large amount on medical attention, and the result is that they do not call in a doctor until people are very ill. Some insurance companies, as you are possibly aware, offer a free medical consultation by an expert officer once a year to all the people who insure with them, in the hope that they will not get ill. If you have this privilege, one of the chief points about it to my mind is that these people have the opportunity of calling a doctor before people have got really ill, and by that means, I think, quite frequently they perhaps save them from getting ill; and, doctors' bills being what they are, you remove a very serious source of anxiety to your officers. I do not think, Sir, it is entirely a privilege. My own view of the matter is that we would save money by making this concession.

THE HON. F. A. BEMIST: Your Excellency, one great point that has struck me in the course of the debate is the query by some students of the sessional paper and the suggestion of an inferiority complex. I would have thought that the only inferiority complex which was emphasized in this paper was that of the Kenya European population, because in this

paper is limited the height to which Kenya residents who are servants in the public service can get. It struck me directly I saw it that at last we have got a clear-cut definition which has been a great difficulty in the days gone by, in deciding what was a first class official and what was a second class official. That has certainly been settled by this paper, Sir. We now know that those in the Kenya Service are only worth £600, and then only at a special grade. But I want particularly to ask Government if that is their definite intention? It was my hope when I heard that the Local Civil Service was to be started that, given capability, all posts would be open to suitable candidates.

THE HON. THE COLONIAL SECRETARY: Your Excellency, on a point of explanation, it may save the time of the hon. Member if he will turn to clause 7 (2) of the European Provident Fund Bill, which we shall take later, wherein he will see specific provision is made to allow in cases of suitability promotion from the Local Service to the Pensionable Service.

THE HON. F. A. BEMISTER: I am intensely obliged for that, Sir, and, now it is public, the public will know, and it will take away a great deal of the objections which are voiced among people intending to enter this Service. I am much obliged for this explanation, Sir, and that is all I have to say.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I should like in the first place to thank the House for the generally very favourable reception that this measure has received. Except in one quarter of the House—in which I sincerely believe the opposition that has been voiced is due to a quite understandable misconception on their part—the only points to which I have to reply are of a rather unusual character. I have been asked on behalf of the Government to give an assurance that in certain respects we will be more liberal than the actual measures indicate. I welcome that evidence of the real feeling that there is abroad that the Service is doing good work for this country, and that where a man has worked hard for this country his interests ought to be properly safeguarded. I can assure hon. Members, if such assurance is necessary, that one of the reasons perhaps why there has been so much delay in dealing with some of these reports, was that we were scrupulously anxious to see that the proper interests of serving officers were not jeopardized by undue haste.

There are one or two points perhaps that I can refer to later in my reply, but I should like at the outset to thank the House for the very favourable reception which they have given to this measure. I would then like to turn for a moment, Sir,

to the point raised particularly by the hon. and reverend Member, Canon Burns, representing native interests. I should like to endorse all he says. I feel that all of us here regret very much that any question of racial discrimination should have been raised on a measure which I believe, and honestly believe, does not raise any discrimination at all. I think I am largely to blame myself that this misapprehension should have arisen. I stated when I opened the debate that for the reason that this matter had been so fully explored, so many reports written, I would be as brief as possible, and I assumed—I think possibly unwisely—in certain quarters the possession of certain elementary knowledge that apparently was non-existent.

One hon. Member stated that all their misapprehensions would have been laid aside had it been possible for Government to lay contemporaneously the Bills dealing with the European and Asian Services at the same time. I take it as an indication of a lack of Government's good faith in the matter. Still, if hon. Members will turn to the report of the original parent Committee, known as the Fitzgerald Committee, they will see that when in 1931 they first tackled this problem, after referring to the general question of the desirability of affording avenues of work and promotion to local youths of all races, they said in paragraph 27: "As a rider to this report, the Committee wish to state that the conclusions they have reached in regard to the possibility of establishing a local Service for Europeans on revised conditions point to the necessity for a basic inquiry on similar lines into the terms and conditions on which Asian Civil Servants are employed." Following up that recommitment, Sir, what was the first term of reference to the Committee known as the Merrick Committee? It is as follows, Sir: "A Committee appointed by Your Excellency" 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 European Service, and (b) a Local Asiatic Service." I think therefore, Sir, that makes it abundantly clear that it is the intention, and it has been so stated in subsequent reports, that now we have got this measure out of the way we have a basis to go upon, and the next step will be to introduce the Local Asiatic Service. In dealing with the problem in two parts rather than in one part, we are merely following precedent that has been established in the case of the Overseas Service. For pensionable officers, whether European or Indian, they both obtain pension rights under existing Ordinances. The general basis of these Ordinances is the same, but they are secured, for what are quite obvious and not discriminatory reasons, in separate Bills. That being so, I should like again, Sir, to state that what we are

being asked to examine to-day is merely the schedule of posts and salaries and terms of service which are regarded as suitable for those Europeans who are at present holding those posts. Similarly, when the Asiatic terms of service are declared, the same will apply. As the hon. and reverend Canon Burns said, at any time when the annual Estimates are brought forward, it will be a matter for consideration whether this basis should be altered or not, in the interests, I suggest, not of racial discrimination but of efficiency and economy alone. In these circumstances, I feel that had I perhaps elaborated this at the outset, we should have been in the happy position of having quite unanimous support for these proposals, more particularly as it is clear that any strong opposition by the hon. Elected Indian Members towards such a measure would be in direct contravention of the interests of their own constituents, for the position is that at present and until these further terms of service of the Asians are settled, no more Indian pensionable posts are being made or created. Therefore the longer the delay in introducing proper measures for the Asiatic Service the longer possibly will hardship be done to those persons whom it is their duty to represent. For these reasons, I feel sure that the House will forgive me if, still further to mix the metaphor employed by the hon. Member for the Lake, I am not bezilled into poring over the leaves of Nollombrosa in a vain attempt, with the aid of a powerful "complex", to detect the virus of discrimination. (Laughter.)

To turn now to points of a practical nature that have been made in the course of this debate. The first point that I have been asked to reply to is of importance, and it is the matter of the Civil Service Board. I should certainly have made it quite clear in my introductory remarks that Government accepted the recommendations of all these Committees and of the Interim Civil Service Board for the creation of a permanent Board. The Board whose reports we are now considering was an *ad hoc* board selected for a special purpose. Now that their work has been done, we entirely agree that a permanent Civil Service Board should be set up, and the question of its personnel and the terms of reference will engage the very serious attention of Government.

The only other criticism perhaps of an adverse character was on the question of medical attendance. That, I think, has already been dealt with pretty fully by my hon. friend the Director of Medical Services. I think, however, that the hon. Member for the Lake particularly drew attention to the fact that he saw no reason why a parent body, with such a chairman as my friend the Postmaster General, which had recommended against such a proposal, should now have that proposal

lightly set aside. I also believe that on a more recent occasion the hon. Member has publicly stated that he holds no brief for slavish consistency; he regards slavish consistency as characteristic of an inferior mind. In that respect the hon. the Postmaster General clearly agrees with him, because if you refer to the first interim report of the Civil Service Board, of which my hon. friend the Postmaster General was chairman, you will find in paragraph 17 of that report the following: "The Board, however, 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 hon. Member therefore has very clearly claimed the right of all strong-minded men to change his mind. (Laughter.)

The hon. Member for Nairobi South drew my attention to certain specific questions which he would like an answer to. One dealt with the question of quarters and whether officers who were not in possession of quarters, but lived in caravans or *bandas*, would still have to pay rent. On that point, Sir, I would refer him to page 12 of the fourth interim report of the Civil Service Board. That Board recommended, under Recommendation No. IV, that "when an officer is issued with a tent or caravan he shall not receive a personal consolidation allowance, nor shall any rent be charged for the use of a tent or caravan issued to him. When such an officer is posted to a station where the conditions of his employment do not involve the use of a tent or caravan, he shall be given the personal consolidation allowance, and be required to pay rent for any Government quarters which may then be allocated to him."

That recommendation I do not think was specifically considered by Government or incorporated in this report, as it was considered a matter of minor detail, but it seems to me the recommendation of that Board is a perfectly sensible way of dealing with the question.

I do not think I should weary the House really by going into details.

Another question was that of the Public Works Department and Survey Department apprentices, draughtsmen, cadets, and so on. That again, if he turns to the fourth interim report, he will find fully covered in paragraph 5. In fact, because it was realized that it raised a matter of considerable difficulty, the departments employing such staff—namely, the Posts and Telegraphs Department, the Public Works, Government Press, Forests and Survey Departments, met together

under the chairmanship of the Postmaster General, and they went into this question very fully, and the recommendations now appearing in this paper reflect what were called the agreed recommendations of the Heads of Departments concerned.

Reference has been made, I think, by more than one speaker to the question of laboratory assistants. I think that is due to a misapprehension. The case of those laboratory assistants whose length of service was considered to be such as to justify their claims for being placed on a pensionable basis in the Overseas Service has been considered by Government and certain decisions taken in the case of certain officers. Of the remainder, provision is made under Appendix II for Learners, Laboratory Assistants, Junior Laboratory Assistants, etc. I do not want to go into details or personalities. I believe it is the case at the moment that, while there is a post of Junior Laboratory Assistant in the Veterinary Laboratories at Kabete, there is no such post in the Plant Industry Section of the Agricultural Department. Should, however, a case be made out to the satisfaction of Government for creating such a post and the creation of such a post be approved by the Legislative Council in the annual Estimates, there will be no difficulty in inserting it in the appropriate place in the list of appointments scheduled for the Local Civil Service, so I think the point made is really covered.

I think the only matter raised which I have not dealt with at any length is the question of Assistant Game Wardens. There, again, I would say that matter has received very careful consideration by this committee and by Government. If you turn to the first interim report, page 2, you will find the following:—

"In regard to the post of Assistant Game Warden the Board is not convinced by the arguments advanced by the Game Warden and accepted by the Merrick Committee in support of its recommendation that these officers should be accorded 'Overseas' status. The posts were listed as 'Local' posts in the Fitzgerald Report, and with this the Board agrees."

The Governor in Executive Council endorsed that view, and my personal view is that if there is a post which is a local post, for which local experience is required, it is the post of Assistant Game Warden. In actual fact, the present officers were all locally recruited. Their individual position is not in any way jeopardized because those of them who were eligible for pensionable position have already got it. We are only here dealing with future entrants, and if for the post we obtain a man with special knowledge and love of the wide open spaces,

who has spent many years here perhaps on a farm or somewhere of that sort, I think hon. Members themselves could not consistently argue that such an officer could be more suitably recruited by the Crown Agents and sent home every two or three years on leave.

There is just a final point on the question of procedure. As I indicated in my opening remarks, the schedules to this Sessional Paper and the salary grades have been gone into *ad nauseam*, and by and large the Government consider that they are fair and reasonable. It always may be that some very minor adjustment may be required. This equally applies in the case of pensionable officers and is brought to the notice of hon. Members in connexion with the Estimates. Therefore, though I would not like to say that every letter and every word of these schedules may be incorporated, I can give an assurance that there is going to be no departure in principle or in any great degree from these proposals which will not be brought to the attention of this House.

I beg, Sir, formally to move the motion.

HIS EXCELLENCY: The question is:—

"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."

The question was put and carried by 30 votes to 5.

Ages: Mr. Bemister, Mr. Bruce, Canon Burns, Major Cavendish-Bentick, Messrs. Fitzgerald, La Fontaine, Hamp, Harragin, Harvey, Hemsted, Hoey, Horne, Hosking, Col. Kirkwood, Messrs. Lillywhite, Montgomery, Moore, Dr. Paterson, Mr. Pilling, Major Riddell, Capt. Schwartz, Lord Francis Scott, Mr. Scott, Sir Robert Shaw, Messrs. Stronach, Walsh, Waters, Welby, Col. Wilkinson, Mr. Wright.

Voices: Messrs. Isher Dass, N. S. Mangal, J. B. Pandya, Shamsud-Deen, Dr. de Souza.

Declined to vote: Sheriff Abdulla bin Salim.

The Council adjourned for the usual interval.

On resuming.

SUPPLEMENTARY ESTIMATES.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to move that the Report of the Select Committee on the Fifth Supplementary Estimates, 1933, and First Supplementary Estimates, 1934, be approved.

