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KENYA GOVERNMENT ARCHIVES
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SECTION 7

CONTINUED FROM
REEL No.

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WEDNESDAY 16th, DECEMBER, 1936

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, the 16th December, 1936, THE HON. THE ATTORNEY GENERAL (W. HARRAGIN, Esq., K.C.) presiding.

The President opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 15th December, 1936, were confirmed.

NOTICE OF MOTION

LOAN FUND REALLOCATION.

THE HON. THE DIRECTOR OF PUBLIC WORKS gave notice of the following motion.

Be it resolved that this Council hereby approves the expenditure of a sum of £769 upon the purpose specified in the Schedule herein as a charge against Loan Funds, and further approves provision being made therefor by a reallocation of the amount from—

Communications—

Roads Survey of Colony

£499

Feeder Roads

£270

Schedule.

Communications—

Main Roads and Bridges

£769

BILLS.

SECOND READING.

THE TRADING IN FURNACE-PURCHASED PRECIOUS METALS (AMENDMENT) BILL.

THE HON. E. H. HOSKISS: Mr. President, I beg to move the second reading of the Trading in Furnace-Purchased Precious Metals (Amendment) Bill.

This Bill has been necessitated by certain quite legitimate requirements on the part of the Indian community. There is a genuine demand for the importation of pure gold into the Colony, even though we are a gold-producing Colony at the present time, producing about £1,000 worth of gold a day. There appears to be a need for pure gold for certain members of the Indian community for the purpose of ornaments which may also have a certain ceremonial significance.

In clause 2, since the publication of this Bill for introduction into the Legislative Council, the definition of "unwrought precious metal" has been challenged in influential quarters—the banks, as a matter of fact—on the ground that it does not include gold bullion. It was intended to include gold bullion, and it might be arguable that the definition does include it, but I propose, with the leave of Council, to introduce in the committee stage an amended definition of unwrought precious metal which will make it quite clear that the definition does include bullion gold.

The alteration I propose will be in the last line but one of (b), after the words "unrefined precious metal" to insert the words "and precious metal which has been smelted into the form of bullion". That will remove all possible shadow of doubt about whether or not bullion is included in the definition.

It is difficult to find a definition of the word "bullion". The definitions vary, but it is generally defined as "unwrought precious metal cast into bars," though it might be considered to be manufactured in so far as it is smelted, though that is not what the general definition of the term, and it might be considered as being made into an article of commerce, though that, perhaps, would be stretching it rather too far! But the insertion of these words will remove any doubt.

In clause 3 it will be noted that we have extended the original sub-section (c) of section 3 of the Principal Ordinance which allowed the Commissioner to grant a permit only up to 20 pennyweights. An unspecified amount is now sought, the reason being that there are certain perfectly legitimate transactions in unwrought precious metal which we in the Mines Department consider should be encouraged. That is, should a man wish to sell his tailings or his amalgam plates, he not being in a position to treat them himself, quite a lot of small workers dealing with refractory ore do not get as much gold out of the ore as is possible, and a certain amount is left for tailings—so that it is quite reasonable and desirable that these workers should be permitted to sell the tailings to any mining concern who can extract the last pennyweight of gold from them. To be able to grant a certificate for 20 pennyweights only, as is the case under the existing definition, is absurd. A proviso has been added to show that we are not concerned with unwrought precious metal passing through tailing refectories to gold.

In (2) of clause 4 we permit a goldsmith to buy gold for the purposes of his business from a licensed dealer or banker. Both banks and dealers will have to keep accurate books, so that we can keep in touch with this gold when it goes to the goldsmith.

In clause 4 we are allowing any person to import into the Colony on consignment on a proper form really pure gold. It is gold of a fineness exceeding 940. This is rather a technical term, but, technically, pure gold (which does not exist) would be 1,000, and gold is refined up to 999's. Locally, it is not refined to a fineness of anything approaching that.

It would be possible, though not easy, to differentiate between gold that originates from a local mine and the pure gold which is obtained from the refineries, nearly always through a bank, almost always the Bank of India.

These sections have been introduced to permit legitimate dealings, and I trust the Bill will have the approval of Council.

THE HON. T. D. WALLACE seconded.

The question was put and carried.

THE MARKETING OF NATIVE PRODUCE (AMENDMENT)

THE HON. THE CHIEF NATIVE COMMISSIONER: Sir, I beg to move that the Marketing of Native Produce (Amendment) Bill be read a second time.

This is a very short Bill, and I hope it will be uncontroversial, but it is very important to redress a certain anomaly which has arisen.

In section 1 of the Principal Ordinance it is laid down that a licence under this Ordinance can only be granted to a person holding a licence under the Licensing Ordinance. That is where things have gone wrong.

We have a very large class of traders who are doing very useful work in the native reserves in buying produce. They have no premises, they do not trade in the ordinary sense of the word; they have no shops, they probably only have a shelter in the market, where they buy produce in bulk and then take that produce on to a larger centre to sell to somebody else; they do not sell to consumers.

Under the Licensing Ordinance, such a class of trader cannot get a licence, because the measure lays down that goods on hand are excluded from the operation of the Ordinance—the goods on hand being domestic produce not for sale to a consumer. These unfortunate people, if they do not break the law, cannot get a licence under the Marketing Ordinance unless they have a licence under the Licensing Ordinance, which they cannot get, so they are left cold.

It is now proposed to substitute the words "any person" for the words "the holder of a trading licence issued under the Licensing Ordinance, 1934." To show how necessary it is

to have this provision, I have been informed that in one district alone, the Central Province, out of 170 people who want to deal in produce only seven have any premises; only these seven are legally going in for this class of trade. That would entirely defeat the objects of the Marketing Ordinance, and for that reason this amending Bill is introduced.

THE HON. T. D. WALLACE seconded.

THE HON. J. B. PANDYA: Sir, if the purpose of the Bill was as the hon. mover has suggested, I should be very glad to support it, because I quite agree with him that it is very necessary that these people who have been trading in native produce in the native reserves should be allowed to continue, but I do not think that the provision in this Bill can be limited to that extent legally.

It might have very serious effects in regard to the administration of the Ordinance in trading centres, for this will allow, as far as I can make out, that anyone, either from Tanganyika or Uganda or any other place, to go to a trading centre, take out a licence for buying native produce, and he can continue to buy in that particular place in competition with other traders who are established there.

The effect of such a provision in Tanganyika, so far as I understand, was very disastrous, not only to the interests of the traders but also to the native produce itself. I believe if administratively the hon. mover is going to limit the administration of this clause to the purpose suggested, it will fulfil a desirable purpose, but I hope he will not let it go beyond that purpose.

THE HON. SHAMSUD-DEEN: Sir, this appears to me to be a swing of the pendulum to the other extreme. On the one hand, you tried to organize and regularize our trade by imposing all sorts of restrictions on the non-native traders by making them keep books and performing all sorts of formalities which are very cumbersome indeed. Now, on the other hand, you bring in this Bill which vitiate the whole principle of the Ordinance by making anybody free to trade in the native reserves in native produce without having a licence.

I can see that this Bill, if passed, will be open to all sorts of abuses by non-native traders who might use the natives in the reserves for the purpose of purchasing produce without any kind of restriction or licence; I take it, without having to keep the books and conform to all the formalities that they are now expected to do.

I think the whole object of the Marketing Ordinance will be defeated if we pass this Bill, because I am quite certain

these people who are exempted from all the operations of the Ordinance will be exploited by some scrupulous or unscrupulous non-native traders.

A. EN. ARCHDEACON THE HON. G. BURNS: Mr. President, the hon. mover has given us a very justifiable reason for bringing such a measure as this into being. It may be that out of 176 people who are to-day buying produce in the native reserves only 26, or something like that, could get traders' licences. That is a possibility, and they are at the present time seeking to help the trade in this way.

At the same time, I do hope sincerely that Government will not allow this measure—and I am confident they will not—to create a monopoly by which the object of the Bill would be nullified. I will support the Bill for the reason I have stated, that those who cannot get a licence now, because of the disabilities which exist, will be able to get one.

DR. THE HON. C. J. WILSON: Mr. President, I only rise to support my colleague in supporting the Bill, and I am perfectly certain that the hon. mover will completely answer the objections which have been raised.

THE HON. THE CHIEF NATIVE COMMISSIONER: Mr. President, the two hon. Indian members who have spoken have completely overlooked the provisions of section 4 (1) (a) of the Principal Ordinance. There it is laid down that a licence may be granted in a specified area by the licensing authority, subject to the approval of the Provincial Commissioner. That, I think, completely answers the hon. member Mr. Pandya when he says somebody may come from Uganda and go into a township and gain unfair advantages over those who have vested interests.

The hon. member Mr. Shamsud-Deen said people would trade without licences. They cannot; they must have a licence under the Ordinance, which may be granted by a licensing authority with the approval of the Provincial Commissioner.

The question was put and carried.

THE KING'S AFRICAN RIFLES (AMENDMENT) BILL.

THE HON. T. D. WALLACE: Mr. President, I beg to move that the King's African Rifles (Amendment) Bill be read a second time.

By clause 2 of this Bill the definition of battalion is amended with a view to making provision for the raising of a Coast Defence Unit.

Clauses 3, 4 and 5 amend sections 73, 75 and 76 of the Principal Ordinance, because it is proposed to include certain posts of the Supply and Transport Corps of the King's African Rifles in the Local Civil Service, and these amendments are necessary in order to ensure that the terms of service of these posts are the same as those in the Local Civil Service. As the Principal Ordinance stands at the moment, the terms of service are different.

THE HON. THE TREASURER seconded.

LT. COL. THE HON. LORD FRANCIS SCOTT: Sir, there is one small point I should like to raise in connection with clause 3 of the amending Bill. The word "first" has been deleted, but I suggest it should be retained so that the section should read "first term of service not exceeding five years". If you say "for a term of service not exceeding five years", that seems to make it rather final. I should have thought the word "first" should remain, and, of course, be subject to re-engagement.

LT. COL. THE HON. J. G. KIMWOOD: Mr. President, I also have a suggestion to make with reference to clause 3. The words "term of service not exceeding 5 years" are, I maintain, going to create a monopoly, inasmuch as these warrant officers and non-commissioned officers will be in the position that when they take leave at the end of, say, 4 years, and return to the Colony after six months, which will be 4 1/2 years, they will have only six months to go to complete their 5 years. At the end of that time they will be in the Colony, and not entitled to passage home.

I suggest that if you alter the last line to read "term of service not exceeding 4 years", or even make it 8, a multiple of 4, you will get over the difficulty. It is a very serious anomaly which should be removed here and now.

THE HON. T. D. WALLACE: Sir, I do not think there is any serious objection to the amendment suggested by the Noble Lord in clause 3, that the word "first" be retained. Regarding the other amendment, I do not think it is necessary.

The question was put and carried.

THE LICENSING BILL.

THE HON. THE TREASURER: Mr. President, I beg to move the second reading of the Licensing Bill.

Hon. members are probably well aware of the history of the Licensing Ordinance.

It was originally introduced as a Traders Licensing Ordinance in 1919, and continued in operation without any material amendment until the middle of 1933, the yield in 1933 being £19,594.

During 1933 the Ordinance was substantially amended, in fact, replaced by a new Ordinance, different both in form and principle, the chief object of the alteration being to increase the revenue of the Colony. From a Traders Licensing Ordinance it became a Licensing Ordinance, professions and businesses being included within the scope of the measure. The yield, however, fell far short of the estimate, and whereas a figure of between £90,000 and £100,000 was mentioned as a possible yield, the actual yield was only £33,000 in the first complete year of its operation, 1934.

At the end of 1934 the Ordinance was again amended, and although administration was considerably simplified the yield continued to be disappointing, being again in the neighbourhood of £33,000, as compared with an estimate of £50,000.

The Bill now before Council is in effect a reversion to the principles of the 1919 Ordinance, and again becomes a Traders Licensing Ordinance, and I suggest for the consideration of the Select Committee, when appointed, that the title should be amended accordingly. The licences imposed on professions and businesses other than traders have been eliminated, thus affording substantial taxation relief to those sections of the community.

As regards the provisions of the Bill, these do not appear to require any very detailed explanation, as they follow almost exactly in effect, if not in drafting, the 1919 Ordinance, which has worked, as I have already said, smoothly for a considerable number of years without any question of amendment. The actual drafting is more in accordance with the later Ordinance.

The only differences in material importance as between the present Bill and the 1919 Ordinance will be found in clauses 6 and 22 of the Bill.

In clause 6, the licence for a commercial traveller (a commercial representative who has no place of business in the Colony) is set down at £20 for a year or part thereof, as compared with £15 in the 1919 Ordinance and £20 for three months in the 1934 Ordinance. It is considered generally that a commercial traveller does not spend a very great deal of time here. He may go to neighbouring territories, and in the aggregate would not spend more than three months in Kenya, and really not three consecutive months, so that it was considered fairer that he should be able to take out a licence for £20 which would cover him for the period of his whole tour through the territories.

Again, a fee of £15 for a manufacturer's representative (that is, a commercial agent resident in the Colony) is imposed under the Bill, which is the same as that imposed under the 1934 Ordinance. In the 1919 Ordinance, however, no such provision was made. It is considered reasonable that this particular section of the trading community should be licensed in common with others.

Hawkers are charged under the Bill Sh. 30 for a licence valid for three months, as against Sh. 10 per month in the 1934 Ordinance. This particular class of trader usually operates in the Colony for consecutive periods of at least three months, and administration will be simplified if quarterly instead of monthly licences are issued, and evasion of payment will be minimized.