In view of the terms of the Report, I do not think I should take up the time of the House by making a speech on this occasion on a motion which is more or less of a formal character. I would, however, like to take this opportunity of giving to the House a little information which I had not in my possession at the time we went into Select Committee. Under the item "Epidemics, £400", to combat an outbreak of small-pox in the Tana River area and the Northern Frontier District, I have since received a report from the Director of Medical Services on the nature of the outbreak, and I think it might be of interest to the House if I read a few extracts from it to show the manner in which the outbreak was dealt with:—

"The outbreak was reported from the Telemguger area of the Northern Frontier Province on the 13th of January, and on the 15th a medical officer, accompanied by a European vaccinator and native staff, left Nairobi for Lamu and the Tana River. The outbreak had reached considerable proportions among the Somali before it was reported, and owing to the nomadic habits of the Somali the infection was already widespread on the Tana River early in January. In all, 375 cases, with 164 deaths, would appear to have occurred among the Somali, and 845 cases, with 273 deaths, on the Tana River. Before the end of January, many thousands of vaccinations were carried out among the Somali and on the river, and in the Lamu, Malindi and Kilifi Districts. Lamu escaped with 4 cases, Kilifi and Malindi with 123 cases and 18 deaths, and Digo with 33 cases and 7 deaths.

"As a precautionary measure, intensive vaccination campaigns were instituted in all the districts to the west of the river which were threatened by lines of travel from the coast, the river and the Northern Frontier, and in addition to the ordinary medical staff four European vaccinators were engaged and employed on these campaigns, and as a result there are now large protected belts in the Kitui and Meru Districts and around Isiolo, Marsabit, etc.

"The total number of cases which have been reported to have occurred is 1,405, and the total number of deaths 470.

"The total number of vaccinations performed is well over 200,000.

"No new cases have been reported for over a month, and, as far as we know, only a few convalescent cases remain in any of the infected area.

"On two occasions, vaccine lymph was despatched from Nairobi to Garissa on the Tana River by air, and reached its destination in under two hours, thus avoiding

the delay and the damaging effects of what might have been anything up to a ten-day journey by road and river through very hot country."

I think it will be said that the Medical Department have dealt with this in a very thorough and expeditious manner.

I beg to move the adoption of the Report.

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

HIS EXCELLENCY: The question is that the Report of the Select Committee on the Fifth Supplementary Estimates, 1933, and First Supplementary Estimates, 1934, be approved.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I have signed the Report, so naturally I support it.

The only point which hon. Members on this side of the House wish to accentuate is their protest against this additional expenditure charged against this Colony with regard to the Income Tax Adviser. I understand, however, that Government have taken the same view.

I should like to add my word of praise to the Medical Department on the report which the Colonial Secretary has given us, which undoubtedly shows great efficiency on the part of the Department.

I have been asked by European Elected Members to take this opportunity of speaking on this motion, as it seems the only opportunity possible of making their position quite clear to Government with regard to what is generally known as "alternative taxes".

As will be remembered, five alternative taxes were originally proposed by the Committee and accepted by Government, namely: Non-Native Graduated Poll Tax, Package Tax, Landing or Exit Tax, Tax on Formation of Companies, Licensing Tax. Of these, the Landing or Exit Tax has never been put into force, and need not further be considered. The Companies Tax was never intended to be a temporary measure, and will presumably remain on the Statute Book in its present form. The Licensing Ordinance was also not introduced as a temporary measure, but there was a quite definite understanding that a committee should be appointed during the course of this year to report on its workings in the light of experience, and to suggest such amendments as would make it more scientific and equitable, and we have heard this morning that Government will appoint a committee to deal with this Ordinance.

With regard to the other two taxes, i.e. Graduated Poll Tax and Package Tax, it was made abundantly clear by Members on this side of the House that they accepted these taxes on behalf of the Colony on the distinct understanding that they should operate for a period of two years only, in order to give Government a reasonable opportunity of balancing the Budget, and would then be withdrawn, and this understanding was accepted by Government, which is shown by the fact that the Bills themselves provide for their demise at the end of 1934.

Moreover, the late Attorney General, in moving the introduction of these Bills, made it clear that they were only temporary measures.

Elected Members wish to make it quite clear to Government that they have not retreated from the position they took up last year, and that they hold that these two Bills must automatically cease to operate as from the end of 1934, and that in place of the present Graduated Poll Tax Ordinance the former Poll Tax Ordinance, which was repealed by the present Ordinance, should again be brought into force.

Elected Members have thought it only right that their attitude should be made known to Government at the earliest possible moment, and in order that Government should be aware of it when framing the Budget for 1935.

HIS EXCELLENCY: If no other hon. Member wishes to speak, I will put the question. The question is:—

“That the Report of the Select Committee on the Fifth Supplementary Estimates, 1933, and First Supplementary Estimates, 1934, be approved.”

The question was put and carried.

REPORT OF SELECT COMMITTEE ON THE LIMITATION BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the report of the Select Committee on the Bill to Consolidate and Amend the Law relating to Limitation be adopted.

As hon. Members are aware, this Bill, introduced at this session, attempts to consolidate the law as it exists in England to-day in one Ordinance in this Colony, and when I tell you that some of the laws in England date back to the time of James I, you will realize that it was not a very easy task. I should like to take this opportunity of thanking the hon. Members and those members of the legal profession who are not in this House to-day, for the help they gave me in Select Committee in this matter. Particularly I will mention the hon.

and learned Member for Nairobi South, who at great trouble brought up with him the President of the Law Society of Kenya, and we went into an exhaustive study of a particular question that was worrying us. Only by co-operation such as this can we ever hope to pass suitable Ordinances in this Colony.

There are, I am glad to say, Sir, extremely few amendments necessary, but there are four amendments which, though important as regards detail and principle, are not really very great. In dealing with a question like limitation, Sir, it is always a matter of opinion as to whether a debt should be barred in two, three, four, five, or six years, and the Bill which is now before the House on its second reading incorporates the law of England. Actually, when we went into it in detail, we found it inequitable in one or two cases that these terms of time should remain, and we therefore amended the limitation with regard first to torts. Torts now, instead of being six years—and I am not dealing with specific torts set out in Ordinance, but generally—are reduced to two years.

The next item of importance is with regard to mixed actions. These have been handed down almost from medieval days and it has been the policy in England, as each new Act comes up, as far as possible to cut out of them all references to mixed actions. This is entirely a legal question. It was carefully considered by the Law Society, and the members whose names I have mentioned, and we are satisfied there is no necessity for them to remain. We have also met the feeling of the House, I think, as expressed at the second reading, namely, we have provided that debts which are now barred when the Ordinance comes into force will not be revived. It is a small matter, and perhaps it is only just that those who have by process of the law escaped up to this moment should not suddenly have a fresh imposition brought on them.

What, I think, Sir, is possibly the most important thing that has been done, and which I myself would have done in the original Bill if I had known the position in the Colony, is that we have now provided that when this defence of limitation is taken it must be specially pleaded. In England that is the law, and actually, as far as the Bill itself is concerned, I would still contend it is the law here, but unfortunately there exists another Rule of Court which insists that the judge, immediately he sees that an action is barred by limitation, must automatically strike it out. It was therefore thought necessary to put into the Bill a specific section to say that it must be specially pleaded before an action can be struck out.

The last amendment is merely a drafting safeguard, in that it is known in one or two cases—and it is possible in several others—that there may be omitted certain limitations in the Limitation Act which do not actually occur in any Ordinance in force in the Colony, but which are at present covered by the Indian Act. We have therefore put in a last section to say that where you cannot find a limitation in any Ordinance in force in this Colony or in the Rules, you may look back to the Act under which you are working at present, the Indian Limitation Act of 1877.

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

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

CURT. THE HON. H. E. SCHWARTZ: Your Excellency, there is very little to say on the report as it stands, although I am moving one amendment which I understand the hon. and learned Attorney General, on behalf of Government, is prepared to accept. I would like, however, if it is not considered a back-scratching contest, Sir, to say how genuinely appreciative I am—and I am sure that my colleague on the Committee, the hon. Member for Mombasa, is—of the way that the Select Committee was conducted by the hon. and learned Attorney General. I would say generally, without desiring to be ultra flattering, but in all sincerity, that I have, during the short time he has been in the Colony, found it a real pleasure to work with him on Select Committees and on most committees, and any other Member who has so worked with him will endorse my views.

I beg, Sir, formally to move the following amendment: That the Report of the Select Committee be amended by the insertion on page 2 of the following words as paragraph 3 (a): "3. (a) That clause 33 be amended by the addition of the word 'not' between the word 'shall' and the word 'be' in line 3." The clause at present reads: "In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from the Colony shall be excluded." That is a provision of the present Indian Limitation Act of 1877, under which we are working. The matter was discussed in Select Committee, and the feeling there was that the opinion of the Law Society should be taken, and, if it was thought that this should be amended, that the amendment should be moved by myself and that the hon. and learned Attorney General would agree to accept it. The matter

was discussed by the Society, the hon. and learned Attorney General and Solicitor General being present, and it was unanimous that this word "not" should be put in.

I will explain briefly the effect of the insertion of the word "not". It really means now that the ordinary periods of limitation, once they have commenced, run and continue until they have expired, and the fact of a defendant being out of the Colony does not stop that limitation running, as is the case at present. It may be thought at first sight that this would create hardship on a plaintiff, because a defendant has only got to give cause for an action either by entering into a contract, practically a debt, or by some tort, and then disappearing out of the country, and staying away until the limitation has expired, when he is free, on return, from the consequences of his act. That is not so, Sir. There is nothing to prevent a plaintiff commencing an action against a defendant, whether that defendant be in or out of the Colony, and the moment the action is commenced and the moment any execution proceedings are commenced in a case in which judgment has been obtained before a defendant left the Colony, the period of limitation ceases to run, and a new period of limitation commences, in the case of the execution proceedings, so that no hardship of any sort falls on a plaintiff owing to the absence of a defendant from the Colony. If this provision were left in, more especially now that the limitation is extended in the case of simple contract debts and others to six years, very great hardship would fall on a defendant, because he would leave the Colony, we will say, five years after the contract debt with no action commenced against him; he may come back ten years later, and the plaintiff would be entitled then to commence action. There would be no witnesses available, and the hardship is obvious. We therefore propose to delete the provision that the limitation will run while a defendant is absent and provide that one limitation shall commence to run and continue to run, irrespective of the whereabouts of defendant, until it expires by the effluxion of time.

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

HIS EXCELLENCY: The question is that the Report of the Select Committee on the Limitation Bill be amended as proposed by the hon. and learned Member.

The question was put and carried.

HIS EXCELLENCY: I will now put the question that the Report of the Select Committee on the Limitation Bill, as amended, be adopted.

The question was put and carried.

THIRD READING.

THE LIMITATION BILL.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Limitation Bill, as amended by the Report of the Select Committee, be now read a third time and passed.

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

The question was put and carried.

The Limitation Bill was read a third time and passed.

MOTION.

REPORT OF SELECT COMMITTEE ON THE JUVENILES BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee on the Bill relating to Juveniles be adopted.

Hon. Members, no doubt, are a little surprised at seeing the number of amendments which appear in this report, but actually it is not as terrifying as it may seem when you look into it, because a very small amendment at the beginning of a Bill often necessitates five or six consequential amendments later on. I think when you have heard and considered the amendments which have been suggested, you will have very little hesitation in accepting them.

The first amendment, Sir, is a very small drafting amendment, inserting the word "only" after the words "Supreme Court". As hon. Members are aware, the Supreme Court has actual jurisdiction over every offence committed in this Colony, and we propose inserting the word "only" after "Supreme Court" and limiting the particular offence to those which can only be tried by the Supreme Court.

The next amendment, Sir, is with regard to making a note in the court file. It has been pointed out that in the subordinate courts of this country the most used document they keep is a case file, and it is much more convenient to make entries in a case file than in a register which only deals with the case number, names, and the offence itself.

The next amendment is one dealing with an extension of the powers of a probation officer. As hon. Members will remember, in discussing the second reading of the Bill, it was pointed out that the managers of approved schools had certain parental duties after the children left the approved schools. It was pointed out in Select Committee that it would be extremely difficult for managers to carry out these duties, unless

some provision was made for receiving assistance in a particular district to which a young person or child was returned. We have therefore made it possible for a manager to appoint a probation officer in the district to which a child is returned to act on his behalf.

We have also provided that unconvicted children can only go to a Class 1 school. I say an "unconvicted" child because I made special reference to children under sections 19 and 20 of the Bill, which provide that children destitute should be sent to an approved school, and it has been made perfectly clear now that Class 1 approved schools should only have unconvicted children in them. The feeling on the part of the Select Committee was this? We know that, human nature being what it is, the moment you allow a school to be contaminated by the presence of children who have actually been convicted of an offence, none of us, or very few of us, would like to accept as a servant a boy or girl from that school, whereas, if we knew that a child was coming from a school where none of the other children had been convicted, and where the child had only been sent on account of the unfortunate death of his or her parents—or whatever the cause may have been—we should be the first to take him or her into our employment.