In clause 22, powers to refuse the issue of a licence have been extended to applicants who are minors or undischarged bankrupts. This extension, I believe, has the full support of the commercial community, and it appears to me to be a very reasonable provision to safeguard business and public interests.

These are the main differences between the present Bill and the 1919 measure.

At the same time, I am authorized to state that, if the second reading of the Bill is passed by Council, it will be referred to a select committee, where every opportunity for discussion and representation of the views of the commercial community will be given. In particular, the scale of fees appearing in clause 6 will be fully examined. Up to the present, very few representations have been received by Government from various sections of the community concerned, but the suggestion that there should be an intermediate fee of Sh. 75 for traders holding stocks between £150 and £500 in value would appear to be worthy of sympathetic consideration.

The estimated yield from application of the Bill as drafted is £25,000 per annum, and this, having regard to the yield in 1932 and preceding years, would appear to be a reasonable figure. Details of receipts under the old Ordinance, which this follows very closely, from 1922 to 1935, will be found on page 206A of Sir Alan Thur's Report, from which it will be seen that the maximum collection under the 1919 Ordinance was £22,791 in 1929. Here again, discussion as to possible yield and so on over the floor of this Council is not likely to be very fruitful, and I suggest a detailed examination would be more proper in select committee.

THE HON. T. D. WALLACE seconded.

THE HON. J. B. PANDYA: Mr. President, this Bill is the result of the Pim proposals, and, as the hon. mover has said, the amount of revenue to be derived from traders' licences should not be more than the 1929 figure; that is, some £22,000. The budget provides for £25,000, and I am sure an opportunity will be taken in select committee to consider the fees payable under clause 6 which will permit a reduction of that amount.

It would not be correct to say that the fees are lower than those under the 1934 Ordinance in all instances. As the hon. the Treasurer has suggested, the provision of an intermediate rate of Sh. 75 is not provided for under this Bill, but I am glad to have his assurance that it will be sympathetically considered in select committee. It is very necessary there should be such a rate, because otherwise those traders would have to pay £15.

As far as the maximum rates of £15 is concerned, I am sure the representations which are likely to be made by the commercial community in regard to a reduction to £10 will also be sympathetically considered. Even on that basis, so far as I can see, we shall be able to obtain the figure of £22,000.

As the Bill is going to select committee, I will not take up the time of the Council. I support the reductions which is proposed to give the commercial community and wholeheartedly thank the hon. mover for them.

LT.-COL. THE HON. W. K. TUCKER, Sir, there is just one aspect that I feel compelled to touch on during the second reading, although I realize all of us are mainly concerned to-day with the examination of the minute details which are to go to a committee. That aspect can be shortly stated, but silence may give the impression that the traders of this Colony, who are so largely concerned with this Ordinance, are in agreement with the principle involved.

I beg to submit that that is not the case, and I think it just as well it should be shortly stated.

Immediately after the War, when trade was not organized as it is to-day, the traders quickly realized that, instead of having a Licensing Ordinance in the ordinary sense of the word, it was nothing more or less than a taxing machine. They have repeated that phrase right through the years, until it was obviously very much accentuated by the amendments of 1933.

I know no aspect of commerce where there is quite so much unanimity, where all the organizations of the country, and, in particular, all the trading organizations in Nairobi, are of one opinion. They have worked along on very cogent lines

towards converting this existing legislation into something which is more in the nature of a licence, something which could be controlled by a licensing board, and so on.

That I do not want to develop, except to ask the hon. mover in his reply whether he cannot indicate that Government may at some future time, in the not distant future, be ready sympathetically to listen to the united representations from the traders of the country, whereby this Licensing Ordinance can no longer be labelled as a purely taxing machine, which is very largely without precedent, certainly in this country, and is, I believe, unknown in the United Kingdom.

THE HON. F. A. BRIMSTER: Sir, I want to ask for information. Is it taken that this Bill excludes from the tax-paying public the banks, shipping companies, all those people who were included in the other Ordinance?

Then I can understand why the hon. the Treasurer said he had not had many representations. I do not think it would be the case that if you were to relieve anybody of taxation they would write that they wanted it put on again; but I strongly recommend the select committee that they should leave these people in, people like the banks, shipping and insurance companies, wharfage companies, and businesses of that kind, and see if they can relieve the ordinary trader, who is earning a living in a very precarious manner. I disagree entirely with these exclusions.

THE HON. THE TREASURER: Sir, the hon. member Mr. Pandya only raised one point, and that in regard to yield, and I think he said it should not exceed the maximum in 1929 of £22,000. I would point out to him that if this proposed intermediate class takes effect, it will make quite a material difference to the yield, and probably bring it down to the £22,000 limit. If the Sh. 300 fee were reduced to Sh. 200—we can go into that in committee—it would bring the yield down to a figure considerably below, and that is the opinion of the Revenue Officer who does the detail work in connection with this particular Ordinance.

The hon. Member for Nairobi North pointed out the views of the commercial community, and said they looked upon it as a taxing machine. So far as I know, Government has always looked on it as a taxing Ordinance. It has always brought in considerable revenue, and to look at it in any other way would be fantastic.

At the same time, if there are united representations from the whole of the commercial community of this country, I can give him my assurance that Government will, and must, consider those representations seriously.

As regards the remarks of the hon. Member for Mombasa, it is a fact that the banks and shipping companies have been excluded from the scope of this Bill because, as I explained, it is a reversion to the 1919 Ordinance, which I understood was the wish generally of the community. That point, of course, can be considered by the select committee. So far as representations go, the Bill covers a very much wider field than banks, insurance and oil companies. Naturally, I should not expect representations, begging me to impose taxation.

The question was put and carried.

THE HON. T. D. WALLACE moved that the Bill be referred to a Select Committee consisting of—

The hon. the Treasurer (Chairman),

The hon. the Attorney General,

The hon. the Chief Native Commissioner,

The hon. the Commissioner for Local Government,
Lands and Settlement,

The hon. Elected Member for Nairobi South,

The hon. Elected Member for Trans Nzoia,

The hon. Elected Member for Mombasa,

The hon. Elected Member for Nairobi North,

The hon. Mr. J. B. Pandya,

The hon. Mr. Shamsud-Deen.

THE HON. THE TREASURER seconded.

The question was put and carried.

THE HON. T. D. WALLACE moved that the Council resolve itself into committee of the whole Council to consider, clause by clause, the following Bills:—

The Agricultural Mortgagees Relief (Amendment) Bill,

The Branding of Stock (Amendment) Bill,

The Moneylenders (Amendment) Bill,

The Trading in Unwrought Precious Metals (Amendment) Bill,

The Marketing of Native Produce (Amendment) Bill,

The King's African Rifles (Amendment) Bill.

THE HON. THE TREASURER seconded.

The question was put and carried.

Council went into committee.

In Committee.

THE AGRICULTURAL MORTGAGORS RELIEF (AMENDMENT) BILL.
The Bill was considered clause by clause.

THE BRANDING OF STOCK (AMENDMENT) BILL.
The Bill was considered clause by clause.

THE MONEYLENDERS (AMENDMENT) BILL.
The Bill was considered clause by clause.

THE TRADING IN UNWROUGHT PRECIOUS METALS (AMENDMENT) BILL.
The Bill was considered clause by clause.

Clause 2.
THE HON. E. B. HOSKING moved that clause 2 be amended by inserting in the penultimate line of sub-clause (b) of clause 2 after the words "unrefined precious metal" the words "and precious metal which has been admitted into the form of bullion."

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

THE MARKETING OF NATIVE PRODUCE (AMENDMENT) BILL.
The Bill was considered clause by clause.

THE KING'S AFRICAN RIFLES (AMENDMENT) BILL.
The Bill was considered clause by clause.

THE HON. T. D. WALLACE moved that progress be reported.
The question was put and carried.

THE HON. T. D. WALLACE moved that—
The Agricultural Mortgagors Relief (Amendment) Bill,
The Branding of Stock (Amendment) Bill,
The Marketing of Native Produce (Amendment) Bill,
The Moneylenders (Amendment) Bill,
be reported without amendment; that—
The Trading in Unwrought Precious Metals (Amendment) Bill
be reported with amendment; and that progress be reported on—
The King's African Rifles (Amendment) Bill.
The question was put and carried.

Council resumed its sitting.

THE PRESIDENT informed Council that the following Bills had been considered clause by clause in committee of the whole Council and had been reported without amendment—

The Agricultural Mortgagors Relief (Amendment) Bill;

The Branding of Stock (Amendment) Bill;

The Marketing of Native Produce (Amendment) Bill;

The Moneylenders (Amendment) Bill;

that the Trading in Unwrought Precious Metals (Amendment) Bill had been reported with amendment; and that progress had been reported on the King's African Rifles (Amendment) Bill.

THIRD READINGS.

THE HON. T. D. WALLACE moved that the following Bills be read a third time and passed:—

The Agricultural Mortgagors Relief (Amendment) Bill,

The Branding of Stock (Amendment) Bill,

The Moneylenders (Amendment) Bill,

The Trading in Unwrought Precious Metals (Amendment) Bill,

The Marketing of Native Produce (Amendment) Bill,

The Registration of Domestic Servants (Amendment) Bill.

THE HON. THE TREASURER seconded.

The question was put and carried.

The Bills were read a third time and passed.

*Council adjourned till 10 a.m. on Friday,
the 18th December, 1936.*

FRIDAY, 18th DECEMBER, 1936

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Friday, the 18th December, 1936, THE HON. THE ATTORNEY GENERAL (W. HARRAGIN, Esq., K.C.) presiding. The President opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 16th December, 1935, were confirmed.

ORAL ANSWERS TO QUESTIONS.

SHOP HOURS ORDINANCE

No. 64.—THE HON. ISHER DASS asked

"Will Government state whether they have received a draft of the Shop Hours Ordinance unanimously approved by the Municipal Board of Mombasa?"

"If the answer be in the affirmative, will Government introduce a Shop Hours Ordinance for Mombasa during the present session of Council?"

THE HON. THE COLONIAL SECRETARY: A draft Bill to make provision for regulating the employment of shop assistants in Mombasa was received from the Mombasa Municipal Board in October. The draft is being considered, but it will not be possible to introduce any such Bill during the present session.

MOTIONS.

DRAFT ESTIMATES, 1937: STANDING FINANCE COMMITTEE REPORT, PART I.

THE HON. THE COLONIAL SECRETARY: Mr. President, I beg to move the motion standing in my name:

"That the Report of the Standing Finance Committee on the Draft Estimates of Revenue and Expenditure for the year 1937, Part I, be adopted."

It will be noted, Sir, that this part of the Report deals with Expenditure Estimates only. The reason for this is, I think, known to all hon. members of Council, namely, that the Standing Finance Committee has not been able to finish its deliberations on the Revenue side of the Estimates, and it is necessary to obtain the approval of Council to the expenditure so that the Appropriation Bill may be passed before the end of the year and supplies voted for carrying on the work of Government as from the 1st January, 1937.

I know it is an unusual procedure to ask for the authority of Council for expenditure without members having before them a statement showing how the revenue from which services are to be financed will be forthcoming. But I can assure Council that the deliberations of the Standing Finance Committee have resulted in an increased estimate of revenue amounting to approximately £100,000 on the basis of the Draft Estimates as submitted to Council. (Hear, hear.)

Of this £100,000, by far the greater part, namely, nearly £70,000, is on account of revenue expected to accrue from Customs and Excise.

This increase at first sight may seem to be unduly optimistic, but at least every member of the Committee has agreed that it is reasonable in the light of data which have become available since the drafting of the Estimates. And, in this connection, I may say that the value of the Colony's domestic exports for next year is now estimated at over four million pounds. This, if it is realized, must react on the receipts from Customs duty.

It may be said—and indeed, it was said in the debate on the Estimates—that Government ought to have known all this before. I am not saying that there may not have been some justification for that criticism, but it is a fact that reports received during the last month or two have brought it about that figures which would have seemed to Government problematic and speculative a month or two ago are now considered to be reasonable and prudent estimates.

In any case, I want to give hon. Elected Members full credit for being right in this matter, and saying that we should be able to find a surplus of £100,000 on further examination. To the best of our belief, and as a result of very careful consideration, after long consideration in the Standing Finance Committee we are all now convinced that this £100,000 is a prudent, reasonable and justifiable estimate, and, for that, as I say, we wish to give full credit to the hon. Elected Members. I have mentioned this, not because I wish to raise at this stage a debate on the Revenue Estimates, but merely in the hope of convincing hon. members that they may accept this part of the Report on the Expenditure Estimates in justifiable confidence that money will be forthcoming to meet the expenditure.

This Report, or rather, this part of the Report, is unanimous though, as was only to be expected, there are here and there notes of dissent.

These Revised Estimates show gross increases of £32,228 over the original Draft Estimates, and gross decreases of £20,475. The net increase therefore amounts to £11,753. A

full statement of all the proposed increases and decreases will be found in the schedule on pages 28 to 32 of the Report. An examination of this schedule will show that a large number of these increases and decreases are more apparent than real.

For example, under Head XVI, Item 31, there is shown a decrease of £5,937, of which nearly £5,000 is set off by an increase under Head XXVIII, Item 1; there is a decrease under Head XV, Item 16, 'Surveyor General, and a nearly corresponding increase for a Chief Surveyor, while under the Medical Department there are a number of increases and decreases which nearly balance each other, consequent largely on reorganization.

There are, however, certain real increases and decreases to which I wish briefly to refer.