There is another slight drafting amendment with regard to when a child or young person runs away from the charge of a person in whose charge it has been placed. We make it clear that though it may be of no use for the court to send such child back to the particular person from whom he has run away, they may send him to another fit person or to the proper approved school.

Then, with regard to the board of management, I think we have made a very wise amendment. As the Bill stood—and the Bill was drafted on the report of a committee, as I explained—the board of management was only appointed in order to advise in regard to Class 1 approved schools. It occurred to us that where you have a strong board of the description indicated in the Bill, it is eminently desirable that these people should be called upon to advise in regard to all approved schools. The fact that in Class 2 and Class 3 approved schools they are "little criminals", if I may use the word, does not preclude the board from being able to give most useful advice in regard to the management of them. We have therefore extended their powers to advise in regard to all approved schools, and we have made the necessary provision

later on—in the section relating to rules—whereby the Governor in Council can lay down the rules under which the Board should work.

There is one very small amendment which I think it is only just to make. In the original Bill it is said that, with regard to Class I approved schools, the manager should be in every case liable for the expenses to Government in searching for, finding and returning any child that has run away from that school. It was thought that it should be left to the Governor—that power should be given to the Governor to remit this amount where it was clearly shown that it was not the fault in any way of the manager of the school.

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

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

The question was put and carried.

BILL.

THIRD READING.

THE JUVENILES BILL.

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

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

The question was put and carried.

The Juveniles Bill was read a third time and passed.

MOTION.

REPORT OF THE SELECT COMMITTEE ON THE PENAL CODE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee on the Penal Code (Amendment) Bill be adopted.

The first point, Sir, that occupied the attention of the Select Committee was the point with regard to the scale of fines in regard to punishments; and it was felt by the majority of the Committee that there should be some amendment. However, at my instigation, they agreed that, if I agreed to withdraw an amendment relating to it, they would agree to postpone bringing this question up till a later date, when I had had an opportunity of consulting the territories adjoining

and also the Secretary of State for the Colonies. We therefore have deleted all reference to the scale of fines, which will remain as it stands at present.

The next small amendment is merely a verbal amendment with regard to whether the words used should be "asks for" or "solicits". Some members of the Committee thought that the proper phrase was "asks for", and others suggested in the Bill—should be used. As a spirit of compromise was ruling, we have agreed to have both in, so the words now will read "asks for or solicits".

The next amendment deals with insult to the religious feelings of any person in the community. It was pointed out that no provision was made for a written insult, which might be exhibited in front of that person, thereby causing him to commit a breach of the peace, and therefore that section was slightly amended so as to provide for insults which are written as well as oral.

I am glad to say we were able to come to a unanimous decision with regard to the deletion of the word "Arab" in the definition which occurs of the word "native" in section 147 of the Penal Code. The word "Arab" has been deleted, and therefore, as far as this Ordinance at least is concerned, there will be no question of an Arab being considered to be a native.

The next question of some interest was the one with regard to lotteries. It was realized that we had to accept the law as it appeared in the Bill, because it did reflect the latest thought in regard to lotteries, but at the same time it was thought it went a little too far. For instance, it made it an offence even to print in a paper the result of a lottery, so that, if some hon. Member of this House was fortunate enough to win the Calcutta Sweep and the local daily paper printed the result of that sweep, it committed an offence. We have therefore made it possible for the result of lotteries to be printed, even though no other reference to that lottery had been made before. There will be no advertisement; merely, the result of the lottery may, as an item of news, be printed.

A slight amendment was made with regard to the receiving section, which dealt with the receiving of property which had been feloniously stolen. It was pointed out that under the law, besides stealing, you could store or obtain property by false pretences, and we have therefore enlarged that section to cover all those possible offences.

The next item is one of some importance from a prosecuting point of view, and that is in regard to the tracing of possessions. Under the law as it stands at present, if X is

found in possession of property suspected of having been stolen—let us say, some ragamuffin is found in possession of a gold watch worth £50—he can be taken before a magistrate and made to account for where he got the property. If that person accounted for it by saying, "I received this watch from Y," and he, in fact, satisfied the magistrate that he did receive it from Y, so far as the prosecution is concerned, under that particular section the case was closed. You could do nothing about it; you could trace it no further. In another Colony in which I served, there was a most useful provision which said that where, in a case such as I have envisaged to you, A accounts to B for the gold watch, and the court is satisfied that in fact B did give the gold watch to A, the same procedure might be followed in regard to B as was followed in regard to A, and B be called upon to say from where he obtained the watch. We have therefore taken this opportunity of incorporating that in the amending Bill.

We have also clarified the section dealing with coining. A rather interesting position had arisen because, under the law as it was printed, it was pointed out that if a coin was tendered—let us say, an Italian coin or a Japanese coin—provided that coin was not of less value than the coin it was supposed to represent, no offence was committed. Naturally, the question of the intrinsic value of a coin was a difficult one, but we have closed up that loophole, so that if anyone does pass a coin with intent to defraud—because that is the basis of the whole charge—he will be prosecuted under that particular section.

I do not think there are any more amendments worthy of particular mention, though there are one or two verbal amendments.

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

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

The question was put and carried.

BILL

THIRD READING

THE PENAL CODE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: I beg to move that the Penal Code (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 Penal Code (Amendment) Bill was read a third time and passed.

MOTION.

REPORT OF SELECT COMMITTEE ON THE CRIMINAL PROCEDURE CODE (AMENDMENT No. 2) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee on the Criminal Procedure Code (Amendment No. 2) Bill be adopted.

As hon. Members will expect, the amendments which are suggested in the report to-day are practically all matters of phraseology. The points that we raised in this House on the second reading have been most carefully considered, and I think you will find a reference made to all of them.

The first amendment which was made was with regard to the release of persons who have been arrested without warrant by the police. At present, only in certain offences could those persons be released by the police without being taken before a magistrate. The position is now that in the case of a person arrested without a warrant by the police, when the officer in charge of the police station investigates that matter, and sees there is no case against him, immediately he may release him. It has been pointed out that an innocent man, known to be innocent, may have to be in prison a considerable time before he is fortunate enough to find himself in front of a magistrate. We have therefore made provision that where the police are satisfied that a man is innocent they may let him go.

The next amendment refers to the service of summonses. At present, we have no provision for the service of a summons on the member of a household of a man who happens to have only female members of his household. Not only is that very disparaging to the fair sex, but it is perfectly ridiculous that when you go to serve a summons on a man at his own house and you find only the wife there, the summons cannot be left with her, although she is obviously the proper person to have it. By deleting the word "male" you will make it possible to leave a summons with any adult person of the household.

Further amendments, Sir, refer to matters of detail; that is, with regard to warrants of distress. The word "distress" is cut out, because it is alleged to have some civil meaning, and actually the law of distress is in such a distressing state at the present moment in this Colony that it is wise to delete all reference to distress in this Bill, and it will have to have an Ordinance to itself in the near future.

With regard to juries, and this is a question which will interest Members of the House the most, we have decided to retain twelve jurors in the case of murder, rape, and so on. As I mentioned in my speech, Sir, on the second reading, the whole object of a reduction was the question of expenditure, and the majority of the Committee thought that in these most serious cases it would be wise to retain twelve as it stands at present. Therefore that number is being retained, but they have given way on the point with regard to five in all small cases instead of nine, with the result that many amendments have to be made which are consequential.

With regard to a doctor's evidence, which the Bill permitted, at the discretion of the judge, to be read in the Supreme Court if it had been given in the lower court, hon. Members on the Select Committee were not satisfied that that did not allow too wide a loophole. They have therefore recommended that where, as in ninety-nine cases out of a hundred it will be the doctor's evidence is only formal, provided there is an agreement reached between the defence and the prosecution, it will be unnecessary to bring the doctor a hundred miles, or whatever it may be, to give that evidence personally. With the consent of the court, he may not be called.

I think these are the principal amendments made. There is a small one with regard to consecutive sentences. Under the Penal Code, there is a section which says that where a man is sentenced to two sentences, unless the magistrate mentions the fact they will automatically run consecutively, instead of concurrently. When we came to the Criminal Procedure Code, it was found that it laid down that sentences should begin to run from the date on which they were pronounced so that in this Bill we have now made it clear that where the court says nothing about it, sentences will run consecutively and not concurrently.

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

HIS EXCELLENCY: The question is that the Report of the Select Committee on the Criminal Procedure Code (Amendment No. 2) Bill be adapted.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, a point has just been brought to my notice by the hon. and learned mover in his speech when he referred to the number of jurors. He stated that the Select Committee recommended in their report that the number should be twelve for murder, treason or rape. Looking at the Bill before the House, on the

opposite page to page 18, which contains the section of the Principal Ordinance, it reads: "On trials for murder or treason, the number of the jury shall be twelve." I am not at all certain that the words "murder or treason" should not be altered to read "murder, treason or rape". If that is accepted by the hon. and learned Member in charge, it will be necessary to move an amendment to the Select Committee's report, section 6. It may be of importance, as the maximum penalty for the rape of a European woman is death, so that it is obvious the jurors should be twelve in that case as in murder. As it will take a few minutes to get the exact wording of the amendment, I suggest, Your Excellency, that we report progress now and get this dealt with to-morrow.

HIS EXCELLENCY: With the leave of the House, we will report progress and consider the matter again to-morrow.

AGRICULTURAL ADVANCES ORDINANCE, 1930: FINAL WRITE-OFF.

THE HON. THE TREASURER: Your Excellency, I beg to move the motion standing in my name:—

"That this Council approves the write-off as final expenditure of a sum of £4,204-7-26, advanced under the provisions of the Agricultural Advances Ordinance, 1930, this write-off operating in reduction of the authorized appropriation of £113,000 approved by this Council as follows: £100,000 by motion dated 30th May, 1930; £7,000 by motion dated 8th May, 1933; £6,000 by motion dated 20th December, 1933."

As hon. Members are well aware, it has always been realized that, in operating the Agricultural Advances Scheme, certain losses are inevitable, and that naturally the recovery of the total amount of the advances cannot reasonably be expected. The Board keeps under constant review all the operations of the scheme, and I hope it will not be thought impertinent if, in spite of my limited experience, I pay tribute here and now to the very excellent work being performed by that Board.

On the 8th May last, a motion was passed in this Council authorizing the write-off of a sum of £2,956-18-12, and the motion now before the House is of a similar nature. It seeks authority to write off a further sum of £4,204-7-26, being the total write-off to date of £72,251-5-38. The sum in the present motion refers to four advances which are deemed by the Board to be irrecoverable. Sanction to the write-off has been received already by the Secretary of State for the Colonies. The position is being kept under constant review, and further

With regard to juries, and this is a question which will interest Members of the House the most, we have decided to retain twelve jurors in the case of murder, rape, and so on. As I mentioned in my speech, Sir, on the second reading, the whole object of a reduction was the question of expenditure, and the majority of the Committee thought that in these most serious cases it would be wise to retain twelve as it stands at present. Therefore that number is being retained, but they have given way on the point with regard to five in all small cases instead of nine, with the result that many amendments have to be made which are consequential.

With regard to a doctor's evidence, which the Bill permitted, at the discretion of the judge, to be read in the Supreme Court if it had been given in the lower court, hon. Members on the Select Committee were not satisfied that that did not allow too wide a loophole. They have therefore recommended that where, as in ninety-nine cases out of a hundred it will be, the doctor's evidence is only formal, provided there is an agreement reached between the defence and the prosecution, it will be unnecessary to bring the doctor a hundred miles, or whatever it may be, to give that evidence personally. With the consent of the court, he may not be called.

I think these are the principal amendments made. There is a small one with regard to consecutive sentences. Under the Penal Code, there is a section which says that where a man is sentenced to two sentences, unless the magistrate mentions the fact they will automatically run consecutively, instead of concurrently. When we came to the Criminal Procedure Code, it was found that it laid down that sentences should begin to run from the date on which they were pronounced so that in this Bill we have now made it clear that where the court says nothing about it, sentences will run consecutively and not concurrently.

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

HIS EXCELLENCY: The question is that the Report of the Select Committee on the Criminal Procedure Code (Amendment No. 2) Bill be adopted.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, a point has just been brought to my notice by the hon. and learned member in his speech when he referred to the number of jurors. He stated that the Select Committee recommended in their report that the number should be twelve for murder, treason or rape. Looking at the Bill before the House, on the

opposite page to page 18, which contains the section of the Principal Ordinance, it reads: "On trials for murder or treason, the number of the jury shall be twelve." I am not at all certain that the words "murder or treason" should not be altered to read "murder, treason or rape". If that is accepted by the hon. and learned Member in charge, it will be necessary to move an amendment to the Select Committee's report, section 6. It may be of importance, as the maximum penalty for the rape of a European woman is death, so that it is obvious the jurors should be twelve in that case as in murder. As it will take a few minutes to get the exact wording of the amendment, I suggest, Your Excellency, that we report progress now and get this dealt with to-morrow.

HIS EXCELLENCY: With the leave of the House, we will report progress and consider the matter again to-morrow.

AGRICULTURAL ADVANCES ORDINANCE, 1930: FINAL WRITE-OFF.

THE HON. THE TREASURER: Your Excellency, I beg to move the motion standing in my name:—

"That this Council approves the write-off as final expenditure of a sum of £4,294-7-26, advanced under the provisions of the Agricultural Advances Ordinance, 1930, this write-off operating in reduction of the authorized appropriation of £113,000 approved by this Council as follows: £100,000 by motion dated 30th May, 1930; £7,000 by motion dated 8th May, 1933; £6,000 by motion dated 20th December, 1933."

As hon. Members are well aware, it has always been realized that, in operating the Agricultural Advances Scheme, certain losses are inevitable, and that naturally the recovery of the total amount of the advances cannot reasonably be expected. The Board keeps under constant review all the operations of the scheme, and I hope it will not be thought impertinent if, in spite of my limited experience, I pay tribute here and now to the very excellent work being performed by that Board.

On the 8th May last, a motion was passed in this Council authorizing the write-off of a sum of £2,956-18-12, and the motion now before the House is of a similar nature. It seeks authority to write off a further sum of £4,294-7-26, being the total write-off to date of £72,251-5-38. The sum in the present motion refers to four advances which are deemed by the Board to be irrecoverable. Sanction to the write-off has been received already by the Secretary of State for the Colonies. The position is being kept under constant review, and further

motions in similar terms will be moved from time to time if and when it is clear to your Government and the Secretary of State that a motion to write off as irrecoverable advances made is necessary. Your Excellency, I beg to move this motion.

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

THE HON. SHAMSID-DIEN: Your Excellency, the only observation that I have to make about this motion is that it is quite a pleasant surprise that the amount is so unexpectedly small; it is rather encouragingly small. I am sure that I am voicing the feeling of a very large section of the community when I say that when this sum of £113,000 was voted it was fully expected there would be very little of it recovered.

The question was put and carried.

EXTENSION OF THE EXPULSION FROM PROCLAIMED AREAS ORDINANCE, 1933.

THE HON. THE CHIEF NATIVE COMMISSIONER (MR. S. H. LA FOSTAINE): Your Excellency, I beg to move the motion standing in my name:—

“Whereas it is provided, *inter alia*, in section 14 of the Expulsion from Proclaimed Areas Ordinance, 1933, that the said Ordinance shall continue in force for one year from the date of its coming into operation and shall then expire: And whereas the said Ordinance came into operation on the 18th day of May, 1933, and will expire on the 18th day of May, 1934: And whereas it is further provided in section 14 of the said Ordinance that the Governor may, by proclamation, with the approval of the Legislative Council, declare that the said Ordinance shall remain in force until a date to be fixed in such proclamation: Now therefore it is hereby resolved that this Council approves the issue of a proclamation declaring that the said Ordinance shall remain in force until the 18th day of May, 1935.”

The Expulsion from Proclaimed Areas Ordinance was passed in May of last year, and has since been applied to the Districts of North Kavirondo, Central and South Kavirondo. At the time of its introduction it received the approval—the unanimous approval—of this Council, and was cordially accepted by the mining community. Its main provision is the establishment of a Board consisting of unofficers, with the Provincial Commissioner as chairman, empowering them, if a case was presented, to order the expulsion of an undesirable

from a proclaimed area. Hitherto no case for action of this kind under the Ordinance has arisen, and this fact testifies to the excellent relations that exist in the mining areas.

It might be argued, Sir, that the absence of any need for the use of the provisions of the Ordinance in the past renders the continuance of the Ordinance unnecessary. I think, however, this Council will not accept that argument. I think it will be generally agreed that the absence of any need for the use of its provisions has been due to the moral influence of the Ordinance itself. With the extension of the mining development I think it possible, although not probable, that cases will arise in which it will be necessary to make use of the Ordinance, and on these grounds I feel that the Council will agree to the resolution which I now have the honour to propose, Sir. The Provincial Commissioner for Nyanza Province will, if necessary, be able to give details with regard to this question.

THE HON. H. R. MONTGOMRY: Your Excellency, I beg to second the motion.

HIS EXCELLENCY: The question is the motion proposed by the hon. the Chief Native Commissioner.

THE HON. H. R. MONTGOMRY: Your Excellency, I had not intended to say anything at this moment, in case any other hon. Member had brought forward points which I might have answered. It is a fact, Sir, as stated by the hon. mover, that we have never even had to convene the Board in either of the three districts to which the Ordinance has been applied, and I should like to associate myself with what he has said with regard to the miners with whom we have to deal.

We have not had to use this Ordinance, but it will be remembered that when the hon. the Commissioner for Local Government moved the second reading he did emphasize that it was necessary to have it so long as general prospecting was in force. That general prospecting will remain probably for the whole year. Perhaps one small example might illustrate what the hon. mover has said about the moral influence of this Board, Sir. I have heard only one case of a man who was conducting himself in an unfair way in a native reserve. He was given a hint as to what might happen to him if he did not mend his ways. That man pulled himself together, and there was no question of convening the board to throw him out of the district. I hope, Sir, that this motion will be adopted unanimously.

The question was put and carried.

BILLS.

SECOND READINGS.

THE EUROPEAN CIVIL SERVICE PROVIDENT FUND BILL.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I beg to move the second reading of a Bill to Establish a Provident Fund for Members of the Local European Civil Service of the Colony and to Provide for Contributions to such Fund by Members of the said Service and by Government.

As I explained, Sir, in moving the earlier motion regarding the Local Civil Service, this Bill, which provides for a provident fund, must be read as one with the conditions and rates of salary which this House has just approved. It forms an integral part of the whole terms of service designed for this particular branch of the Service.

I think hon. Members are fully aware of the underlying reasons that have led to the Government bringing forward this measure. It is, as stated in the last debate, that we all realize the very heavy weight of pension commitments on this Colony, and that if something is not done to deal with that matter now it will be cumulative in its effect, and later on we may find ourselves with a fixed charge in excess of what the normal revenue of this Colony can meet. Therefore, quite frankly, one of the main objects of this measure is economy, and in reply to remarks that were made by the hon. Indian Member, Mr. Pandya, on the question of economy, I would say to him that it is by this measure that the Government hopes in time to attain a real measure of economy as regards this Service, and the Asiatic Service when it is subsequently inaugurated.

The immediate economies may not be as large as some of us could wish. What exactly they will be it is almost impossible—in fact, it is impossible—to state at the moment. Much will depend upon what officers do—those officers who have, under the proposals we have just agreed upon, the right to exercise certain options—but there can be no doubt whatever that, taking the long view, once this Service is fixed on a Provident Fund basis, substantial economies to the Government will be afforded. At the same time, the Board and the Committees that have considered this matter have felt that, while economy must be their watchword, at the same time they must see that the proposals are reasonably fair to the officers concerned, and it is our hope that the proposals of this Bill, while effecting economy, will at the same time afford reasonable relief for officers in the days of their retirement.

There is just one further point which, I think, may make the provisions of this Bill particularly acceptable to a certain class of public officer. A certain number—quite a large proportion possibly of the officers with whom we are dealing—

may not necessarily be looking for continuous service in the public service in the way pensionable officers do. For example, they are providing for quite a large number of women clerks. They, owing to circumstances over which the Government at least has no control, may leave us prematurely; and while it is only fair that they should get some recognition of their service here, at the same time I think it will be agreed that such officers should not be made pensionable, and obtain a pension if they leave the service in pursuit of matrimony. We therefore confidently hope that that class of officer will be particularly attracted by the conditions of this Bill.

So much, Sir, for the general reasons which led to the introduction of this measure. I will now very shortly refer to the more salient proposals which it contains.

If you will turn to clause 3 of the Bill you will see that it provides for the establishment of a provident fund, and it explains how that fund is to be made up. It is to be made up on the one side by contributions from officers and on the other side by contributions from the Government. The rate of contributions by contributors is laid down in clause 4.

Members will notice at once that, whereas the contribution from a male servant is to be 5 per cent, the contribution from a female will be 7½ per cent, and you may well ask at once why that distinction has been made. The reason for that distinction is this: In addition to the provisions of this Bill, members of the Local Civil Service will be required to contribute to the Widows' and Orphans' Pension Fund, and, roughly speaking, that means another 5 per cent of their salary; so that, in effect, the male Government official will be contributing 10 per cent towards pension and widows' and orphans' pension, whereas the woman contributor—who has no such commitments to make for her prospective husband—can perhaps easily contribute 7½ per cent during her service, and thereby make such provision for her future, should it be her fate to remain a spinster.

In clause 6 it will be observed that, in addition to the normal annual contributions from the Colony, sub-clause (b) provides, in the case of contributors who, prior to the date of commencement of this Ordinance, were in the Service, and on the said date became contributors without break of service, for payment in to the fund of such sum as would have been paid into the fund from general revenue in respect of each such contributor under paragraph (a) of this section if this Ordinance had been in force at the date on which such contributors first joined the service.

That is definitely a concession, and is in the nature of a "nest egg". The Government's reasons for making that proposal are, as I explained in the last debate, that quite a large number of officers have been kept hanging on, not knowing whether or not they are going to get a pension. Some of them now are not going to get a pension, and it is perfectly clear that had we been in a position to give a decision earlier they would have been in a better position to leave the Service or make other provision for themselves. It is therefore not unreasonable that that contribution should be made, and it is at the present moment engaging the attention of the Government and of the Secretary of State as to the best means of meeting that liability—whether it should be by some method of funding, or whether it should be made each year as the liability occurs in the case of individuals falling to be eligible for the benefit.

The rates of Government contributions are laid down in the schedule, and it will be observed that, in respect of continuous service up to and including the tenth year, the same amount as the officer pays in is paid by Government. In respect of the years from the tenth to the twentieth, the Government contribution goes up to 7½ per cent, and in respect of continuous service after the twentieth year the Government contribution goes up to 10 per cent. Again, in the case of a female contributor, a distinction is made, and a flat rate is maintained of 7½ per cent throughout her service. The reason for that provision is clearly set forth in the second interim report of the Civil Service Board. They state, on page 6, that for the male contributor they are in favour of a sliding scale contribution, for which this Ordinance provides, and their reasons are as follows: They say a sliding scale provides an incentive to remain in the Service in order to qualify for increased benefits, and in their opinion should go far to create a settled and contented Service, and should be calculated to retain in the service of the Government the services of officers who have been proved valuable. In the case of women, however, they have recommended a flat rate. They appreciate that they may be attacked for being inconsistent on this point, and the relevant paragraph is as follows:—

"It may be argued that we have been inconsistent and possibly illogical in abandoning in the case of women the principle of sliding scale benefits, by which we have stated we were favourably impressed and which we have recommended for application to the male service. We suggest, however, that the objects to be attained are not quite the same. Under that principle the advantage is to the officer who retires after long service; the disadvantage to the one who leaves early. To us this appears reasonable

in the case of men, for the average man at the end of a long service has to provide not only for himself but also for a wife and family. Increasing benefits therefore correspond with increasing liabilities. With women servants, the case is very different. If they marry they leave the Service, and if they remain unmarried they have only themselves to provide for in their old age. In view of the large numbers who will marry or for some other reason will leave early, it is probably to the general advantage that the rate of benefit should remain constant throughout their service. Moreover, it has also been borne in mind that the normal retiring age for women is earlier than for men by five years, and that the casualty rates and expectation of life of men and women are different."

So much for the differentiation in the rate of contributions.