Under Head II, Administration, consequent upon the closing of the Consulate for Southern Abyssinia, a net saving of £1,840 has become possible under Items 4, 10, 20, and 21, while under Item 6 of the same Head there is a saving of £1,344 owing to casualties.

Under Head III, Administration Extraordinary, the sum of £740 is proposed to meet the cost of the removal of the last of the *labon* remaining in the Kericho district to Guasi in Central Kavirondo. The Committee was assured that this removal is a real necessity in the interests of law and order.

Under the same head, there is a new item of £400 for reconditioning the Machakos Native Reserve. In this connection, the Machakos Local Native Council has voted, and has spent, considerable sums by way of self-help, and the Committee felt that it was justified in recommending some small financial assistance from Government in order to encourage the prosecution of this very necessary work.

Under Head III, Agriculture, the increases are mainly on account of services to the coffee industry. The provision is shown in detail at Items 35, 37, 39 and 47, and two new items under Personal Emoluments, and the provision amounts to £1,960. In the Draft Estimates the Director of Agriculture has grouped officers employed on coffee services under a separate sub-head, in order that a picture might be provided of what Government is doing for the maintenance and advancement of the industry. Representations were made, however, to the Standing Finance Committee that further experimental scientific work is very necessary, and the Committee was convinced by these representations. It should be noted that this additional grant cannot rightly be regarded as a subsidy to coffee planters, as it is definitely earmarked for research.

Under Head X, Game Department, there is a decrease of £810 owing to the absence of the Game Warden from the Colony, while there is an increase of £720 consequent upon the re-introduction of the post of Senior Assistant Game Warden, as explained in the Report. As will be seen from the Report, it is proposed to promote one of the Assistant Game Wardens to this post.

I have already referred to Head XVI, Item 21, a decrease of £5,037 in basic road grants. This decrease is due to the fact that it has not yet been found possible to inaugurate a District Council in the North Nyeri area, nor have certain roads in the Machakos area yet been taken over either by Nairobi District Council or by the Public Works Department. Of this sum, £4,906 has been returned to the Public Works Department for the maintenance and improvement of roads and bridges.

Head XVII, Medical Extraordinary. The sum of £1,500 has been re-voted for the Frans-Nydia Cottage Hospital. This sum was voted in 1936, but was not spent during that year.

Under Head XVIII, Military Extraordinary, there is a large increase amounting to £4,346. The necessity for this increase was explained in full to the Committee, and I do not think that it admits of argument.

Under Head XX, Miscellaneous Services, there is a new item, Grant to Aero Club for Civil Aviation. Of the sum of £200 provided, £100 is a renewal of the grant made in previous years, while £200 is an increase. I trust that all hon. members will agree that this increase is fully justified in view of the enormous importance to the Colony of encouraging civil aviation, and, in this connection, I should like to express Government's deep appreciation of the magnificent work that the Aero Club is doing. (Hear, hear.)

Under Head XXII, Police, the increases are mainly due to the establishment of police in the Samburu district. During the last few years, provision of this nature has been made from a levy imposed on the Samburu, but, as explained in the Report, a levy can no longer be justified, as it can no longer be certified that the area is in a disturbed or dangerous state, which is a necessary condition for imposing a levy on the inhabitants. At the same time, it is felt that steps must be taken to prevent as far as possible any recurrence of the disorders from which this district has suffered in the past. The area is extensive, and the inhabitants are still wild and inclined to be undisciplined, and the Committee felt that, in view of all the circumstances, an addition of ten African ranks at an all-in cost of £511 is justified.

Under Head XXVIII, Item 2, of Public Works Recurrent, an increase of £1,000 is recommended for the installation of sanitary improvements in Hobbly Road, Mombasa. This increase is strongly recommended by the Administration and by the Medical Department, and is in accordance with the policy of the Mombasa Municipal Board.

Under Head XXXI, Secretariat and Legislative Council, there is an increase of £1,400. This is due to the restoration of the scales of allowances in respect of attendances at Legislative Council and committee meetings to those scales which were approved by the Secretary of State in 1929. Government feels that it is no longer justified in taking advantage of the generosity of honourable members, who, to meet the needs of the depression, voluntarily surrendered one-third of the allowances to which they are entitled.

Under Head XXIV, Public Works Extraordinary, the additions in respect of the Kitui water supply, the Mombasa water supply, and the new pontoons for the Kilifi and Shimoni-Teva ferry services, are all re-votes. The £1,000 provided for furniture for new buildings on account of the new building at the Girls' Secondary School, Nairobi.

In view of the fact that there is in the Report an explanation of every increase and decrease recommended, I do not propose to go into further detail now, but I hope that I and my colleagues will be able to answer questions that may be raised during the course of the debate.

I have to draw attention to one misprint, on page 18, paragraph 173. This should read: "Item 39 (a) would be increased from £3,216 to £3,244." The figures are given correctly in the schedule.

Sir, I beg to move. (Applause.)

THE HON. THE TREASURER seconded.

THE HON. A. C. HOBY: Mr. President, first of all, I should like to congratulate the Standing Finance Committee for having produced a very clear statement concerning the proposed expenditure. It is quite obvious that during the sitting of the Committee there was a great deal of co-operation and harmony, and I hope very much that when the second half of this Report comes to be issued there will be every evidence of the same degree of co-operation and harmony.

There are two points on which I wish to criticize this Report, and the first one is Head XV, Local Government, Lands and Settlement.

There is one thing which I think is very important concerning a number of settlers in the district I represent, and also in the Trans Nzoia, and that is the question of the remission of rents. The body which advises Government is the Advisory Land Board, which, I understand, has already gone into this question in such districts as Rumuruti, Thomson's Falls, and Maghakos, and have made definite recommendations to Government for the remission of rents.

I think it is only right that that Board, or certainly a sub-committee of it, should visit the Usain Gishu and Trans Nzoia, because there are undoubtedly a number of very hard cases which are entitled to remission of rent, either partially or wholly.

We have heard that the policy of Government is to implement that question of remission where there is real hardship incurred, and I think it would be an excellent thing if the Board could visit these districts in order that individuals who felt they had a case to put forward could have an opportunity of presenting their case personally. I hope very much that Government will agree that an meeting of the Advisory Land Board can take place in Eldoret and Kitale for that special purpose.

I also hope that while they are there they will go into the question of the re-classification of areas. There is no doubt whatever that there are farms which are nothing more or less than pastoral farms to-day which are being called upon to pay agricultural rentals on a much higher basis than is really right. That question could be gone into at the same time.

The other point I wish to criticize is the Medical vote, under paragraph 144 of the Report, which concerns the district surgeons.

I wish to associate myself entirely with the attitude which was taken up by the four Elected Members of the Standing Finance Committee, because here is a suggestion to do away with the district surgeons—who presumably have discharged their services in a very capable manner—and to replace them by medical officers.

That is the abandonment of a principle which has been accepted, and I do not see any reasons here in the Report which support in any way the proposed action.

Such a suggestion could be made on two grounds. One, that the district surgeons were incapable of carrying out the services properly; and two, that there were no private practitioners who would be prepared to accept the posts of district surgeons.

I do not believe that either reason applies, and I would like to hear some detailed reasons from the hon. the Director of Medical Services as to why he has suggested doing away with these district surgeons and replacing them by medical officers. To me it seems unnecessary extravagance, and I shall oppose this until I hear further reasons why this action should be taken.

The hon. gentleman will, I believe, continue to make every sort of raid on the exchequer of this country to expand his medical services, and I think this is another instance in which he is really trying to get away with it. (Laughter.)

THE HON. F. A. BEMSTER: Sir, I am sorry to bring into this delightful, co-operative, amicable meeting a suggestion which is quite the opposite. To my mind, this Report of the Standing Finance Committee is one of the worst I have ever seen. (Laughter.)

It may be, Sir, that presently we shall hear some suggestion that I should be allowed to speak from a tub, but let me remind you that I would rather speak like one than look like one; and further, it may be suggested that I am bawling. Well, Sir, I am afraid my remarks may be quite as vulgar but not as crude because I am English and have never been to a university.

This Standing Finance Committee went away from this House with the intention and, I would suggest, instruction to endeavour to balance the budget and to increase the surplus as far as they possibly could. It has been suggested all round the country and in this House that the budget estimates were under-estimated on the revenue side, and the expenditure over-estimated. The Standing Finance Committee go, and, in a delightful atmosphere, decide that the expenditure was not over-estimated; in fact, there is an increase of some £11,000.

I judge this entirely from the man in the street. It reminds me of the Budget Committee, as it was then called which sat in 1930, and left this House pledged to the country to find £100,000. Directly we went into the room adjacent here, the first suggestion was—and you have got to keep in your mind that we were to save £100,000—the first suggestion which came from an elected member was that we must have a bloc vote for the Agricultural Department of £20,000. That was to start the saving of £100,000.

It is quite clear to me that in the present case it has been nothing but a common huckstering deal between one section of the country and the Government.

I was intensely pleased at the very kind, courteous manner in which the hon. the Colonial Secretary endeavoured to assist me in getting somebody representative of the Coast to sit on the Standing Finance Committee, and I had wondered much why it was so urgent that the appointment should not be made. I appreciate the difficulties of the hon. the Colonial Secretary, though I did not agree with them, but I can quite see now why it is never politic to have anybody on these committees who is in any way connected with the Coast. (Lord Francis Scott: How about Mr. Pandya?) I repeat, nobody connected with the Coast.

The hon. member Mr. Pandya's name has been mentioned. Mr. Pandya sits for the whole country, and has no particular connection, or definite connection, with the Coast.

I am more than surprised, Sir, because there is one member of the Standing Finance Committee who knows more about the Coast than anybody else, who every time he goes there, investigates every possible question that his time allows.

We can thoroughly well understand how intensely surprised I am when not one single request that was made in this Council in debating the Estimates—which debate I have always taken to be a kind of instruction or hint to the committees who were going to decide these questions, as to the desirabilities and requirements of different districts—was granted.

I particularly refer to the most mild request of the hon. member Archdeacon Burns, who represents native interests, who asked for a paltry sum, I think it was, I am speaking from memory, of £100. It was a paltry sum to assist in ameliorating the lot of the poor lepers at Kuloleni. (Laughter.)

I quite understand that it is a subject for humour; I quite understand that it is a most laughable subject and in excellent taste. But if anyone has seen and lived among these people, or lived near them, I am really afraid they would not have that laughable instinct. When you have seen people taken away from villages, which you have created, through no fault of their own apparently—I do not know how this horrible disease is caused—taken away from their families and segregated apart from the rest of their people, I think it would be a case of huge hilarity to see them being taken away. But not to me, Sir; not to me.

This small request was made, and I would suggest that the hon. member Archdeacon Burns imagined that his brother member would have pressed it. I am presuming that he did, because I feel that the hon. member Dr. Wilson is just as much interested in native welfare as his brother member, Archdeacon Burns.

So I can picture to myself the hon. member Dr. Wilson pleading for this small increase, and the rest of the hilarious members taking it as a huge joke, and consequently throwing it out. I see even now a smile on the face of the hon. the Chief Native Commissioner—who, more than anybody else should, must know the seriousness of the position.

What was the reason? I can quite see what the reason was. It was a case of "Leave it alone; the Coast is nothing; we in the Highlands are the governors, we are *au fait* and co-operate with the high officials of Government, and the Coast is 300 miles away, represented by people who attempt to represent them." But who, unfortunately, have been unable to bring or to have among them the greatest speaker for the Coast, not as an orator, but as a man who speaks entirely from his heart and his knowledge, and that is the hon. Sir Mubiru Salim. I feel sure that if he could have been here to-day he would have supported me in my disgust at the thought that a paltry figure which has been contracted for for the ameliorating of the lot of these poor people at Kuloleni; he would have echoed my disgust, and would have put it in perhaps better and more forcible language.

I am quite convinced now, Sir, that the Standing Finance Committee should be abolished, and that we must return to the Budget Committee which we used to have, and on which we could all defend our own causes. This Report has confirmed me entirely in that belief.

There was another question—I am only dealing with the Coast; I will not go beyond it—there was another question which I asked and which I put to the Noble Lord in connection with the benefit of native education at the Coast. All I asked was that a small sum be given to the terms which I understood were made at the time the present Colonial Secretary was Acting Governor. This was in connection with the Waa School.

I think it will be agreed that the Digo are among the most backward of the Coast tribes. An experiment was started years ago where Government opened a training school there which cost some thousands of pounds. In September, 1935, His Excellency the Acting Governor himself inspected it, and wished to close it. Everybody admitted it was a failure; everybody.

I was very interested in keeping the school open by hook or by crook. I belong to a religion which has people in it who are more than willing to throw away their lives than I am, and it was possible to secure among that type of religionist a man who would devote himself to the natives and really give them a fair chance.

We had discussions on the matter, and, with Sir Ali bin Salim, who was unable to attend His Excellency's meeting, and we decided that if Government would give half of what it cost them for a failure we would guarantee to double the pupils and make the school a success. The figures that were given us at that time, from figures given later by the Director of Education, were apparently wrong, but it was understood at the time that the cost of taking 50 boys was, say, £2,500, and we offered to teach 100 or 150 boys for £1,000.

When I say offered, that is not the correct word; we decided to ask. The then Coast member, the late Major Robertson-Bustace, was with us, and the Coast and Mombasa members—there were no Indian members at that time—fixed the figure. But it appeared that this Brotherhood, or whatever you like to call it, had offered to take the school over for £500. Feeling taxpayers we said that if they were fools enough to take it on, let them, but that in equity we thought that after one year the expenditure should be examined; if at the end of that time they had made a success, then we would work in Legislative Council on the terms of the Standing Finance Committee to pay them a further grant.