If hon. Members will turn to clause 7 (4), they will observe provisions for the payment of contributions to the legal personal representative in the event of death, and I should like, when dealing with this clause 7, to draw the attention of hon. Members to the amendment which has been tabled and which I propose to move in Committee of the whole House. The object of that amendment in brief is this: that it is considered, in view of the benefits that officers are going to receive from this measure, that they should not normally be entitled on leaving the Service to obtain, not only their own contributions with interest, but also the Government contributions—and also the "nest egg"—unless they have had at least five years' service. We think it would be unfair and unreasonable that an officer should come along, stay for two or three years, quit the Service and get away with these additional Government benefits intended as a reward for those who intend to make the Local Service their career. Members will realize that under the existing pension law one has to serve till 50 before one gets a pension at all, so that I think this provision is not inequitable.

Clause 8 provides for the dismissal of the contributor. He gets his own contribution back with interest, but unless the Governor sees special reason to intervene he gets no contribution from Government.

Clause 10 is an important clause. It provides that, in addition to any moneys that he gets out of this fund from his own contributions and the Government's contributions on his retirement, he may also get, provided he has had 15 years' continuous service, a gratuity not exceeding the amount of one week's salary, based on the salary drawn at the date of

retirement, for each completed year of service. In the case of pensionable officers, they are entitled to such a gratuity after seven years, so that this does involve a definite saving and differentiation from the conditions of service applied to pensionable posts.

The other points, Sir, I think, are purely committee points, and I will not occupy the time of the House any longer.

I beg formally to move the second reading of the Bill.

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

HIS EXCELLENCY: The question is that the European Local Civil Service Provident Fund Bill be read a second time.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I merely wish to raise one point in regard to clause 5 of the Bill, which deals with those people who should not be permitted to contribute to the fund. Clause 5 (d) says "whose age on appointment, or at the commencement of this Ordinance, is fifty years or over". Now, as far as I can gather—I shall be glad to be corrected if I am wrong—if an officer joined the Service at the age of 44, seven years ago, he would be 51 at the time this Ordinance came into force and would thereby not be allowed to contribute. The effect of that would be, not only that he would be prevented in the future from contributing, but he would lose the "nest egg" of seven years, payable under clause 6 (b). It does seem to me, unless there is some very good reason, a pity that a person who joined the Service, say, seven years ago, and happens to have passed the age of 50, because of the necessary delays that have taken place in the introduction of the Local Service, should be completely barred from contributing or getting the "nest egg" provided under clause 6 (b); and I would ask Government to consider that point before they pass this Bill, and, if there is any doubt on this point, to hang this up also to be looked into, because it will affect a very large number of people, as far as I can see.

THE HON. THE COLONIAL SECRETARY: I would suggest, Your Excellency, if the hon. Member is agreeable, that the second reading of the Bill be taken now, and that this question be taken up in Committee of the whole House to-morrow, when I have had more time to consider it.

HIS EXCELLENCY: I will put the question now.

The question was put and carried.

THE CROWN LANDS (AMENDMENT) BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES: Your Excellency, I beg to move that the Bill to amend the Crown Lands Ordinance be read a second time.

It is a short, innocuous Bill of three sections only, which, contrary to expectations, I understand has caused a certain amount of misunderstanding. The law relating to land in this Colony is Chapter 140 of the Revised Edition, but leases were issued under the Crown Lands Ordinance of 1903 until the Crown Lands Ordinance of 1915 superseded it. There were certain discrepancies between these two Ordinances, dealing with the subdivision of land which it is now hoped to put right, especially the specific provision for charging a minimum rental on a subdivision of land. There is no specific provision in the Ordinance of 1903 for the minimum rental. A minimum rental has been charged under the 1903 Ordinance, and it is not legal. I mean that during the 30 years or more that the Ordinance has been in force, the charge of the minimum rental has never been questioned. I have brought the matter up now because I want to make it absolutely definite in the Ordinance that a minimum rental will be charged. It is merely a question of legalizing a practice that has existed for over thirty years.

This is merely a question of subdivision, and does not deal with transfer or any other vexed question that may upset hon. Members of the House. By the courtesy of the Elected Members' Organization, I had the opportunity of meeting the members of that organization and explaining some of the points that they thought underlay this very innocuous Bill. There is a great temptation in special pleading that I must try to avoid. Section 2 deals with subdivisions in townships; section 3 with subdivisions on farms. The principle is the same in both. That principle is the principle sanctioned already in the Ordinance of 1915. But when you subdivide a farm you charge a proportionate rental for a subdivision, and if the cost of the rental is Sh. 100, it should be put equally in two. It does not often occur that a farm held is subdivided in such a way that the proportionate rental is less than Sh. 10; it may occur, of course. The point that I wish to raise is that it is not worth the trouble of Government collecting a rental of less than Sh. 10. We are put to a lot of trouble in collections and correspondence and so on, and we consider it unreasonable that we should be called on to collect a fee of less than Sh. 10. In the case of a township we have instances where, if we divide the rent in due proportion, we should have to collect something like 33 cents from 33 people, and it is really not

worth the time and correspondence that it entails. It is almost as hard to get 33 cents as the Sh. 10 that we propose under this Bill.

Turning to section 4, this apparently is a reversion to despotic rule, but it can be easily explained. Under the 1902 Ordinance, the subdivision of land had got to be approved forthwith by the only person competent to do so—the Surveyor General. When a case for subdivision comes up, we have not got to take into consideration who is going to possess that subdivision; there is merely a plan submitted showing the amount of land, physically speaking, divided. In the case of a farm, only one thing is watched by Government—that a man does not take all the plums out of the pudding, and leave the pudding behind. There is at the back of the minds of Government a fear that it may happen, that a seller may wish to cut out all access to a lake, and leave the hinterland as a separate farm. That is a case where we would not agree to a subdivision. In the 1915 Ordinance it has to be referred to the Governor in Council, and I will explain what that entails. In normal circumstances, approval is given by the Surveyor General, who passes it on to the Land Secretary, who passes it to the Commissioner of Lands, who sends it to the Clerk of Executive Council, who prepares the minutes for the Executive Council and places it before them; and back it comes through all those different stages to the applicant. In a case where there is undue hurry—and there is always undue hurry in my experience as Commissioner of Lands—and there is not a meeting of the Executive Council in the next few days, the following is the procedure: From the Surveyor General to the Land Secretary, to the Commissioner of Lands, to the Attorney General, Colonial Secretary, to His Excellency the Governor, who has to chance his arm that, if he approves, it will meet with the support of the Executive Council; back to the Colonial Secretary to the Clerk of the Executive Council to approve sanction, and then back through the various steps I have mentioned. (Laughter.)

I am asking to have this procedure cut short; that we shall allow His Excellency the Governor to approve of subdivisions of land under the 1915 Ordinance, as it is in the case of the 1902 Ordinance; in other words, that one person competent to deal with it, the Surveyor General, shall deal with applications forthwith.

I trust, Sir, that hon. Members, when dealing with this Bill, will confine themselves to the question of the subdivision of land, and will not take us into the bypaths of leasehold, freehold tenure, transfers, and the like, because this is a straightforward, simple, entirely innocuous Bill.

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

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

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, as the hon. mover has said, this Bill arouses great feelings of suspicion in the minds of hon. Members on this side of the House. Having heard his explanation of the innocuousness or innocuity of this simple Bill, Members were satisfied to a very great extent. At the same time, while we do not propose to oppose this measure, we do not want to be associated with a Bill, which is presumably framed to legalize for the future the illegal acts of Government in the past. One reason of suspicion is that we find in these small, innocuous Bills for amending the Crown Land Ordinance invariably the same result—that further sums of money are extracted from the pockets of the unfortunate landowners. Several Members feel—I am not going far down the by-paths; I have been asked not to—but many Members feel not altogether satisfied with the present security of land tenure, and they do hope that in the future Government will seriously go into the question of the possibility of freeholding, both from the point of view of obtaining additional funds and also from the point of view of giving greater security so as to make propositions more attractive for the investment of money.

Another reason of suspicion, Sir, with regard to any Bills of this sort is that we have found a certain tendency in some Government circles—I am definitely not referring to the hon. mover—to hold the theories enunciated some years ago by Mr. Henry George—theories to the effect that it is almost a crime for anyone to make money out of land except Government. As we do not hold with these views at all, we are perhaps unduly suspicious of even this innocuous-looking Bill. For that reason, the European Elected Members will not vote on this measure, as they do not wish to be definitely associated with it.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I rise to oppose the measure before the House, and am definitely opposed to it. I am very suspicious of Government action in bringing this matter forward, and it does not ease my conscience after listening to the hon. mover, when he stated that in these transfers of subdivisions Government was not concerned with the person for whom the transfer was going to take place—a definite statement made by the hon. mover. Also, I view with suspicion generally the tinkering

with the present land laws. I also view with suspicion the methods and manner in which Government has administered these laws recently. The Morris Carter Land Commission has reported, and I understand the report has been in print for some considerable time now, and has not been laid on the table of the House. I am convinced that that report contains some very far-reaching suggestions and proposals which will probably be adopted by Government, and that it will probably lead to a general review of the land laws of this Colony. I suggest that it would be very much better if Government withdrew this measure and laid on the table the Morris Carter report; and the eventual result of that report will be to deal in comprehensive manner with the land laws of the Colony.

I am also very suspicious about Government action in relation to the transfer of land and the subdivision of land, in view of the question asked in the last Council some weeks ago by the Noble Lord the Member for Rift Valley, a question not yet answered by Government. Unless an answer is given to-morrow, I propose to take the question up myself. In view of what has happened and what I know has taken place in Executive Council—which I am not going into this morning—in reference to certain transfers of land, I am very suspicious of Government's action, and shall definitely oppose this Bill this morning.

MAJOR THE HON. F. W. CAVENDISH-BENTING: Your Excellency, I am very much inclined definitely to oppose this Bill in company with the hon. Member for Trans Nzoia. We are told it is a short innocuous Bill; we are told it is not tampering with such questions as land transfers and the like; that it merely deals with subdivisions. As subdivisions are only usually made in order to transfer ownership of part of one's property, it is difficult to appreciate the distinction.

The Bill before us, Sir, starts by suggesting that this amendment should be enacted "with the advice and consent of the Legislative Council". I think, Sir, we on this side of the House would be absolutely and utterly wrong either to give that advice or to give that consent. We are merely, as has already been pointed out, being asked now to legalize what can only really be described as extortionate acts of blackmail which Government has been committing for the last thirty years. Furthermore, all we are doing in bringing this Bill forward and discussing it is informing people that there is a strong possibility that they have got rights and could bring an action against Government for what it has done in the past. I admit that all that is suggested is that when there is a subdivision required the minimum rental to be collected should be Sh. 10, and that sounds at first sight fairly reasonable.

But we have an uncomfortable feeling on this side that, under strict orders, possibly from the Colonial Office or the Secretary of State—at any rate, there are definite orders—that all people given land here, when they have developed it and brought it to a state when there is a possibility of subdividing it, have got to be squeezed to the uttermost. That is not going to lead to prospects of further development and further investment in the country. It is going to have the opposite effect, and these small amendments of existing laws constantly cropping up only strengthen our suspicion that we are going to drift into a policy of keeping investment out of the country, instead of doing all we can to get people to invest in this country.

Taking first of all the point that it is reasonable that every subdivision should pay a minimum rental of Sh. 10, I admit in agricultural subdivisions it is perfectly reasonable, and in some town subdivisions it is also perfectly reasonable, but not in all. There are little places not far from here of only a few square feet in which not Sh. 10 is being charged but Sh. 72 is being charged. We mention in this Bill that the minimum should be Sh. 10. There has been a committee sitting which has recommended that a sufficient minimum is Sh. 10 per unit instead of Sh. 72, but the practice still exists, a practice which was deprecated in the report of that committee, of actually charging Sh. 72 per annum.

I have said that I consider that the trend of our land laws and the occupation of land in this Colony is against encouraging development and investment, and I would like to give a few figures, based entirely on this minimum charge of Sh. 10, of what actually happens in practice. There is some land which I know quite well, which belongs to a person who practically never comes to this country, and has not been here for years. He is an investor of capital in the country, exactly the sort of man we want to encourage. He purchased, not far from here, an estate of 397 acres. He has paid for that land alone £7,000. In the development of only half his estate he alone £9,346, which means that he has spent so far £16,346 has paid £9,346, which means that he has spent so far £16,346 in the development of that estate. That works out at £42-4-8 per acre. It will cost him at least another £6,000 in order to develop the whole of that estate, which will work out at £57-15 per acre. That land sells at £75 to £100 per acre, if you are lucky enough to find a buyer. The man who buys that at £75 an acre finds himself in this position: He pays £75 for his property. He is then saddled with a rental to Government of £9-12-0 per acre for 99 years, if he bought at the beginning of a lease, but at any rate for the unexpired portion of 99 years. On the property the owner gets £75, and Government gets £955-8-0. On this particular property there are 125 plots.