I took it upon myself to speak in favour of all, as Sir Ali says, "I will not touch the Standing Finance Committee, and I will not touch what I was given with a perfectly straight forward mind, the people say." No, I will not vote for any more expenditure until the revenue

Now, Sir, not only has the revenue been found, but a further £12,000 expenditure has been found, and yet this salary grant and salary fund cannot be found, not even from a vote passed there as a line, with saving to the Medical Department. We don't want this money spent, but we will allow you the extra if you really think it necessary, and saving to the Education Department. We don't want the money spent, but want it carefully guarded. Don't spend it over holes-and-holes; hang on to it for two or three months to see that everything is all right, and if you are satisfied that everything is proper and justified you have our permission to spend it. But it was intended, it is not good, and that is

The having the least bit of expenditure has been the price for years. If Government have a line in their brain that something should be done, let it be done. Take the Mombasa ferry, where they built a ferry according to the wrong design, and then had to build a road six miles around it, costing hundreds of pounds to maintain. But where there is a carefully considered, and thought-out improvement and a really needed demand at the Coast, it is not met.

Now, Sir, the only way to get over that is to throw this Report out, and I am going to vote straight against the motion for the adoption of the Report. I am going to call for a division and I hope—at least, I do not hope but I expect—I shall be in a minority of one, and even then I will be proud.

Grants to Horticultural Societies are very good in their way, I am not objecting to them; grants to Aero Clubs, grants to this and the other, but anything that is really pleaded for, where you could have checked the demand and the reasonableness of the demand, is thrown out. The Kaloleni suggestion is not even mentioned in this Report, not even mentioned, and yet we have to congratulate the Committee which has found extra expenditure, which is a certainty, of £11,000, against a hypothetical estimate of revenue which is going to increase the estimated surplus by £100,000.

Can you really, Sir, excuse such a thing? First of all, a select committee was supposed to represent the Elected Members. All the Elected Members said: "Strict economy, economy, as much economy as possible." Yet this is an increase. Why, Sir? Simply because there was that spirit all the way through of co-operation: "We will give you £50,000 on the Customs or 10 per cent on the petrol; you have got your bit, we have got ours."

Can you realize or think of a more degrading set of circumstances than that? And I am going to vote against this Report, and I hope it will be the last seen of the Standing Finance Committee.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, before I deal with the one point in this Report on which I wish to speak, I must refer to the opening remarks of the hon. Member for the Coast—(Mr. Bemister: Mombasa.)—for Mombasa. I apologize to the hon. Member for the Coast. (Laughter.)

In those remarks he saw fit, first, to comment on my personal appearance; second, to throw doubts on my nationality; and, lastly, to sneer at me because I was educated at a university. I will content myself in reply by saying that if the hon. gentleman had himself been educated at a university he might not have been guilty of the gross vulgarity and breach of taste which he has seen fit to give expression to to-day. (Mr. Bemister: Question.)

The one point I wish to refer to is under the Medical vote: Item 13, paragraphs 123 and 124.

The latter part of the first paragraph states: "This increase (that is, in connection with a resident physician at Mathari) would be partly set off by a decrease at Item 14, consequent on the retirement of Dr. H. L. Gordon from the post of Mental Adviser to Government."

I was not present on the Committee when this Medical vote was taken in Standing Finance Committee, but I have it on the best possible authority that the only interpretation which can be placed on this paragraph, namely, that Dr. Gordon is voluntarily retiring, is incorrect, and he has no intention whatever of retiring, and if his services are dispensed with it will not be with his consent or at his wish. In fairness to Dr. Gordon, that should be made quite clear.

With regard to paragraph 124, where it states that "the local branch of the British Medical Association favoured the appointment of a full-time officer," I think the hon. the Director of Medical Services will agree that that is not in fact what he said. What he said was that there was no doubt the local branch of the British Medical Association would approve. I understand the branch have not been asked, and I have also been told—and I merely repeat what I have been told—that, if asked, they would not approve.

MR. ARCHDEACON THE HON. G. BURNS: Mr. President, I suppose I had better begin with the usual formality that "I will not keep the House very long."

I want first of all to thank the hon. Member for Mombasa for trying to help me in what I asked for on the discussion on the Estimates before they were sent to the Standing Finance Committee. I should like also to say that I think there is a misunderstanding, which the hon. the Director of Medical Services himself made perfectly clear last year.

There is in the minds of a good many people the idea that the leper camp at Kaloleni is part and parcel of the hospital which is there. That is not so. The hospital was founded on the principle set forth between the Church Missionary Society on the one hand and the medical authorities on the other, at the rate of £25 per bed. There are forty beds in the hospital, and the Church Missionary Society first of all received £1,000 a year towards running the hospital, which they built at a cost of something like £6,500.

Not one penny of that grant goes towards the leper camp at Kaloleni, which is entirely supported by voluntary contributions and by the kindness of Mrs. Pitt-Pitts and others such as she, who, year after year, try to raise funds to enable that camp to be maintained. I want to make that perfectly clear, and I want to say that last year the hon. the Director of Medical Services himself corroborated what I am now saying, or said that was the case.

There is one other point I should like to make, and it is this: seeing that things taken away in the time of depression, with which I entirely agreed, are being given back, I should

like to press; if I am not too late, for the restoration of the cost of £60 in the original vote of £1,000 to Kaloleni; it is now £940. I should like to ask that that sum be restored to the Church Missionary Society for the hospital, which is being run entirely by that body.

DR. THE HON. C. J. WILSON: Sir, as my name has been mentioned in this request of a grant to the leper camp at Kaloleni, it is only right that I should explain that I was myself under the impression that this camp was part of the hospital at Kaloleni.

I must explain this for the sake of my fellow members of the Standing Finance Committee, who, when I did put forward this request, did suggest that it was a matter of asking for an increase in the annual grant to the mission hospital.

I now understand that is not the case, and what was asked of me to press for was a special grant towards the upkeep of this camp. The hon. and hon. member said the point was made clear last year by the Director of Medical Services. I am afraid I must have been very stupid on that occasion too, because I thought the matter was thoroughly threshed out last year, and it was a question of the C.M.S. asking for an extra grant for the upkeep of the hospital for the sake of the lepers.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Mr. President, the hon. Member for Uasin Gishu made a definite request that a visit from the Advisory Land Board should take place at an early date to the Plateau and no doubt also to the Trans Nzola district, with a view to discussing with the people there the policy Government should follow in regard to the remission of rents.

I think I need hardly say that, during the whole period of the depression, Government has viewed the question of land rents with as much sympathy as it has been possible to do. We have in various areas made recommendations on the basis of district conditions rather than on individual cases of distress.

With regard to visiting the Plateau, I think I may say forthwith that, so far as I am concerned as a member of the Board, I should entirely agree that we should visit it at as early a date as possible to discuss these matters with the people there. We are having a meeting of the Board on Wednesday, at which a large number of cases of rents remission are coming up, and I feel sure the Board then will agree that one of the best ways of tackling the consideration of individual cases which may not have any grounds for consideration because of conditions applicable to one district will be for us to go to the spot and see as many of them as we can. (Hear, hear.)

So far as reclassification of areas is concerned, that is a very large question, and I would not like, as it were on the spur of the moment, to commit myself or the Board to a line of policy in that regard. But I would like to say that it is one of the questions I shall bring up to the Board at its next meeting.

THE HON. THE DIRECTOR OF MEDICAL SERVICES: Sir, I have been asked to explain two things. Firstly, with regard to the question of the district surgeons. I do not think there is a principle with regard to the employment of district surgeons. The public health principle is the only principle, I should think, which is this: that when you have a very large area and when you have sufficiently large hospitals to provide a full-time job, and when you can afford to pay for someone to carry out that job, then you do not employ a part-time district surgeon, but you employ a full-time officer, just as I do not think anyone would suggest that to-day the correct way to do the public health work of Nairobi would be to have a district surgeon or some general practitioner engaged part-time as medical officer of Nairobi.

In the case of Eldoret you have the Uasin Gishu district, you have a hospital at Nandi, and at Kitale in the Trans Nzoia district, and Tambach and Elgeyo. Some years ago there was a full-time medical officer whose services, I think, were very greatly appreciated in the Trans Nzoia District, and he has since been asked to do similar work time and again since then with regard to malaria, sanitation on farms, and so on. At the same time there was a full-time medical officer at Eldoret.

Well, the district is growing. We may have malaria again, there are more people being employed on the farms, there are large sisal estates, there is a growing hospital, and large numbers of natives now come in requiring surgical and medical attention, and there are hospitals at Nandi, Elgeyo, and in the Tambach district.

The same really applies to Nakuru. At Nakuru you have a hospital which generally has about 130 patients, you have a very large district, estates are coming into operation again, there is Naivasha, and you have on occasion to deal with infectious diseases.

To my mind there is no question at all that in each of these places there should be a full-time officer.

The second point I was asked to refer to was by the hon. and learned Member for Nairobi South. The hon. member is perfectly correct in stating that paragraph 124 of the Report does not give a correct record of what I said in select committee. If I remember rightly, the hon. Member for Nyanza

said he would have liked to have known what the opinion of the British Medical Association was. I said the matter had not been referred to the British Medical Association, but that I had no doubt at all that they would be entirely in favour of the appointment of a full-time resident medical officer at Mathari.

My reason for that is that I do not think the British Medical Association on a matter such as this would be in the least likely to go against the opinion of Dr. Gordon and myself. Both Dr. Gordon and myself are firmly convinced that the time has now come when there should be a full-time resident physician at Mathari.

With regard to the first point which the hon. Member for Nairobi South raised, it is the case that this word "retirement" as used by the Standing Finance Committee does not mean that Dr. Gordon has tendered his resignation or that he necessarily would wish to retire. But the position is that what is now required is a full-time permanent officer at Mathari, and, quite naturally under the circumstances, Dr. Gordon is on a temporary appointment, and on the ground of age alone would not be eligible for a full-time appointment which Government now considers is necessary.

I was asked to speak on the question of a grant for the lepers at Kaloleni.

So far as I am concerned, the position is this: I presume that the mission is an organized body and has a secretary and so on, and that when such a body desires to have a grant it makes an official request, usually through myself, to Government in order that the needs of the matter may be investigated. I have never had such a request from the Church Missionary Society. If I did, it would receive most careful consideration; but I have never yet had it.

VEN. ARCHDEACON THE HON. G. BURNS: On a point of explanation, may I ask the hon. the Director of Medical Services if he has not received a letter from Dr. Allen, who is in charge of the leper work at Kaloleni, regarding the leper situation?

THE HON. THE DIRECTOR OF MEDICAL SERVICES: The answer is "No" to that question.

Council adjourned for the usual interval.

On resuming.

MAJOR THE HON. SIR ROBERT SHAW: Mr. President, before the reply is given to this debate, there is one small matter I should like to draw attention to, for it naturally

interests me very much. That is paragraphs 23 and 24 of the Report, wherein a sum, albeit small but satisfactory up to a point, is allocated for reconditioning in Machakos Reserve. It interests me for a number of reasons.

One is that I should like to remind hon. members of this that during the budget debate the hon. the Director of Agriculture drew attention to the fact that in that district a properly constituted reconditioning committee has been formed, and he also told us, I think, that a central committee was being formed for the purpose of co-ordinating the work of such committees. It appears to indicate that for the first time we really are getting down to something like organization for dealing with this much-discussed question, and a very important question, of reconditioning in these reserves.

It also interests me because the formation of precisely such a committee as exists in the Machakos area was, in fact, recommended to Government by the local Farmers' Association twelve or fourteen years ago. At the time I am sorry to say, no attention was paid to it. It is merely an academic point now, but it is at least satisfactory to know that now all those concerned are agreed as to some method of tackling this problem.

Although I am not a member of that committee, I can assure hon. members that it is an extremely well-chosen one of very competent people, both official and unofficial, who really know and understand the problem they have to face, and I only hope the item now included in the Estimates will form a precedent and that in future years we shall see such a vote not only in this but other districts, so that we shall really know this work is being tackled and proceeded with in an organized manner.

I congratulate the Standing Finance Committee on having seen fit to add this small item to our expenditure.

THE HON. THE DIRECTOR OF EDUCATION: Mr. President, I should like to deal with this point raised by the hon. Member for Mombasa in regard to the Waa School, and to amplify the explanation given in paragraph 84 of the Report.

The original proposal that the school should be taken over by the Mission of the Holy Ghost Fathers came from me in connection with the Economy Report. Before making that suggestion I saw the Rt. Rev. Bishop Hefferman, and discussed the matter, and he agreed that if Government would give him the use of the buildings for five years and a bloc grant of £500 he would be quite prepared to take over the school.

I quite agree with the hon. member in everything he has said about the principal of that school. He has done most excellent work, and effected a wonderful improvement during the year he has been at Waa.

The question of approaching Government to increase the grant has been discussed by me and the Bishop on two or three occasions, and we both felt that the present time was not opportune to make such an application. The reason is that the Local Native Council of the Digo has not yet agreed to allow the Mission the use of the land. I have been advised by the Land Office that their consent is necessary.

That is a reason for not increasing the grant which has not been put in the Report, but which I did explain to the Standing Finance Committee when I appeared before them.

LT.-COL. THE HON. J. G. KIRKWOOD: Mr. President, my first point is to express the wish that the procedure followed in this instance, of laying the expenditure side of the budget, will not be taken as a precedent in the future. (Hear, hear.) It does complicate matters, and somewhat spoils the picture in not having both sides of it before one.

I presume it is possibly due to that very controversial matter, the income tax, and I have no doubt that Government are now awaiting information, confirmation, or orders from the Secretary of State of the action they have got to take. It would appear a foregone conclusion that income tax is going to be imposed; and it is naturally impossible to lay the relevant figure of revenue from that tax before Council; but I should like the hon. the Colonial Secretary, when he replies, to give an explanation as to why the procedure this morning has been followed.

Before proceeding further, I should like to join in the thanks to the hon. the Colonial Secretary for the manner in which he spoke this morning, and giving thanks where thanks are due. It certainly meets with my great appreciation.

But I think he would have been more correct if in his remarks he had referred to the European Elected Members instead of simply Elected Members. In any case, I do appreciate, not only this morning but on all occasions, the manner in which the hon. the Colonial Secretary has induced a much better tone of amiability and co-operation into this Council than we have had from other quarters.

I also wish to thank the Standing Finance Committee for including a vote of £1,500 for the Trans Nzoia cottage hospital. It is true that item was voted last year. It was left out of the preliminary budget; I drew attention to it, and it was put in, and I am very pleased now to see it reinscribed.

I should like to take this opportunity of pointing out that this is not the sole contribution, although it is from Government, but I wish hon. members to realize that the district itself by public subscriptions put its hands in its pockets and raised over £1,500 to build this most necessary institution. The help of Government has been appreciated, and I can assure hon. members that the building will be completed next year.

I wish to endorse every word that has been said by the hon. Member for Usin Gishu regarding land rents. I should also like to inform the hon. the Commissioner for Local Government that a public meeting was held last Friday, after I had left Kitale, at which a unanimous resolution was passed requesting a reduction in rents.

I think the proper body is the Advisory Land Board, and I do hope Government will consider, or the Board, this question in its broader aspects, not as regards remission to individuals, but classification in general, both in the Plateau and Trans Nzoia areas.

It may be considered a big job, but I think the hon. the Commissioner for Local Government is fully aware that a very large number of applications for remission in individual cases have been made, and while remission in individual cases will no doubt help the individual it does not affect the principle, and I maintain that the average rate of rent on land of say 20 cents is not equitable. In other areas, such as Machakos and Nanyuki and other places, the matter has been given consideration by Government, and substantial reductions have been made.

I do hope the Board will consider appointing a sub-committee to visit Eldoret and Kitale to take evidence and go into the general question of classification. If it cannot be done immediately, I hope it will in the near future. It is a very pressing and necessary inquiry, and unless the inquiry is held on the spot (the pressure will increase for that investigation to take place).

I am quite sure the hon. member will give it his sympathetic consideration, as will Government, and will take what I tender as advice, that an inquiry should be held by a sub-committee of the Board in the two centres I have named.

Under Head XX, Miscellaneous, Branch Line Guarantees, I should like an assurance from Government that steps are being taken to approach the Uganda Government with a view to getting that sum of £21,000 paid remitted from our Estimates. I think it was an iniquitous charge, and in view of the whole circumstances I am sure if it is sympathetically considered Uganda will come to the conclusion that, while it might have been a legitimate charge when it was agreed to,

conditions have so altered over a long period of years that there is neither justification nor necessity now for continuing that payment.

Under Head XXIIA, Police Extraordinary, the increase in the Police vote of £611 is, I understand, due to disturbances that have taken place in the Samburu Reserve compelling Government to increase the police force in that area. It is now stated that there is no longer any justification to impose a levy on the tribe, because there are no disturbances at the moment.

But will Government give an assurance that, should disturbances break out again, this amount will be collected from the tribe? It seems to me that Government would have been justified in still collecting the expenditure under the Police vote from the Samburu tribe. If they have given up their murdering and spear-blooding, it is probably only temporary, and from past history I should say it is.

From my point of view, I think we are perfectly justified in insisting that while this force is kept there it should be at the expense of the tribe and not at the expense of the Colony as a whole.

As regards the increase in expenditure which has been agreed to since the budget was sent to the Standing Finance Committee, by a sum of £11,000, while agreeing and not wishing to dispute the different items which go to make up that total, I do submit that the money should have been found out of savings elsewhere. I think it is almost useless to keep on demanding a reduction in the administrative costs of the Colony when, each time the committee meets, we find the expenditure side has been increased.

I do hope that in future, where these extraneous amounts have got to be found, no matter how advisable it may be to find them, they will be found out of savings, as has been the practice for many years. I maintain that it is a very sound and logical practice, which I hope will be given consideration to in the future.

I do not wish to detain the House. Part 2 of the Report has still to come, and it will no doubt give me an opportunity to say what I would have said this morning had that part been tabled. There has also been a resolution tabled which cuts across any remarks one may wish to make on the budget, and anything I may have to say I prefer to conclude now and leave it until that motion is moved and the second part of the Report has been laid on the table.

THE HON. CONWAY HARVEY: Mr. President, as one of the members of the Standing Finance Committee, I should like to assure my hon. friend the Member for Mombasa that the

members of that Committee are not a lot of irresponsible hucksters playing a game of "put and take"! They did make it their business most carefully and intensively to consider all representations that were brought to their notice, both from the Coast and other parts of the country, and, as a matter of fact, as everyone knows who reads the Report, the Coast did not come out too badly.

As a result of representations made, it will be noticed on reference to page 32 that a very substantial sum of money has been voted additional to that in the original Estimates of expenditure for the replacement of old, obsolete pontoons at Kilifi and Shimo-la-Tewa, which is the expenditure of a very substantial sum of money. Not only that, a very substantial increase in expenditure has been inserted by this Committee for consideration by this Council in respect of agriculture, particularly veterinary services. On a very strong case being put up by those who know Coast conditions very well, it was decided, as you will see in paragraph 41 on page 5, to reintroduce the post of an assistant veterinary officer.

I think it is quite unfair to pretend that the Coast is the everlastingly Cinderella, always left in the cold, and does not get its perfectly fair share of consideration from all those various bodies which bear force of circumstances are settled in the capital.

It is just possible that his natural modesty will prevent the hon. member Mr. Pandya from challenging the statement that he does not really adequately, faithfully and fearlessly represent the Highlands and Coast interests. I can assure the hon. Member for Mombasa that he does, and that he spent an enormous amount of time in going into all those various problems which arise in the district in which he resides, and members of the Standing Finance Committee are left in no doubt whatever by Mr. Pandya as to what is equitable and fair and just in the matter of expenditure on services for those areas.

I had a good deal to say on the subject of land rents on the motion for reference of the Estimates to the Standing Finance Committee, and I have no intention of repeating my remarks on that occasion. I should, however, like to say how grateful I and those who are specifically interested in this question are for the hon. the Commissioner of Local Government's very sympathetic reception of the proposals that have been made for some careful inquiry into the circumstances of those who do desire some alleviation in the matter of rents in those districts that have not yet been very carefully investi-

LT.-COL. THE HON. LORD FRANCIS SCOTT: Mr. President, I should like to associate myself with the remarks made by the hon. mover of this motion when he said that, in coming to our estimates of increased revenue of roughly £100,000, we had gone very carefully into every item of revenue, and that we did form our opinion unanimously on what we considered a safe, reasonable and conservative basis.

When I say that my hon. friend the Treasurer—who very rightly looks on himself as the watch-dog of any extravagance which may take place in this country—agrees with those figures, I think the country at large can be satisfied we are not unduly optimistic or trying to boost up the Estimates.

I should like also to thank the hon. the Colonial Secretary for the tribute he paid to the efforts of members on this side of this House, and in doing that I am sorry that my friend the hon. and gallant Member for Trans-Nzoia wished to exclude the hon. Indian member Mr. Pandya from that tribute, because I can assure members that he did work just as hard in as good co-operation as everybody else on that committee.

As he has already been quoted, may I say that when the hon. Member for Mombasa says he sits for the whole country I should like to point out that every member of the Standing Finance Committee is there representing the whole country (Hear, hear). We are not there representing our particular constituencies or any particular hobbies in our part of the world. I believe the hon. the Colonial Secretary as chairman will bear me out that we are scrupulously careful not to press for any particular things which might be of particular interest to our own constituents.

There are very few things I wish to speak about on this motion.

The hon. Member for Trans Nzoia said he hoped this procedure would not make a precedent, and wished to know exactly why it had been followed. I think the answer to that is, first of all, that none hope it will be a precedent, but the reason why it was followed was that it was impossible to get the whole question of revenue on the taxation side settled before the end of the year, and it is necessary for the Appropriation Bill, allowing Government to spend the money, to be passed before the end of the year. That is the only reason this procedure has been followed.

Coming to details, there is one point I should like to refer to: the question of the increase in the Police vote necessitated by putting assistant superintendents on a long-range scale of salaries, so that they shall not be stopped for an indefinite period at the head of their grade because there are no vacancies.

A case was put up, and certainly it is a measure of justice to these officers that this alteration should be made. It does not entail a very large sum of money, but it should rectify what is undoubtedly a hardship on a very hardworking and able body of Civil Servants. (Hear, hear.)

Dealing with the medical question which has arisen, the hon. the Director of Medical Services said he knew of no principle which affected the appointment of district surgeons. I suggest that the principle which underlay the original appointment of these district surgeons was one of economy and efficiency.

A district surgeon has consolidated pay, and costs Government, no extra amount in passages, leave, and so on. When you have a Government doctor, immediately you have an increased vote for passages, and again, by £300 to teach these fellows apparently to be doctors, and there is housing and so on, and costs which do not occur in the case of district surgeons.

I suggest that to-day there are more practising medical officers in those two areas than there were ever before, and it would be quite possible to have got one in each of these districts to have done this work, and carried on with efficiency and economy. I consider this reversion to the old form is unjustified and unnecessary. (Hear, hear.)

On that I do wish to protest against the fact that we should have to put up money to educate these medical officers before coming out here. In any other walk of life, if a man goes into the Army or becomes a lawyer, it is up to him to educate himself up to the standard when he is fit to take his place in those ranks or professions, and as medical officers come out at a starting salary of £600 a year, plus all allowances, I cannot see any justification for spending £300 a year on educating them before they come here. (Hear, hear.)

With reference to Dr. Gordon, I must say that I feel very much upset that I should have been a party to putting something in the Report which has been the means of causing hurt to a gentleman who has given most distinguished service to this country. I think all of us at the time were under some misapprehension, and this was an agreed matter, or else I think we would have been more careful to see that such a statement did not go into the Report and thus be the first intimation to that officer that his services were no longer required. As a member of the committee and one who signed the Report, I offer my apologies to Dr. Gordon. (Hear, hear.)

A question has been raised about the grant for branch railways, and the Report does set out quite clearly what we decided. I do not think I am overstating the case when I say

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that the hon. mover, as Colonial Secretary, did give an undertaking that Government would go on with this question. I think that is correct, Sir: I entirely agree with what the hon. Member for Trans Nzoia said; that the time is past when this call on Kenya can justifiably be made.

The hon. Member for Mombasa took it upon himself to make sneering references to the people who attempt to represent us. I take very great exception to such remarks, which I consider are unjustified and not altogether in the spirit of what one would expect from one of one's colleagues. (Hear, hear.)

We do attempt to represent the people of the country, and I submit we do not altogether fail in doing so. In this Report I do not think it can be said that we have done so frightfully badly, because not a single case has been put up against us where we have made a mistake. It has been suggested that, if we had to increase expenditure, that should be covered by savings. To a great extent, if you read the Report, that has been done, but there are two items which go to swell this expenditure side of the budget, which I do not think can be avoided anyhow.

One is the military expenditure of over £4,000. I am sure the hon. Member for Trans Nzoia, with his military experience, will agree that if we are to have decent soldiers they must have decent rifles to shoot with, and that was absolutely essential. The other big item was Public Works Extraordinary which was merely a re-vote of sums which should have been spent this year but were not, and have to be put in the budget next year. These come to about £4,000. These two items together account for over £8,000 out of the increase of £11,000.

The hon. Member for Mombasa started off by saying that we were sent into the Committee to economize, and ended up by increasing expenditure. He is perfectly entitled to his opinion that expenditure should have been reduced. Then he goes on to criticize us because we did not spend a sum of money on his own particular schemes down on the Coast, which seems to me slightly inconsistent.

THE HON. F. A. BEMISTER: On a point of order, on particular schemes in which I am financially interested, what is not right.

LT.-COL. THE HON. LORD FRANCIS SCOTT: I should like to point out to the hon. member Standing Rule and Order No. 52 (iii), where it says:—

“When the motion referred to in sub-rule (ii)—that is, to refer the Draft Estimates to the Committee—has been adopted, any member of the Council shall have the

right to appear and be heard before the Committee at a time and place to be fixed by the Committee: Provided that any such member shall have given previous notice to the Clerk of his intention to appear before the Committee and of the particular points on which he wishes to give evidence."

Now, Sir, if the hon. member thought these matters were of such importance, why did he not exercise that right and appear before the Committee and put up his own case? (Hear, hear.)

On the question of the Waa School, as you know, knowing the hon. member had strong feelings about this, I did ask the Committee to go into it, but he gave me no data; I had no facts or figures. We had the answer from the hon. the Director of Education, which satisfied us, as he has again, certainly satisfied me to-day, that there was no case for increased expenditure on that school, but if the hon. Member for Mombasa had come himself, no doubt with his great eloquence he would have persuaded us otherwise, and might have put up a case which we have not yet heard.