Permission has been given to subdivide these into 126 subdivisions. Supposing the owner was lucky enough to sell all those subdivisions, after a long period of being without his money, meeting his overheads and expenses that are incurred in developing an estate, he might make £7,750 profit, if he be lucky, and if that property has not been taken into the municipal area; if it is taken in, he has to pay a lot more. At the end of 99 years, Government has made a profit out of that land of £44,896, and gets the whole of the land, the buildings and everything else back—unless the man can come to an arrangement with Government or demolish what may be a flourishing town.

I only quote these figures, Your Excellency, to show that, although this may be an innocuous Bill at first sight, it deals with principles which we feel strongly about, and I would add my belief to that of the Noble Lord the hon. Member for Rift Valley that as soon as we know where we stand we must try and get down to some system of freeholding the Highlands.

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

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES: Your Excellency, the Noble Lord the hon. Member for Rift Valley accused me of trying to legalize previous illegal acts. We join issue on the word "illegal". It was not specifically provided for in the Ordinance but the intention of the Ordinance warrants the practice. It has not been strictly legal in the past, but I wish to make specific provision now, so that there should be no doubt about it in the future.

The hon. Member for Trans-Nzoia harks back to land transfer, with which I tried to ride him off. A question of subdivision comes up; a plan arrives with a line across it. There is no name on that plan, nor is any consideration given to the ultimate transferee. The plan arrives, but no names are on that subdivisional plan; and there is no question of a transferor or potential transferee. The whole of the work is based on the fact that Government is dealing with a question of a transfer. As long as no names occur in dealing with that subdivision, the question of a transferee or a transferor does not arise. He suggests, let us wait till the Carter Report is digested. That process of digestion will take longer than he thinks.

I must take this House into my confidence—I am not the Commissioner of Lands; I am the Acting Commissioner. For over thirty years this charge has been unchallenged, and

during the absence of the Commissioner I have thrown doubt on the legality—that is, on the specific provision for the charge. I must have this point cleared up while I am still Acting Commissioner of Lands. If we wait until that Carter Report has been read—I think 7½ tons went home, and I do not know how many tons will come back—it will take a long time to adjust our land laws to implement the recommendations of the Carter Report, and I require this amendment to go through as soon as possible.

The hon. Member for Nairobi North also dealt with transfers, and referred to Sh. 10 as our uttermost farthing. I trust that is not correct. In the time given me, I tried to work out what rental I should have to collect on the 126 plots into which his friend the absentee landlord proposes to divide his land. Sh. 10 is the lowest fee that it is reasonable for Government to collect. We cannot deal with 33 cents. The cost of stationery, postal services, officials' time, etc., does not warrant our collecting a rent of that amount. I still stand on my declaration that Sh. 10 is a reasonable minimum fee to collect. He refers to Sh. 72, and that is one of my strongest points. We propose in future to charge a proportionate rental until it falls below Sh. 10, and we propose charging Sh. 10 as the lowest rental we shall ever collect; but if the rental came to Sh. 11 we should charge that—we should not charge Sh. 72. I trust he will be satisfied with that assurance.

This Bill seems to have been put in the waste-paper basket once before, and there seems some desire to do so again. But Bills have a habit of cropping up, and the only way to deal with a Bill is to settle it, and I call upon the House to settle this Bill during the present session.

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

The question was put and carried.

*The Council adjourned till 10 a.m. on Friday,
the 11th May, 1934.*

FRIDAY, 11th MAY, 1934

The Council assembled at 10 a.m. at the Memorial Hall, Nairobi, on Friday, the 11th 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.

COMMUNICATION FROM THE CHAIR.

HIS EXCELLENCY: I want to make one short communication from the chair in general terms. After consultation with the European Elected Members, the Indian Elected Members, and the Arab Elected Member, I have decided to make use of Standing Order No. 51 and appoint a Standing Finance Committee of this Council. I can say no more at present, because the personnel and functions of this Committee have still to be arranged, but it will be announced and a motion moved in the next Council for your approval. This Committee may have some effect on the method of dealing with supply. All I can say at the moment is that, on this aspect of the matter I will ask the hon. and learned Attorney General, who is chairman of the Select Committee dealing with the revision of Standing Rules and Orders, to keep that in mind, and to see what alterations of the Standing Rules and Orders may be necessary on the appointment of a committee of this nature. I will say no more at present, and I do not want anybody to infer anything. I will leave it at that until we can see what the actual functions of the Committee will be.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, if I am not out of order, I rise on behalf of all the Elected Members of this Council to thank Your Excellency for this measure of taking the unofficial community still more into co-operation with the Government. I feel sure that Government will not regret the decision it has taken.

MINUTES.

The minutes of the meeting of the 10th May, 1934, were confirmed.

ORAL ANSWERS TO QUESTIONS.

LAND COMMISSION REPORT.

No. 44.—LT.-COL. THE HON. LORD FRANCIS SCOTT asked:—
Can Government state when the report of the Land Commission, under the chairmanship of Sir Morris Carter, will be published?

Will Government give an undertaking that no action will be taken on any of the recommendations contained therein until the elected representatives of the people of the country have had ample time to study and discuss the report?

THE HON. THE COLONIAL SECRETARY (MR. H. M.-M. MOORE): The report of the Land Commission will be published on May 14th, when the Secretary of State will make a statement upon it to the House of Commons. As the report is addressed to the Secretary of State, it will be appreciated that in advance of such statement it is not competent for the Government to give an undertaking in the general terms suggested by the Noble Lord.

BOVINES IN TOWNSHIPS.

No. 46.—**THE HON. CONWAY HARVEY** asked:—

What progress has been made by the Committee which Government promised to appoint on the 7th of April, 1930, to inquire into the matter of bovines in townships?

THE HON. THE COLONIAL SECRETARY: The Committee, for a variety of reasons, has not met since July, 1930. If the Government is satisfied that there is a real demand for its reassembly the question of reappointing, or reconstituting the Committee will be considered.

THE HON. CONWAY HARVEY: Your Excellency, arising out of that, may I ask what would satisfy Government? The report is required in accordance with the wishes already expressed in this House.

THE HON. THE COLONIAL SECRETARY: I think, Sir, it would help if Government could have a more general expression of opinion that this Committee is still required. It really arose on an *ad hoc* emergency, and I agree with the hon. Member that there is probably a good deal to be said for reconstituting it. But it has definitely died a natural death, and we wanted to be sure before we revived it that there was reason for reopening it.

INDIAN REPRESENTATION ON THE NAIROBI DISTRICT COUNCIL.

No. 38.—**THE HON. ISHER DASS** asked:—

Has the Government received any representation from the Indian Association, Nairobi, on behalf of the Indians in the Thika, Ruiri, and Kikuyu Districts, for the nomination of an Indian member on the Nairobi District Council?

If the answer be in the affirmative, will the Government please state what action is being taken?

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS, SETTLEMENT AND MINES (MR. E. B. HOSKING): The answer is in the affirmative. It is proposed to nominate one Indian member of the Nairobi District Council in due course.

MOTIONS.

REPORT OF UNEMPLOYMENT COMMITTEE.

THE HON. ISHER DASS: Your Excellency, I beg to move the motion standing in my name:

"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."

While moving this motion, Your Excellency, I wish to say a few things for which I hope the House will excuse me. It is very unfortunately that the politics of this country are run purely on a racial basis and not on an economic basis. Whenever politics are run on a racial basis it is always a demoralizing form, because if run on an economic basis I am sure the class of people to whom these unemployed belong would have taken this question more seriously in 1930 when it started. I find to-day, Your Excellency, that this question, on account of, I do not say lack of sympathy or lack of sense of humanity, but I do say it has not received the same consideration as it should have received.

Your Excellency, if in the year 1930 some of us—I do not mean myself—but if some of the people of this country had made a jolly good noise and brought home the sufferings of the unemployed of this country, and had followed the principle that a stitch in time saves nine, to-day we would be in a position to know exactly what is the suffering under which these unemployed Indians and Europeans are suffering.

Your Excellency, some of the hon. Members of this House are probably bored for the simple reason that I take too much time of the House. Particularly to-day. Your Excellency, I have no desire to be either short or sweet. (Laughter.) When I say that I mean it, for the simple reason that, being short, I would be failing in my duty. I wish the House to remember for a moment, and put themselves in the position of those who suffer through unemployment, through no fault of their own, day in and day out. Were I simply to stand up in the House and say "let them suffer," everyone knows that I do

not want to be sweet—I mean I do not want to be untrue to myself and my class to which I have the honour to belong. If I was sweet I would simply be giving expression to a form of flattery only. I am not going to flatter anyone, but I shall speak the truth, which is not sweet but bitter.

If these unemployed in this country, Your Excellency, who in my opinion are to the extent of about 250 Europeans and 1,000 Indians, if these 1,250 people plus Africans and Arabs, can suffer for three years, it is high time to express their sufferings, and I shall be justified in doing so.

Your Excellency, I will come to the point, the history of the unemployment in this country. Very unfortunately, owing to the world depression in 1930, we also felt the depression in this country, and there were other unfortunate circumstances, shortage of rain and drought, and the fall in prices all over the world of produce and other things. Your Excellency, that is admitted. Those circumstances were absolutely out of control of all. Your Excellency, one thing cannot be forgotten, and that is that if these things had been taken in a sportsmanlike way—I mean all this depression and all these difficulties and the unforeseen circumstances—and if we had spent the same amount of time that we have spent for ourselves in the interests of these unemployed, probably things would have been different. But what did we actually do? Some landlords, as we understand them, even plottolders if that can be substituted, even big people in this country, even, I will go to the extent of saying capitalists without capital, what did they do? Feeling this depression, they put their servants and employees on the streets by dismissing them; they gave them a month's, a week's, notice, naturally increasing the unemployment. In addition, what happened in most cases? It went on in Government departments also. I do not suggest that Government was bound to do it, but I do say that there was ruthless retrenchment in all Government departments . . .

CAPT. THE HON. H. E. SCHWARTZ : On a point of order, Your Excellency, are not the terms of the motion that the report does not reflect the true position and that the method of alleviation is not the right one?

HIS EXCELLENCY : The hon. member is keeping within the terms of the motion.

THE HON. ISHER DASS : In the year 1931, Your Excellency, your Government was very sympathetic and they appointed a committee in the month of January, 1931, and that committee as per page 3 of their report, adopted two methods

to cope with the situation. The first method was repatriation. Now, Your Excellency, I wish to ask, for people repatriated and sent home what was the chance for them there? In the case of Europeans we had about 2,000,000 unemployed unfortunate people living in England and in the case of Indians I am sure I can say safely there were about 40,000,000 people unemployed in India.

HIS EXCELLENCY : I wish the hon. Member would keep to unemployment in this country. We have nothing to do with unemployment in India at the moment.

THE HON. ISHER DASS : There was no use in getting them repatriated to their own land because there were no jobs there for them.

The second method adopted to cope with the situation was the farm scheme. Some Europeans were put on farms. When I come to think of the emoluments and advances made to them in dire circumstances I think even necessity has some limits. What was actually given to them? Board and lodgings, plus Sh. 30 in the case of single men and Sh. 40 in the case of married people. I ask this House to be very serious for a moment and think, if Sh. 7/50 a week is enough for a man's existence, and in the case of married people Sh. 10, how many of us if unemployed would like to live on that. I quite appreciate, Your Excellency, that necessity knows no law—one has to exist—but I do say that these unemployed people deserved more than has been spent on them.

The conditions of these unemployed became so acute in 1933 that most of the people in the country thought that something had to be done by this time. I am mentioning this because it has not been fully realized by the Unemployment Committee—that is why I am referring to it—that in 1933, when the unemployment position in this country was absolutely hopeless—I speak here as an Indian, Your Excellency—the Indian community in this country decided to establish an Indian Unemployment Committee. And here I wish to mention one point and that is that when those unemployed Indians approached the committee and the committee pressed Government to have the position taken into consideration in this town . . .

HIS EXCELLENCY : I would refer the hon. Member to the terms of his motion. The motion is that 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.

THE HON. ISHER DASS : Your Excellency, when I say the position I mean the numbers of the unemployed, and the numbers the Unemployment Committee has given in its Report do not reflect the true position. Now, Your Excellency, exactly as I was mentioning, those unemployed came here to show the distress they were in and to show the numbers of unemployed and the officials of your Government should have gone out . . .

HIS EXCELLENCY : You are getting beyond the terms of the motion. I must ask the hon. Member to stick more closely to the motion. You are always inclined to drift away from it and I must ask you to carry out the instructions from the chair in this matter.