I do suggest that if people want these things done they must put themselves out a little bit to do their proper jobs as members to put up a case, and not always turn round and abuse other people who have done their best on the evidence before them because they have had no case put before them.

I have no more to add. I think this debate has shown that we did not do our job too badly, because of the complete lack of criticism of what we have done, and I support the motion before the House.

DR. THE HON. A. C. L. DR. SOUSA: Mr. President, it is only a few minutes ago that we heard the hon. Member for Rift Valley, the Noble Lord, cite Rule No. 53 (iii), and ask why the hon. Member for Mombasa did not appear before the Standing Finance Committee if he had a case to put up, and why any member did not who was in a similar position.

That is exactly the point I want to raise in speaking to the motion before the House. As you know, I made it perfectly clear during the debate on the budget that, because of the unconstitutional step Government had taken in referring the budget to the committee when it contained something which the laws of the country did not authorize, that is revenue from income tax, I said I did not wish to go before that committee.

The effects of this rule are very clear, that if a member has any conscientious objections to appearing before that committee he has not the alternative, which would be to send

in a memorandum in writing. I suggest that I have been deprived of an opportunity of appearing before that committee because I considered it was an unconstitutional way of submitting a budget, and because I consider the Standing Finance Committee had no right, within our constitution, to consider the revenue side of the budget as presented.

On the other hand the rules of this House do not allow me to submit written memoranda on the various questions I have been raising for the last two years before that committee. It is therefore clear that the contention of the Noble Lord was not correct as it might have appeared when he quoted the rule and castigated the hon. Member for Mombasa.

I am voting against this motion, and will give my reasons why. One evil begets another.

In 1935 we had before us a budget which Government brought in as provisional, and even to-day, at the end of the year, that budget is provisional. I should very much like you, Sir, to tell me and the House in what part of the world the annual budget is brought in as a provisional budget and has been carried as such, and I should like you to tell me whether there is anything in the constitution of the Mother Country or the colonies where provision is made for the country to be run on a provisional budget?

That was one evil.

The second evil is the one which I mentioned just now, and that is, the reference of this budget to the committee with provision on the revenue side which should not have been included. There is no such law as an income tax law in force in this Colony yet with its revenue, and that evil has given birth to this other evil, which is to produce a budget for only the expenditure side.

I think this is the proper occasion for the President of the House to quote me an instance, a precedent, either in the Home Country or Colonial Empire, or even in the Dominions, when an annual budget is brought before a House with an unconstitutional provision in it and referred to a committee, and when that committee reports on one part of the budget only. That is what we have here to-day. An evil begets an evil, and here we have the second evil.

How can we honestly vote for this motion when we do not know what our revenue is going to be?

I quite appreciate the reasons which the hon. mover has given. The great point he has made is that the year is closing and Government must be authorized to spend the money at the beginning of the new year. I submit that it would have

been better if a lump sum had been voted, say for the first three months, for Council to agree to that as a temporary measure, until such time as the full Report of the Standing Finance Committee was presented.

Instead, we are told, that the revenue has been increased by a sum of £100,000, but I have had nothing before me to show what amount this country is going to receive in revenue for us to sanction the expenditure proposed to-day. We do not behave like that with our family budgets, so why should we do it here?

I must agree with the hon. Member for the Coast who, during the budget debate, called this a phantom budget. No more appropriate term could have been applied. But I can quite see the game. I see the policy of "You scratch my back and I'll scratch yours" which has been going on, and it is not only the steam roller which is being used to carry measures through but also the arrangement which I suspect, and am quite sure, has been arrived at with the people who have always been opposing Government, who have been opposing the measures which this Government and the Imperial Government have been asking us to introduce.

I suggest that these laudations and praises poured on Government and on the hon. mover are the reward for a compromise. If it is not a reward for a compromise why was not this attitude shown at the beginning of the budget debate? Government made it clear even then that there was going to be some sort of surplus. The white opposition said it would be even more, that it would be £100,000, so that the question did not then arise about an increase of revenue. The question was the income tax issue.

I fear that some sort of arrangement has been arrived at for this mutual back-scratching to take place in this Council.

I very much regret to have to refer to the attitude of the hon. Member for Trans Nzoia. I have always given this Council the assurance that we did not wish to raise these racial issues. If the hon. the Colonial Secretary thought fit to include the hon. Indian Member Mr. Pandya in his thanksgivings, or to include us, why should the hon. Member for Trans Nzoia object? The Noble Lord also said that the hon. Member Mr. Pandya, in spite of racial antagonism, had collaborated with him and his colleagues on the Standing Finance Committee, and if it were not for his colour one would not be able to say whether the hon. Member Mr. Pandya's contribution to this Report was that from a white man, black or brown. It shows that, given the opportunities, even an Indian can co-operate with Government and with the white people.

The hon. the Director of Medical Services has already spoken. I can assure him that I am not in the frame of mind that I was at the beginning of the session! (Laughter.)

I have to take his side on one or two issues that have been raised, especially the issue of the appointment of medical officers in place of district surgeons. I do not know that he has been able to convince the European elected members, who opposed this, as well as the hon. Member Mr. Pandya, of the real point at issue, which is that not only in the districts but even in the towns if Government have got to run hospitals, it is not very desirable to place those hospitals in charge of private medical practitioners.

I would not myself advocate the principle of placing those Government hospitals in the hands of private medical practitioners on a small remuneration, for I am convinced that that does not make for efficiency or organization or administration. In the districts, too, the time of a private medical practitioner is bound to be taken up with his own private practice to a very great extent, thus endangering the interests of the people who usually go to the hospitals and have to be attended to at all times of the day and night.

In this connection, however, I would put up to the hon. the Director of Medical Services an idea which is very largely employed in India, where the large hospitals have consulting physicians, men who specialize in various branches of medical science and who give their services free to those hospitals. I believe the same system is adopted in England, and I know it is to a great extent on the continent.

The other question on the medical side that I want to refer to is the provision that appears on page 13, Item 127, for nursing sisters to the Nairobi hospital.

I believe this is in response to my appeal to the hon. the Director of Medical Services to improve the Indian section of the hospital as far as Indian women are concerned. I have had his personal assurance this morning that additional arrangements are also being made so that the grievance which we have laboured under for the last three years will be removed, and I think it is only fit that I, myself, and on behalf of my colleagues, should thank him for this timely consideration.

As regards the question of lepers, I do not wish to enter into that, but it seems to me some sort of arrangement could be made by which Government could collect these lepers and segregate them as is done in various parts of the world.

Incidentally, I must refer to a remark made, I think, by the hon. member at one of the last meetings, that lepers did not walk around Nairobi. I understood the hon. the Director

of Medical Services to say he was satisfied there were none walking about. I can assure him that I have seen one in Nairobi, opposite my office, only ten days ago, in an advanced stage of the disease, with nose, toes and fingers mutilated, and a horrible face, moving about in an area where there are many children around. Perhaps it is too small a matter for the chief of a department to be worried about, but I think it is serious enough for him to make a note of it and get the police or some other authority to rectify that condition.

I have one or two words to say about the Education Department.

There are two points in the Education Vote, on page 7, Item 76. I notice that the hon. the Director of Education anticipates a saving in the grants in aid to Indian schools to the extent of about £300. I have never considered that a contribution of £7,000 to these schools was a fair contribution. I thought it was always a meagrely one, and I cannot understand how he comes to the conclusion that it is adequate.

I know some schools in Nairobi which are struggling, and to save £300 on a vote of £7,000 is very unfair to those schools. I hope before the year is over that he will use the balance to help those very needy schools who have from time to time approached him.

I now come to the question on page 8, Item 68, of the grant in aid to Goan Schools.

This subject has been of great importance to me and people like myself for many years, and I am grateful to Government for what they have done. In this connection I must mention the name of His Excellency the Governor, whose impending departure from the Colony we all regret. His wise administration and sympathy to us have given us all a great regard for him, almost amounting to love, and I wish to place our regard on record, and I know the other hon. Indian members will join me.

The sympathies of the Governor, the Colonial Secretary and the Director of Education are reflected in the proposal made for taking over one of the Goan schools by Government and run as a Government school. That is a proposal which relieves me of a bugbear, the yearly recurrence of an ex gratia grant in the budget. I think that Government have done well in recognizing its responsibility to undertake Goan education, and to that extent I must record my gratitude.

But I cannot understand why the grant of £1,200 originally made has been reduced; neither can I understand why it was increased from £600 to £1,200. The fact that Goans would be called on to pay Sh. 10 more under the basic tax if

income tax came in, was said to be the reason why Government were increasing the grant by £600, and now there are several things in the air.

For one thing, we find that income tax may not come; for another, that the basic tax may not be more than Sh. 30; Indian members have pressed for Sh. 20. Is it on account of this particular fear, that you are not going to tax the Goan community Sh. 40, that the decrease is made? Why within a few months then are adjustments taking place? It cannot be because Government are taking over one school? It seems to me there is something in the air, that this taxation business is not as firm as it appeared to be when the Estimates were framed. In any case, I am glad that the Director of Education has agreed that the Goan schools, being in such a high state of efficiency, deserve more than other schools, and are to get £3 per child.

I have an objection to the inclusion of Item 4 (c), under Head XX—Miscellaneous Services.

I think the hon. member stated that it was a very desirable thing that civil aviation should be encouraged. I do not know whether he will confirm what I say, that this grant to civil aviation is a grant to an exclusive club which will not allow Indians as members. I want to be very clear about this. If this club is to be State-aided, I think the club should be asked to alter its constitution. We cannot go on pampering a particular section of the community, we cannot go on using all the facilities for one section of the community only.

Last year, we were told that certain facilities were necessary for certain sections of the community and provision was made accordingly, and again this year. In these Estimates of Expenditure there has been an amount inserted for rifles. Who are going to use them? I know they are not for the Indians who would never be allowed to use rifles. Yet these are items for which we are asked to vote, though we may have a conscientious objection, especially in the case of the Aero Club which, from the very beginning, has excluded Indians of this country, some of whom have been early in the field of aviation, yet are not allowed to be members of the Club. Some of them possess machines, and I understand one or two of these Indians are licensed to fly.

This is the sort of thing which perpetuates racial distinction in this country!

Lastly, this question on page 25, Item 235, rent for the Memorial Hall, this very hall in which we are now met. I understood the hon. Member for Nairobi South recently to explain certain details of additional building which was to take place, and the use of two large rooms for members.

I want to make it clear that I at any rate am not going to be committed to any arrangement whereby we shall stay in this hall any longer. I have requested Government to make other arrangements so that we can shift from this place. I have been listening to an interesting speech this morning and, though I am not deaf, I heard very little of it. I cannot follow the speeches made here, and I told you the other day that I could not follow the speech of the hon. the Colonial Secretary on the budget. That is unfair to us. Incidentally, I do not know whether I shall be right in criticising the hon. Member for Trans Nzoia when he said things about the Indian members, for I do not know yet what he has spoken.

I do not want to stay any longer in this hall than I can help, and I consider there are facilities at Government House or other places—the hall where we met last Monday for instance—where we could meet and which would be more appropriate than this place.

I oppose the motion before Council, Sir.

THE HON. THE COLONIAL SECRETARY: Sir, I do not think there is a great deal which calls for a reply from me. In fact, I think I am justified on behalf of the members of the Standing Finance Committee in expressing to the members of Council our appreciation of the way in which our Report has, in general, been received.

We had one very severe critic, the hon. Member for Mombasa, and when he said it was the worst Report he had ever seen I took a thick notepad and a pencil and thought the least that would be done in justification of his criticism of such a wholesale nature would be that I would have some thirty or forty items to write down in respect of which we, in some way or other, had failed to do our duty. In the end, I could only find two items which seemed to have excited his displeasure.

One was the fact that we have not increased the grant for Waa School. That, I think, has been adequately dealt with by the hon. the Director of Education and the hon. Member for Rift Valley. I have very little to say about that, except to add my tribute to the wonderful work of that remarkable Christian gentleman who has been lucky enough to obtain as headmaster of the school, and to assure the hon. Member for Mombasa that the Standing Finance Committee was in no way lacking in sympathy in dealing with this request. It considered it at reasonable length, and we came to the conclusion that there was not at present a case for increasing the grant. And that was that.

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The other item was one which I seem to have to explain every year in the budget debate, the item of £100 for lepers at Kaloleni. Every time I try to explain the position I only make confusion worse confounded. But the fact is, if you look at the item 64 under the Estimates, you will see there is an increase of £250 on account of infectious diseases hospitals and leper establishments. On the other hand, under Item 111 of the Medical-Draft Estimates, there is a decrease of £100. The net result is that for this service there is an increase of £150.

I do not know how much of that is spent on work for lepers and how much on other infectious diseases, but there is an increase of £150, and the main thing is that no member of the Standing Finance Committee, whether he happens to sit on that side of Council or this side, is going to see the lepers starved or ill-treated, and any suggestion that we treated them in a spirit of levity is fantastic and monstrous. Everyone has every sympathy with these unfortunate people.

THE HON. F. A. BENNETT: It was a matter of his duty in the House, not in the Standing Finance Committee.

THE HON. THE COLONIAL SECRETARY: Everyone has all the sympathy possible for these unfortunate people, and if a case had been put up to us that money is necessary for their maintenance and care, it would have been the very first item which would have received the approval of that committee.

But we have not been told that they are in need of money. When I went to Kaloleni I saw the leper camp. Dr. Allen took me round, and no request was made to me for more money, there was no suggestion that they were not getting everything necessary in the way of treatment. But if a case were put up, I can assure members of the Council that the hon. the Director of Medical Services would go into it, and if there is any necessity for any more money I will sign the special warrant without any hesitation whatever. But we must have a case put up that it is necessary first.