THE HON. ISHER DASS : This Report does not give the true position. The Committee appointed by Your Excellency's Government in December to inquire into the question actually has presented us with the figures of 104 Europeans and 240 Indians. The method adopted to ascertain the true position of the unemployed was simply by means of publication of notices in different newspapers. I sincerely appreciate the kindness of the chairman of the Committee but I can say safely that this was not the best method of ascertaining the exact number of the unemployed. If your Committee had simply inserted an advertisement in the newspapers they would have received applications.

Now, Your Excellency, as I said, the question as regards distress among the unemployed—the true position has not been given, and I make the statement here in this House that there are more than 300 Europeans unemployed in the Colony and 1,000 Indians alone, leaving aside the natives. As regards distress among these people, I can tell you that if this Committee had realized the suffering and distress among the unemployed they would not have suggested the remedy they have. In paragraph 15 on page 6, it has been suggested that an appeal be made to people. It is suggested that the farm scheme should be continued. These methods, Your Excellency, I certainly should not have been suggested at all and something else should have been suggested. In my opinion, the methods suggested to cope with the unemployment situation are both inadequate and unsatisfactory. If I am not going to be cut of point, then I wish to point out that I do not want to be accused of

criticizing the Committee; for whom I have the greatest respect, instead of criticizing I should like to give concrete suggestions as to the remedies to be adopted. Your Excellency, I can safely say that to remove the immediate distress there should have been some immediate relief granted to these people because they cannot be expected to live on hope only.

HIS EXCELLENCY : The motion does not say that you should suggest remedies. You merely say that the remedies suggested are inadequate and unsatisfactory.

THE HON. ISHER DASS : I thought I might be accused of not having given any constructive ideas.

HIS EXCELLENCY : There is no question of bringing in alternative methods of dealing with the matter. Your motion merely says that the remedies suggested by the Unemployment Committee are inadequate and unsatisfactory. Will you please stick to that point.

THE HON. ISHER DASS : It is very easy to criticize other people who work on these matters. As I have said already, the Report given to us by the Unemployment Committee does not reflect the true position. Otherwise the methods suggested by this Committee would be different. That is why they are inadequate and unsatisfactory.

THE HON. SHAMSUD-DIN : Your Excellency, I beg to second the motion.

HIS EXCELLENCY : The question is that the motion which has just been moved by the hon. Isher Dass be approved.

THE HON. SHAMSUD-DIN : After seconding the motion, I do not think I can usefully add very much to the learned discourse of my hon. friend except to say that the seriousness of the problem is not appreciated in this Colony as it ought to be. I will only mention one or two facts. In the Report published by the Medical Officer of Health last year he mentions that 50 per cent of the Indian children are stillborn and that 50 per cent of those remaining die within one year. The Medical Officer, when asked to investigate the reasons for this very abnormal infantile mortality, said that it was due to the impoverished conditions in which Indians were living and due to the children being fed from the breasts of ill-fed mothers. The reason is obvious; where people cannot find employment they cannot feed their wives, and the result on children born in such circumstances is not very surprising.

As far as Indians are concerned I find there is a definite and deliberate attempt on the part of Government to squeeze them out by different methods. For instance, the possibility of tenure of land in the country is denied them. The conditions of existing employment are so tightened from day to day that it is adding to the ranks of the unemployed every month instead of finding employment.

As far as the Committee is concerned the reasons why it has not been able to estimate the exact number of the unemployed is because people see the futility of going to the officers and registering their names. We are spending, Your Excellency, thousands of pounds on education every year and the boys who are coming out of school after passing their examinations add yearly to the list of unemployed. Recently I have heard the Postmaster General—who happens to be the chairman of that Committee—say he could not offer more than £2 per month to the learners in his Department who are in fact called upon to perform the duties of full paid clerks.

HIS EXCELLENCY: Is this dealing with unemployment, this question of employment in the Post Office? I do not want to restrict you unduly.

THE HON. SILAMSD-DEEN: I was trying to point out that even in the case of those who are employed there is absolutely no avenue left whereby they can find a living. If we close our eyes to the problem and sit down in this House and say there is no unemployment, that does not alter the facts. As far as the Committee is concerned, it has done practically—**I should say absolutely nothing to remove or alleviate the position as it exists in all classes.**

THE HON. DR. A. C. I. DE SOUSA: I do not wish to take up any more of your time, Sir, on this subject. I think the great utility of this motion is that it has placed very vividly before Your Excellency the conditions prevailing in the Colony, especially in a place like Nairobi. The Report of the Unemployment Committee did suggest to me that there is no distress in the Colony, but the distress is so great, Sir, that only this week we have had people visiting our offices to get exemption from the Sh. 2 fees for the education of their children in the elementary schools. The people cannot afford to pay even Sh. 2 for their children. If that is so, there is presumably something seriously wrong, and I will only say that the utility of this motion lies in the direction of giving Government an opportunity of still further trying to find out the exact position of unemployment in the Colony.

THE HON. N. B. MASOAT: Your Excellency, I am in a different position to my colleagues who have already spoken because I happened to be a member of this Council when the Unemployment Committee was appointed to investigate the problem. Since I have had my share in the appointment of the Committee it is only fair that I should support the Committee in the work it has done. The motion as framed certainly cannot get my support, because, after all, the Committee could not be expected to go from house to house to find the sufferings of the unemployed. They more or less based their recommendations on reports received from the Kenya Unemployment Committee. The hon. and learned Member for Nairobi South during the last Council moved a motion, which he afterwards withdrew, for additional members on this Committee. They were, however, appointed—the then hon. Hakim Singh and Mr. Cocker, Secretary of the Kenya Unemployment Committee, and I think by the Indian representation in the new members Government fully appreciated that the problem touched Indians more than Europeans.

This motion, Sir, comes from the hon. Member who is an active member of that Kenya Unemployment Committee, and the hon. Member who is his seconded happens to be President of that Committee. Their Secretary was a member of the Unemployment Committee, so that I do not see any reason in coming to this House to ventilate their grievances rather than instructing their Secretary to place them before the hon. the Postmaster General, Chairman of our Committee.

If we go through their facts and figures, and say that the labour market adjusts itself according to conditions, I find in the latest immigration reports issued by the Statistical Officer that throughout the last four years of 1930, 1931, 1932 and 1933, the inward excess of Indians was in March, 1930, minus 226; in March, 1931, minus 45; in March, 1932, minus 445; in March, 1933, minus 350; and in March, 1934, the inward excess of Indians was plus 318, so that if the labour market adjusts itself, as it should according to the principles of economics, it is obvious that in every way and every day this Colony is getting better and better as far as unemployment is concerned.

My hon. friend on my right has said that the method of giving notice to the unemployed was inadequate. I had personal knowledge of the fact that there were letters published in Gujarati and other Indian dialects, and were distributed throughout Kenya, as a matter of fact, through the agency of the hon. Members supporting the motion. Then was the proper time to suggest improvements, and to suggest that there should be publications in the newspapers. So that if we go to the wording of this motion, in suggesting that the Committee

have done nothing, it will be found that they have done appreciable work, while on it the Indians had one Elected Member and their secretary, so that the representation could not have been better. If the fault has to be laid on anybody's shoulders, it is really on those of people, who had the opportunity and did not avail themselves of it.

The remedies suggested by the Committee, in my opinion, are adequate, especially when I look at the announcement, Your Excellency, from the chair this morning, so that I have good hopes that that Committee will recommend commencing the Group Hospital to which you have previously referred; the Law Courts are in course of erection, and the building of the Central Offices has been sanctioned, so that if all this work is started the 2 per cent of unemployed Indians will be affected, and we shall perhaps have to import more Indian artisans from India to make up the deficiency.

The report that the Chairman of this Unemployment Committee has signed is not his first report. I am sure that he is an expert in drawing up reports, and that he is used to looking carefully into things which affect all communities in the Colony. We had two of the best heads of departments, the Postmaster General and the Director of Education, on this Committee, and with the Indian representatives on the Committee also they had all that was possible. We cannot expect Government to use the dole system, which is pernicious, and should not be introduced into this Colony. I think, in my opinion, that the hon. the Postmaster General as Chairman has no case to answer at all, and that the Committee should be exonerated from any suggestion that they have neglected their duties.

THE HON. T. FITZGERALD: Your Excellency, the hon. mover of this motion, in his opening remarks, stated that there was little in common between sweetness and truth, and went on to say there was necessarily an affinity between bitterness and truth. His speech provided a little of the former, but I am afraid that I cannot agree altogether that he was very consistent in regard to the latter. For instance, he mentioned that there were in this Colony—I think he used the word—thousands of unemployed, but he did not offer any proof in support of that statement. I think it is perfectly clear that nothing like that number of unemployed exists in the Colony. He further went on to say that Government expected people—Europeans—to live on 7/6 a week. That, of course, is anything but the true representation of fact. What a single man on a farm really got was 7/6 a week for pocket money. The hon. Member went on also to refer to the repatriation of people in a manner which suggested it was the deliberate

policy of Government to repatriate them. All that the Committee did was to offer facilities to such unemployed who wished to return to their own countries where they had some hope of obtaining employment. A good number of Europeans availed themselves of the opportunity, and a good number of Indians. The hon. mover is not quite fair to himself when he hides the fact that he was an active agent in assisting the Committee to send a number of these Indians out of the country. I do not say that in any spirit of disparagement, but I do say that he helped the Committee to a very great extent in determining who were suitable people to whom such assistance should be given. It is remarkable that he should come here to-day and state that the Committee were guilty of what might be called carelessness of the grossest kind in sending to India with its forty millions of unemployed a certain number who wished to return to their own country.

My hon. and learned friend, Mr. Mangat, has answered and dealt with a great many of the matters that I had intended to deal with. He dealt with the action taken by the Committee in its efforts to determine what the position of unemployment in the Colony actually was. The Committee gave wide publicity to its appointment: it issued posters, there were notices in the Press, and the Kenya Unemployment Committee took a very active part in making the position known and the appointment of the Committee known among the Indians, especially in Nairobi. The secretary of the Indian Unemployment Committee was a member of the Committee which investigated the position. They, the Kenya Unemployment Committee, issued no fewer than 600 posters urging all unemployed Indians to come and register with the Committee of which I was chairman. Those posters were signed by Mr. Cocker, by the hon. mover, and by the hon. seconder, Mr. Shamsud-Deen. If these gentlemen were not satisfied with the action then being taken, and felt that some other action should be taken, as the hon. and learned Member, Mr. Mangat, has said, that was the time to come forward and make suggestions.

It is suggested that the Committee did not appreciate the distress which exists. Nobody who has been associated as I have been with this business for four years can fail to realize the distress which does exist, and it is quite a gratuitous insult to the Committee to suggest that that distress is not appreciated.

It is suggested that because the unemployment position was so bad in 1930 a special committee was appointed. The real fact of the matter is that the position was very much worse in 1931 and 1932. In 1933 there was definitely a very great improvement in the unemployment position.

Special reference was made by Mr. Shamsud-Deen that we in the Post Office engage Indian learners at a low rate of salary. We do that in the same way as we do with Europeans. Youngsters come into the Department in the process of learning their jobs, and they are fortunate in obtaining any salary at all. It is quite untrue to say that there is no avenue in the Post Office for Indian learners. There are Indians in the Post Office to-day who are drawing salaries of £30 a month.

All I can say, Sir, in conclusion, is that I am perfectly satisfied that the Unemployment Committee Report represents the true position in this Colony in regard to unemployment. I think the picture presented by that Report is one that the Colony has cause to congratulate itself upon. It does seem such a pity that gentlemen associated with the public life of this Colony should seek to go out of their way to make the picture less true than it really is.

THE HON. THE DIRECTOR OF EDUCATION (MR. H. S. SCOTT): Your Excellency, I did not wish to intervene in this discussion, but as I have been referred to as a member of the Committee, I think perhaps I ought to say a word in support of what the hon. the Postmaster General has said. I think it is really almost tragic that here, where we have had this difference—I might almost say "feud"—between the Indian and European communities from time to time, here was a piece of work which was undertaken by members of the two communities jointly, and one would have hoped that the fact that we were able to sit round a table in a committee, at which there was no vestige of any racial feeling or any difference of opinion in regard to the treatment of the question from the European or Indian point of view—and where we thought that we were getting the help of the hon. mover and the hon. seconder, and where we felt certain that the Kenya Unemployment Committee were assisting us in every way they could—because things came out differently from what they thought, they immediately come here and raise this racial issue.