So far as I can make out, these are the only two concrete objections that this very severe critic of ours had to this Report. If that is all he can find as his sticks to beat us with, I do not think we have done so badly.

The hon. Member for Trans Nzoia asked that the procedure we have seen fit to adopt on this occasion would not be a precedent. I certainly hope it will not be.

I think the hon. member is perfectly right to ask for a statement that this is not meant to be the normal Government policy, but on the other hand I ask for sympathy with Government in its present predicament.

It arises out of the fact that Sir Alan Pim's Report came some months after it was expected. We expected to have a full debate on that Report some months ago and, as a result, the Standing Finance Committee would have known more or less where it was. As it is, we have had to combine the debate on the budget and the Pim Report, and I cannot do very much more than refer to what I said in my speech this morning in explaining the necessity for this procedure.

The first necessity is to get the expenditure approved and the Appropriation Bill passed this year. I think every hon. member realises and appreciates that necessity. But, combined with that, is the fact that on the Standing Finance Committee we have not come to finality about the Revenue Estimates. I think that was foreshadowed and made perfectly clear in Council, that we were not likely to finish before the end of the year in the present circumstances.

I quite realize that this is an abnormal and unusual procedure. I quite realize that the hon. Member Dr. de Souza has a good deal on his side when he says that he is asked to approve expenditure without knowing what the revenue is going to be. I did try to forestall criticism on that account by explaining at the beginning of my speech that the revenue, so far as we could humanly see, would be more than that required to meet the expenditure, and I do not think I could do any more than that.

The hon. Member for Trans Nzoia also referred to the matter of the branch line guarantees. He said it was an iniquitous arrangement. I cannot, of course, agree with him over that. It was a perfectly sound, reasonable, and business-like arrangement; in my opinion. However, I will give him the assurance for which he asks, that Government will proceed immediately to take the case up and see what we can do about it in conversations with the Uganda Government.

The hon. member also referred to the extra police for the Samburu area, suggesting that we should have been justified in making the Samburu themselves pay for these ten extra police. There is a good deal of logic in his argument. If the police are necessary because of the disorderly proclivities of the Samburu, there is something to be said for making them pay for it, as the law stands at present, it is not possible. Somebody has got to certify that the country is in a dangerous or disturbed condition. That has been done for the last year or two, because it was in a dangerous and, to some extent disturbed condition, but it is not so any longer, so that nobody can give that certificate.

But there is another question, whether the ordinary authorized establishment of the police is adequate even for

normal times, and this question we shall have to go into. The Samburu area is a large area, and the population is not very disciplined, and it may be decided that, quite apart from the spear, bloodying murders and anything of that kind, the police establishment ought to be increased by ten to bring it up to a reasonable and normal establishment. I do not want to prejudice the issue, but will merely say we will go into it during the course of the year.

The other assurance asked by the hon. member was: if they started their murders again, would Government impose a levy to cover the expense of the police? The answer is emphatically in the affirmative, if conditions warrant it being done as before, both in respect of the Samburu and other lawless tribes.

The same hon. member also mildly protested at the increase in expenditure. The Noble Lord, the Member for Rift Valley, dealt with that, and showed that expenditure on two large items which could not very well be avoided made up about £8,000. I would also ask the hon. member to bear in mind two other considerations. One is, during the year of depression services have been starved; we have not been able to set aside money that we ought to for renewals, and we have not been able to do necessary repairs, so that in the budget for next year we have had to put in just a few items to make up for all the deficiencies of the budgets of the last few years.

In fact, this might possibly be called the first prosperity budget inasmuch as we are almost beginning to return to normal.

The second consideration is that in a Colony of this kind there must be some expansion—at least, I hope there must, because a Colony of this kind cannot stand still for ever: it has either to go on or go back, and there cannot really be any doubt as to which of those two courses this Colony is going to pursue, so that we must realize we have got to have expansion, and expansion means an increase on both sides of the budget.

I do not therefore think that the hon. member's complaint, mild as it was, of the increased expenditure is really a very severe criticism.

If I may just say one word about our work on the Standing Finance Committee. The Noble Lord suggested that I would be able to endorse his remarks that we do try to realize our position as members of an important committee advising Government in respect of the whole Colony and that we do try not to be parochial. I certainly can give that assurance. In the committee, hon. members do not regard themselves merely

as representatives of their own divisions, they do not give advice in a petty, narrow, parochial kind of way. At least, that has been my experience, and so far as that goes I can give the Noble Lord the endorsement he suggested I might.

I also wish to associate myself with the Noble Lord in apologizing most profoundly and humbly to Dr. Gordon. There was a definite misunderstanding, I think we all misunderstood the position: we thought that an arrangement had been made between the Director of Medical Services and Dr. Gordon and that Dr. Gordon was quite prepared to resign and retire. There was not the very slightest intention of slighting Dr. Gordon in any way at all, and I am very, very sorry that this should have happened.

I do not wish to enter into a constitutional argument with the hon. Member Dr. de Sousa. I do not think it has anything to do with the motion before the Council, which is merely that the Report of the Standing Finance Committee be adopted. It is not a motion to the effect that this Council has exceeded its powers in asking the Standing Finance Committee for a Report. That is an entirely different matter. Actually, the Standing Rules and Orders are quite plain for anybody to read and understand if he likes, so that I will not go into the matter of the constitutional question at all. The only question is whether we adopt this Part I of the Report.

The hon. Member Dr. de Sousa raised the question of a decrease in the grant in aid to Goan schools. I have little to add to the explanation in the Report. The £690 in the Report is what the Director of Education told us would be required on the maximum scale for Indian pupils, and the Standing Finance Committee decided that that was a generous scale to adopt. It also added a rider that the Director should go into the question of taking over one of the schools and running it as a Government school, that if assistance to Goan education was wanted that that was a better way than originally suggested in the Draft Estimates, by putting in a rather extravagant figure for a grant in aid.

The hon. member also asked if the Aero Club was exclusive, if only European members were allowed, and what the constitution of the club was. I do not know what the constitution is. All I know and all that I am concerned with is that it is doing very valuable work for Government, and therefore Government is justified in giving it a subsidy.

I hope I have answered all the questions asked me: I have tried to do so as well as I can.

The question was put and carried.

18th December, 1936

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LOAN REALLOCATION: COMMUNICATIONS.

THE HON. THE DIRECTOR OF PUBLIC WORKS: Mr. President, I beg to move:

"Be it resolved, that this Council, hereby approves the expenditure of a sum of £769 upon the purpose specified in the Schedule hereto as a charge against Loan funds, and further approves provision being made therefor by a reallocation of the amount from—

Communications:

Roads survey of Colony	£90
Feeder roads	£670

SCHEDULE

Communications:

Main roads and bridges	£769
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This proposed reallocation of loan funds comes to this Council with the blessing of the Central Roads and Traffic Board.

The motion asks authority for the transfer of certain unspent balances under the loan items "Road survey of the Colony" and "Feeder Roads" of the sub-head "Communications" to the item "Main roads and bridges" for the purpose of augmenting the loan funds already allocated to the Mau-Mokafana Road which is now under construction in order to provide hard surfacing, thus rendering the road of all-weather standard, at an estimated cost of £1,000. The cost of the new road, inclusive of the hard surfacing, will amount to approximately £170 per mile, which I consider very reasonable.

THE HON. THE TREASURER seconded.

The question was put and carried.

Council adjourned till 10 a.m. on Monday,
21st December, 1936.

MONDAY, 21st DECEMBER, 1936

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, the 21st December, 1936, THE HON. THE ATTORNEY GENERAL (W. HARRAGIN, Esq., K.C.S.) presiding.

The President opened the Council with prayer.

COMMUNICATION TO COUNCIL.

THE PRESIDENT: Hon. members may be interested to learn that the Agreement between the Government and Liebig's (Kenya) Ltd. was signed on the 18th December. The Agreement provides, *inter alia*, for the leasing of land to the Company and for the erection by the Company during 1937 of a factory for the manufacture of meat extract, for the slaughtering of cattle and for the manufacture and treatment of the products and by-products thereof. The factory is to be situated at Athi River and is to be capable of dealing with thirty thousand head of cattle per annum. An assurance has been given that the Company does not deal in fresh meat and has no intention of doing so in this Colony.

MINUTES.

The minutes of the meeting of the 18th December, 1936, were confirmed.

PAPERS LAID ON THE TABLE

By THE HON. THE DIRECTOR OF AGRICULTURE:

The following papers were laid on the table:

Report of Select Committee on the Kenya Cotton (Amendment) Bill.

By THE HON. E. B. HOSKING:

Report of Select Committee on the Mining (Amendment) Bill.

NOTICES OF MOTION.

The following Notices of Motions were given:

By THE HON. THE DIRECTOR OF AGRICULTURE:

"That the Report of the Select Committee on the Kenya Cotton (Amendment) Bill be adopted."

By THE HON. E. B. HOSKING:

"That the Report of the Select Committee on the Mining (Amendment) Bill be adopted."

BILLS.**FIRST READINGS.**

On the motion of the Hon. T. D. Wallace, seconded by the Hon. The Treasurer, the following Bills were read a first time:—

The Kenya Regiment (Territorial Force) Bill.

The Kenya Auxiliary Force Bill.

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

VALEDICTORY.

H.E. SIR JOSEPH BYRNE.

THE HON. THE COLONIAL SECRETARY: Mr. President, before the adjournment is made, I feel sure that I am expressing the feelings of every member of this Council in wishing His Excellency the Governor on his departure from Nairobi a good voyage, a speedy return to health, and long life and happiness. (Applause.)

CAPT. THE HON. H. IS. SCHWARTZ: Sir, on behalf of the European Elected Members, we wish to endorse the wishes which the hon. the Colonial Secretary has just given expression to and would ask to be associated with them.

VEN. ARCHDEACON THE HON. G. BURNS: Mr. President, I would like to associate myself, on behalf of the natives of the Colony, with the words expressed by the hon. the Colonial Secretary.

THE HON. J. B. PANDYA: Mr. President, on behalf of the Indian elected members I wish to associate myself with the remarks of the hon. the Colonial Secretary and the hon. Member for Nairobi South, in wishing His Excellency the Governor happiness and good health on his retirement. The Indian members are very grateful indeed for the sympathy and consideration His Excellency has always extended to us, and we wish him all health and happiness. (Applause.)

Council adjourned till 10 a.m. on Tuesday, the
22nd December, 1936.

TUESDAY, 22nd DECEMBER, 1936

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, the 22nd December, 1936, THE HON. THE ATTORNEY GENERAL (W. HARRAGIN, Esq., K.C.) presiding.

The President opened the Council with prayer.

VALEDICTORY.

THE PRESIDENT: His Excellency has instructed me to say that he has received with great pleasure and appreciation the good wishes of Council, which were conveyed to him yesterday.

In saying farewell to Council, His Excellency wishes it all prosperity in the future, and is confident that its deliberations will result in measures of lasting benefit to the Colony and Protectorate whose interests it so diligently serves.

BILLS.**SECOND READINGS.**

THE KENYA REGIMENT (TERRITORIAL FORCE) BILL.

THE HON. T. D. WALLACE: Mr. President, I beg to move the second reading of the Kenya Regiment (Territorial Force) Bill.

It is, I think, impossible to divorce this Bill from the Auxiliary Force Bill, as these two measures are intended to give effect to the proposed new defence scheme for the Colony and, as such, naturally dovetail into one another. I therefore propose to deal with the military organization of the Colony as it exists to-day and the necessity which arises for the enactment of these measures. I trust that by adopting this course it will be possible to dispense with the necessity of any explanatory remarks when I come to move the second reading of the Auxiliary Force Bill.

It will be within the recollection of hon. members of this Council that, early this year, correspondence took place between this Government and the Secretary of State with regard to the defence scheme of the Colony. This correspondence culminated in the Colonial Office despatch of the 5th February, in which the Secretary of State outlined the type of military organization which in his view would enable the potential European manpower of the Colony to be utilized to the best advantage. That despatch was published in the local Press, and the whole matter was ventilated very fully at the time.

As a result of that correspondence, His Excellency, on the 6th April of this year, appointed a committee to submit recommendations on the proposals contained in that despatch, and to submit draft legislation to give effect to any changes which they might recommend if such were ultimately approved. The committee commenced its deliberations on the 26th April, and its first act was to publish a notice in the Official Gazette and to issue a communique through the medium of the local Press and the wireless asking all those desirous of placing their views before the committee to do so at the earliest opportunity. This invitation was repeated some ten days later, and, as a result, twenty-four persons came forward and gave evidence before the committee, while eighteen others submitted written memoranda.

Hon. members who have perused the report will have observed how much the committee appreciated the assistance thus given to them, and I think every member of this Council will agree that a debt of gratitude is due to those gentlemen who came forward, in many instances at great inconvenience to themselves, in an endeavour to assist in the solution of this important problem.

Early in the course of its deliberations the committee was satisfied that the defence of the Colony was of a twofold nature. Firstly, defence against external aggression, and, secondly, defence in the event of any internal disturbance; and it is on this hypothesis that any criticisms they have made of the existing organization, and any recommendations which they made in regard to the future organization, is based.