THE HON. SHAMSUD-DEEN: On a point of order, has any racial question been raised?

HIS EXCELLENCY: I think in the course of the debate I did hear something to that effect.

THE HON. THE DIRECTOR OF EDUCATION: I only want to quote one word in regard to what Mr. Shamsud-Deen has said, and that occurred in the opening remarks of the hon. mover's speech. He said that politics in this country were run on racial lines. If that is not sufficient answer, I will be very

glad to withdraw. But I do not want to raise this question; I only want to make an appeal to the mover to realize that, however bad this report might be, it is the report of Indians and Europeans together, sitting round a table, considering facts obtained for them by Indian agents. Mr. Mangat, as my hon. friend the Postmaster General has said, has demolished the case.

There are only two points I want to make. One is with regard to this question of repatriation. No one wants to drive people out of this country, but I think there is an important fact to remember in regard to this particular problem. Of the 240 registered unemployed Indians, 164 of them have their relations and their families still in India. Of the balance, 93 have not answered the question where their families and their children are. It is not unreasonable, I think, to assume that of these unemployed Indians at least half are in a sense provisional immigrants, and not permanent residents in the country; and that is a point we ought to bear in mind in dealing with this question of repatriation.

The other thing I want to say is this: The Indian community—if they will allow me to make a remark about them as a whole—has shown itself extraordinarily generous when questions of public funds are raised. At this very moment, the Indian community are engaged in raising money for their suffering compatriots at Bihar. I would urge them to go on applying that policy of generous assistance to their compatriots in India and also to their suffering compatriots here. The only thing that really hurts is this suggestion that we do not realize their sufferings. I think at some of our meetings the details supplied by Indian Associations in regard to particular cases have been sufficient evidence to us, if we had wanted evidence, of the real suffering which unemployment has entailed, but to go and pretend—because it is indeed a pretence—that the numbers of unemployed are four times what they are, is not helping the unemployed; it is simply doing the very opposite.

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

THE HON. ISHER DASS: Your Excellency, I made it absolutely clear when I spoke on the motion the points which have been raised against me by those hon. Members of the House who have spoken against the motion. The hon. Mr. Mangat has just tried to demolish the whole case against the Unemployment Committee. In regard to that, the hon. Member, when approached in the beginning to have anything to do with it—

THE HON. N. S. MANGAT: On a point of order, Your Excellency, there should be no personalities in the debate.

THE HON. ISHER DASS: There is no question of personalities, Your Excellency. I was simply going to mention that my hon. friend has never had any sympathy with the unemployment question.

HIS EXCELLENCY: One must not make any personal reflections.

THE HON. ISHER DASS: With regard to so many people coming to Kenya in 1934, Your Excellency, I can say that he did not try to give us the correct position; that most of those figures include those who have gone on leave from Government offices and come back. They are people who have gone temporarily to India and come back. Otherwise, if he were to give the exact figures, he would see that there is a huge decrease over 1933, because these people did not find jobs during these years and have gone back to their home.

Well, Your Excellency, the hon. the Postmaster General has asked a question, and that is a question of proof. I made it very clear that there is no one in this House who appreciates more the kindness of the Postmaster General in dealing with unemployment and repatriation. In fact I was talking to someone this morning and said, "There is a gentleman who seems to me absolutely full of kind-heartedness . . ." (Laughter.)

He only raised one point, and that was that I had not come forward to give proof of the figures I have quoted. Your Excellency, the proof of those figures lies in one fact alone, and that is that Your Excellency can always find out the figures from the Central Revenue Office—how many Europeans and Indians have applied for exemption from their tax.

I am sorry that the hon. the Postmaster General did not hear me, but I always appreciated that the posters issued asking people to come forward and register themselves have been published in all four languages. But there is one thing which the Postmaster General has not told us, and that is that these posters contained one clause that there was no fear of being deported from the Colony. The very fact of that being included shows that there was some fear in the minds of these unemployed people that they were likely to be repatriated to their homes. And that is why most of them have not come forward to register themselves. It is said

the remedy lies at their door, but, Your Excellency, it is the duty of the State to look after the comfort of every citizen because every citizen forms part of it. If some of these people have not come forward owing to some fear of being deported from the country to register themselves, they have not ceased to have the right of existence.

The hon. the Director of Education raised the point that I mentioned that politics are run on a racial basis. I did not mean that in the sense the Director of Education has taken it. I meant that if it was run on an economic basis, the people concerned would have raised the question more in proper form.

There is something more which I said, that the figures in the Report did not reflect the true position. I meant by that the Committee has not told us in its Report that there are hundreds and hundreds of people earning Sh. 100 and Sh. 90 per month. Unemployment does not mean people who are staying at home doing nothing; it also includes part-time workers.

HIS EXCELLENCY: The hon. Member in his reply must solely confine his observations to observations made in the debate and not raise fresh issues.

THE HON. ISHER DASS: I have now dealt with the only points raised by different hon. Members who have opposed this motion, and in conclusion I say that if the remedies suggested are adequate and satisfactory, as suggested by one of the speakers, all I can say is that they are ignorant and know nothing of the true position or what is actually happening.

HIS EXCELLENCY: The question is—

"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."

The question was put and lost.

REPORT OF SELECT COMMITTEE ON THE CRIMINAL PROCEDURE CODE (AMENDMENT NO. 2) BILL.

The Hon. the Attorney General having moved that the Report of the Select Committee on the Criminal Procedure Code (Amendment No. 2) Bill be adopted; the Hon. T. D. H. Bruce having seconded, and progress having been reported—

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

" That paragraph 6 of the Report be deleted and the following substituted therefor :—

" 6. That clause 33 of the Bill be deleted and the following substituted therefor :—

" 33. Section 209 of the Principal Ordinances is hereby repealed and the following substituted therefor :—

" 209. Every person committed for trial to the Supreme Court under the provisions of this Part shall be tried by a jury composed of Europeans.

" On trial for murder, treason or rape, the number of the jury shall be twelve; on trials for other offences the number of the jury shall be five."

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

HIS EXCELLENCY : The question is that the Report of the Select Committee on the Criminal Procedure Code (Amendment No. 2) Bill, as amended, be adopted.

The question was put and carried.

BILL.

THIRD READING.

THE CRIMINAL PROCEDURE CODE (AMENDMENT NO. 2) BILL.

THE HON. THE ATTORNEY GENERAL (MR. W. HARRAGIN) : Your Excellency, I beg to move that the Criminal Procedure Code (Amendment No. 2) Bill be read a third time and passed.

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

The question was put and carried.

The Bill was read a third time and passed.

SUSPENSION OF STANDING ORDERS.

THE HON. THE COLONIAL SECRETARY : Your Excellency, with the leave of the House, I beg to move that Standing Rules and Orders be suspended in order to enable the 1933 Supplementary Appropriation Bill, 1934, to be introduced and taken through all its stages to-day without due notice.

The Bill in question is purely a formal measure. The expenditure involved has already been voted by the House, and supplementary estimates have been approved, but it is necessary to secure that provision by a Supplementary Appropriation Bill. There is no very great urgency in the matter, but it would be a very great convenience if the measure could go through this morning. Therefore, if hon. Members are agreeable, I will move the suspension of Standing Rules and Orders.

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

The question was put and carried.

Standing Rules and Orders having been suspended :

BILL.

FIRST READING.

1933 SUPPLEMENTARY APPROPRIATION BILL, 1934.

On motion of the hon. the Colonial Secretary, the 1933 Supplementary Appropriation Bill, 1934, was read a first time.

SECOND READING.

1933 SUPPLEMENTARY APPROPRIATION BILL, 1934.

THE HON. THE COLONIAL SECRETARY : I beg to move that the 1933 Supplementary Appropriation Bill, 1934, be read a second time.

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

The question was put and carried.

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

The 1933 Supplementary Appropriation Bill, 1934.

The European Civil Service Provident Fund Bill.

The Crown Lands (Amendment) Bill.

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

The question was put and carried.

The Council went into Committee.

In Committee.

1933 SUPPLEMENTARY APPROPRIATION BILL, 1934.

The Bill was considered clause by clause.

THE EUROPEAN CIVIL SERVICE PROVIDENT FUND BILL.

The Bill was considered clause by clause.

Clause 5.—Who are not contributors.

THE HON. THE COLONIAL SECRETARY: Your Excellency, in accordance with the undertaking I gave yesterday, the Government has considered clause 5 (d) of the Bill, and I propose the following amendment: That after the word "appointment" the words "or at the commencement of this Ordinance" be deleted. The sub-clause will then read: "whose age on appointment is fifty years or over". That deletion, Sir, will meet the point raised by the hon. Member for Nairobi South.

The question was put and carried.

Clause 7.—Rights of contributors against Fund.

THE HON. THE COLONIAL SECRETARY: Your Excellency, in accordance with the the tabular amendments that have been circulated, I move that clause 7 be amended. As on the Order of the Day the nature of the amendments has been fully set out, it will save time if I do not read them out, but more that the amendments of which I have given notice be adopted.

The question was put and carried.

** Clause 7:—*

"That the comma after the word 'permanent' in the fourth last line on page 4 of the Bill be deleted, and a semicolon substituted therefor, and the following inserted there:—

(b) in the case of a male contributor on attaining the age of 55 years;

(c) in the case of a female contributor on attaining the age of 50 years;

and that a full stop be inserted after the word 'thereon' in the last line of page 4, and the remainder of the sub-clause be deleted.

"That clause 7 (c) be deleted and the following substituted therefor:—

"7. (3) A female contributor who marries while in the Service shall on such marriage be paid from the Fund a sum equal to the aggregate of the contributions which she has made to the Fund together with interest thereon, and shall in addition be entitled to any contributions made to the Fund from general revenue under section 6 of this Ordinance on her behalf, together with interest thereon, provided that a female contributor who marries while in the Service before she has completed four years' continuous service as a contributor shall on such marriage be paid from the Fund a sum equal to the aggregate of the contributions which she has made to the Fund together with interest thereon, and shall in addition be entitled to any contributions which have been made to the Fund from general revenue under section 6 (a) of this Ordinance on her behalf together with interest thereon. A female contributor shall cease to be a contributor to the Fund with effect from the end of the month immediately preceding her marriage."

THE CROWN LANDS (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE HON. THE COLONIAL SECRETARY: I beg to move that the 1933 Supplementary Appropriation Bill, 1934; and the Crown Lands (Amendment) Bill be reported to Council without amendment, and that the European Civil Service Provident Fund Bill be reported to Council with amendment.

The question was put and carried.

The Council resumed its sitting.

HIS EXCELLENCY: I have to inform Council that the 1933 Supplementary Appropriation Bill, 1934, and the Crown Lands (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 European Civil Service Provident Fund Bill has been considered clause by clause in Committee of the whole Council and has been reported to Council with amendment.

THIRD READINGS.

THE HON. THE COLONIAL SECRETARY: I beg to move that the 1933 Supplementary Appropriation Bill, 1934; the European Civil Service Provident Fund Bill, and the Crown Lands (Amendment) Bill be each read a third time and passed.

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

The question was put and carried.

The Bills were each read a third time and passed.

DATE OF ADJOURNMENT.

CAPT. THE HON. H. E. SCHWARTZ: As I understand that closes the business of this session. I have been asked, Your Excellency, to inquire whether in adjourning Council it would be possible for you to adjourn it to such date in June as you may have decided that the Council will meet again, instead of adjourning it *sine die*, thereby allowing hon. Members to know when they may be expected back, and also doing away with the necessity for a further proclamation.

HIS EXCELLENCY: At the moment I am awaiting certain information from home, and I cannot yet tell you the date in June. It may be early in July.

CAPT. THE HON. H. E. SCHWARTZ: If Your Excellency is not aware of the date, then it will have to be *sine die*.

HIS EXCELLENCY: I am afraid it will have to be *sine die*.

VALEDICTORY: MR. E. B. HORNE.

His Excellency: Before I adjourn, I should like to mention that this is the last time Mr. Horne will be with us; the last time he will sit in this Council, and I am sure everybody will join with me in wishing him all happiness and prosperity in the future. He has done splendid work in this country, and, in fact, if I may use an unparliamentary phrase, he has been a "regular character". His work among the Kikuyu is well known to everybody, and he is held in affection by the European officials and also by Members on that side of the House. I would ask you to couple Mrs. Horne's name with that of her husband.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, on behalf of the European Elected Members on this side of the House, I should like to be associated with all you say, and may I add the hope that perhaps before very long we shall see him back adorning this side of the House.

The Council adjourned sine die.

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