In considering the external aspect of the problem, the committee, bearing in mind the lessons of the East African campaign in the late War, came to the conclusion that, in the event of any future aggression, the primary function of the European manpower of this Colony should be to provide a nucleus of officers, non-commissioned officers and instructors to native troops. In so far as the internal aspect is concerned, the committee agreed with the Secretary of State that some sort of organization was necessary to prevent life and property in the event of any local disorder, but whereas the Secretary of State suggested that the position could possibly be met by mere compulsory enrolment without any type of training, the committee was satisfied that a force to have any practical value, must be acquainted both with its leaders and its duties, if there was not to be any confusion in any emergency, and, secondly, a force without any practical training might in an emergency by precipitate and rash action embarrass the authorities rather than help them.

The committee then examined the existing organization, which, as all hon. members are aware, consists of the Kenya Defence Force established under the Defence Force Ordinance of 1927. While they were satisfied that there was nothing inherent in that organization to render it unsuitable for dealing with matters of purely local disorder, they considered it was totally inadequate to deal with the question of external aggression.

They therefore came to the conclusion that the best method of tackling the problem, as far as the external aspect was concerned, was, as the Secretary of State suggested, by the establishment of a volunteer force on the territorial model. The Bill we are about to consider is an endeavour to give effect to that recommendation.

The Kenya Auxiliary Force Bill, which appears next on the Order of the Day, is an endeavour to give effect to the committee's recommendation with regard to a security force in the case of local disorder. The Secretary of State suggested that it might be as well if this auxiliary force was formed as a reserve to the volunteer force. But the committee, after mature consideration, came to the conclusion that, as the purposes which they proposed to assign to the two forces were so dissimilar, and as there did not appear to be any good military reason, it would be advisable to keep the two forces entirely separate.

They did, however, suggest there should be a reserve to the volunteer force, into which all members having served four years in the regiment should pass and continue to serve for another four years. This recommendation has been accepted, and provision has been made therefore in the Bill.

I should remind hon. members of Council that when the committee was appointed it was made clear that any scheme which was involved should be subject to review by the Army Council. Therefore the Bills which are before us to-day are, as a result of various criticisms which that body made, different in a few respects from those which appear in the appendix to the report. Since the Bills have been published the Army Council have made suggestions which will necessitate further amendments to the Bills, and these it is proposed to make at the committee stage.

It was pointed out to the Secretary of State that it was essential that these Bills should be put on the statute book of the Colony as soon as possible if interest was not to flag. He therefore agreed to their introduction at this session, but pointed out that the Army Council had only so far furnished provisional comments, and might have further alterations to make, which, if necessary, could be made by an amending Bill.

Coming to the details of the Bill, clause 3 provides that the Governor is empowered to establish a regiment, to be known as the Kenya Regiment (Territorial Force), and the regiment is to be under the supreme command of the Governor, and under command of the Commander, Local Forces, Kenya and Uganda.

Clause 4 provides that the officers and members must be British subjects of European origin, and, upon being commissioned or enrolled, as the case may be, must take the oath.

Clause 5 provides that every officer and member is liable to be called up for active service in the Colony with the regiment, and it is proposed to make an amendment, that they will be liable for service with the Coast Defence Unit established under the King's African Rifles Ordinance. There is, however, a proviso to the clause which states that any officer or member may sign a declaration to the effect that he is willing to serve outside the limits of the Colony if the Governor thinks such course expedient.

Clause 6 provides that the period of service shall be four years in the regiment, and thereafter four years in the reserve. There is a proviso to the effect that this service may be curtailed in the case of any person who produces evidence of service either with the Auxiliary Force or with any of His Majesty's regular forces.

Clause 7 empowers the Governor to establish the reserve to which I have already referred.

Clause 8 empowers the Governor to form a Special Reserve. The object of this is to provide for voluntary enrolment of persons who, by virtue of past service either with the regiment or elsewhere, it is advisable to retain for service with the regiment.

The next three clauses, which form Part III of the Bill, deal with the establishment of cadet units on the lines of the Officers' Training Corps, which shall be composed of boys between the ages of 14 and 18, with the consent of their parents or guardians. These units are not to be part of the regiment, but to be affiliated thereto, and a cadet who has passed the prescribed tests for a period of three years may, at the age of 18, be transferred to the regiment.

Clause 12 is merely administrative, in that the Governor may establish military districts.

Clause 13 provides that the Governor may at any time call out the whole or any part of the regiment for active service, and clause 14 goes on to say that while on active service no officer or member is entitled to discharge.

Clause 16 provides that officers of the executive command shall be appointed by the Governor.

Under clause 18 the Governor may cancel the commission of any officer, but that, before he does so, notice must be given to the officer of any complaint or charge made against him, and he must be given an opportunity of exonerating himself.

Clause 19 provides that officers of the regiment on the retired list may, with the approval of the Governor, retain their rank and wear their uniform.

Clause 20 provides that an officer may resign his commission, but shall not be relieved of his duties until his resignation has been accepted and notice thereof has been published in the Gazette.

Clause 21 provides that members of the regiment are to be issued with uniforms, arms, ammunition and equipment, and are to be responsible for the maintenance thereof, and if issued with rifles, they are to be kept in their personal possession.

Clause 22 provides that service is to be reckoned from the time of appointment or enrolment, and that the time occupied in proceeding to or returning from any camp shall not be reckoned as part of the training.

Under clause 24 the Governor is empowered, when the regiment is called out on active service, to authorize officers or public servants to commandeer supplies of food, transport, etc., which are necessary for the maintenance of the regiment in the field.

By clause 25 the Governor may authorize the officer in command on active service in the field to require the railway authorities to convey officers and men of the regiment and their impedimenta to and from any place in the Colony.

Under clause 26, which it is proposed to amend, the provisions of the Army Act are to apply to the permanent staff and officers of the regiment at all times, and to members of the regiment, the reserve, and special reserve during peace training, when they are in uniform, when they are on active service, and when called out for active service.

Clause 27 provides that no officer or member of the regiment, reserve, or special reserve shall be punished twice; that is, under this Ordinance and under the Army Act. Clause 29 provides that an officer can be prosecuted under the ordinary law, but if he has been convicted or acquitted of an offence under the Ordinance or Army Act he cannot be tried again for the same offence.

Clause 30 provides that, when the regiment is associated with other branches of His Majesty's Forces, any act committed by any member of the regiment which would in relation thereto be an offence, be also an offence if committed in relation to any other branch of the forces with which they are associated.

The next four or five clauses are penalty clauses.

Clause 31 provides for a fine of £100 or a term of imprisonment not exceeding six months, or both, on any officer or member who fails to assemble when called out on active service. Clause 32 provides a penalty for inducing any person or member of the regiment—or attempting to—neglect his duty. Clause 33 provides that any officer or member of the regiment who fraudulently pretends he is travelling on the service of the regiment with the intention of obtaining special rates, shall be guilty of an offence. Clause 34 provides that a person who commits an offence against any regulation regulating commandeering shall be punished with a term of imprisonment not exceeding five years.

Clause 35 provides that any officer or member of the regiment who, without permission, disposes of any moneys, animals, ammunition and so on, which have been entrusted to him for the service of the regiment, is liable to a penalty, and may, in addition to such penalty, be ordered by the court to make good the loss or deficiency caused by such disposition.

Clause 36 is a general penalty clause of a fine, on conviction, of £10 or a month's imprisonment, or both, and clause 37 provides that every civil action against and every criminal prosecution in respect of anything done in pursuance or contravention of the Ordinance shall be commenced within a period of six months from the date on which the cause of action arises or the offence was committed.

By clause 38, the disclosure of secret information by any officer or member of the regiment or by a public servant is an offence, unless that person is acting with due authority and in execution of his duty.

By clause 39 the Governor is empowered to constitute a permanent staff.

Clause 40 provides that the Governor may award a gratuity or pension to any member of the regiment who has been temporarily or permanently disabled on active service; but no gratuity shall exceed £250 and no pension shall exceed £100 a year, except with the sanction of this Council.

Sub-clause (2) of clause 40 provides that the Governor may grant to the widow or family of any member of the regiment killed in action or on active service a pension or

allowance as to him may seem fit. By sub-clause (3) such pension or gratuity shall not be assignable or transferable, and shall not be attached.

This Bill, Sir, does not give a complete picture because, of course, all details will be dealt with by regulations, and clause 41 provides that the Governor may make regulations for all sorts and conditions of practical matters which may from time to time arise. I may observe that these regulations have already been drafted, and when this Bill becomes law the first opportunity will be taken to publish them.

THE HON. THE TREASURER seconded.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Mr. President, as the hon. mover said, these two Bills cannot be dissociated from each other, for they are all part of the one scheme.

And in dealing with them it is impossible not to refer to the almost unbelievable mismanagement which Government saw fit to take with regard to this question last year. There was no necessity whatever for any ill-feeling or any controversy at all to have taken place on the question of the Kenya Defence Force (Hear, hear) if Government had only seen fit to take the representatives of the people concerned in these affairs into their confidence.

Not only that, Sir, but if the Governor of the Colony had seen fit to accept the advice, the unanimous advice, of the Standing Finance Committee which sat last year there would have been before us a very similar report in evidence to that which was produced by the subsequent committee. A definite recommendation for the appointment of a committee was made by the whole of that Standing Finance Committee, and my hon. friend the Colonial Secretary had to get up in this House and explain that he could not accept it, and therefore there was moved in this House the following motion:

"That in the opinion of this Council a small committee should be appointed with wide terms of reference to inquire into the organization, requirements, equipment and training of the Defence Force. The personnel of such committee to consist of the Brigade Commander, the Defence Force Commandant, and the hon. Member for Rift Valley, together with an independent secretary."

Had that been accepted, everything would have been done in good will, instead of which feeling and bitter resentment had been caused right through the country and among everyone who has been connected with the Kenya Defence Force, and I myself would not have been driven off His Excellency's Executive Council.

The reason why Government pursued that attitude was a completely erroneous idea, which ill-informed people apparently had told the Governor, that the Defence Force was meant to be used for political purposes against Government. I say that there was never any such suggestion put forward by any responsible person either in the political world or in the Kenya Defence Force, and if any suggestion as that was ever made it was merely idle gossip over the bar, and should have been paid no attention to. I do not say this, Sir, idly, because it was confirmed to me when I was in England last year by a responsible person that that was the case.

I do not want to go back over past history. What we have before us now is to see that the Defence Force of this Colony is reorganised on the best possible lines and with the best will and with the co-operation of everybody in the country. For that reason I support the Bill which is before us.

This first part of the scheme which we are now dealing with has, of course, nothing new in it. It is putting into force what could have been done before under the existing Territorial Force Ordinance, which has got to be repealed when this Bill becomes law.

The object, as has been stated, is that there should be a system of voluntary service by which suitable young people of the country should be trained so as to take their place in time of war as officers or non-commissioned officers in the regular forces. I am sure, Sir, that this is an object which we must all be in agreement with. I trust that the necessity for joining this force will be apparent to all young men who are in a position to join.

It is no use in these days shutting one's eyes and saying there will not be war. Unfortunately, affairs in Europe are so difficult and so strained that at any time in the near future, we may find our nation once more involved in a European war. If that does happen, I submit it is the duty of everybody to train themselves in the meantime to the best of their ability so as to be ready to take their place if such an unfortunate eventuality happens.

I do suggest this to the young men of this country: that this does give them the opportunity of training themselves for such service, and it will be a great benefit to them if, unfortunately, war does occur.

I have not very many points of detail to bring up on this Bill, but there are one or two that I should like to mention.

I do not quite understand why in clause 5 members of the regiment should only be liable for active service within

the limits of the Colony; while it goes on to say that they can if they like sign a declaration to the effect that they are willing to serve outside. Why not make one bite at the cherry instead of two, and say that anybody who joins is liable to serve wherever in the interests of the Empire it is thought he should serve?

With regard to training, this does not actually come under the Bill but under the regulations. I submit that the recommendation in the committee's report that, in addition to their twelve days in camp, members should also do 100 hours' drill during the year, will have to be modified if you want to get practical results, at any rate outside Nairobi. I do not think it is possible to get young men to give up 100 hours during the year, nor would it be possible to get instructors for them. I suggest that when we get to that part of the proposals that some alternative system should be found whereby there might be week-end camps, or for a longer period, as may seem most practicable, otherwise I am afraid that that recommendation will defeat the object of the Bill, which is to get a lot of young men scattered all round the country suitable for this force.

Going back a little to past history, the committee produced a most admirable report, and though some of their recommendations will have to be modified so far as the technical and practical side is concerned, it was a very good report. But I do think it was a great pity that in that report they spoilt it in my opinion by pandering to the political side of the question, wherein they state that they recommend the Defence Force should be disbanded. The Defence Force, however, is not being disbanded, but is being continued as before in the Bill which will come up later for consideration, only the name has been changed from the Kenya Defence Force to the Kenya Auxiliary Force.

I would make the most earnest appeal to Government. We want to start this new system under the very best auspices, with the best will, and to wipe out any feelings of resentment which may be left. I would ask most earnestly that Government will accept my proposal that the name of the regiment shall be the Kenya Defence Force instead of the Kenya Auxiliary Force. (Hear, hear.)

Some people ask: What's in a name? When it is a question of tradition and *esprit de corps*—two of the good qualities which make good soldiers, there is a great deal in a name, and those of us who have been associated with the old Defence Force for many years are proud of that name. The initials "K.D.F." have become an established symbol in this country!

I hope very much that in due course Government will accept my suggestion, so that we can all start again with the

best will in the world, determined to make the material available to us as efficient and in as good spirits as it is possible to do in this Colony. (Hear, hear.)

THE HON. ISHAK DASS : Mr. President, I beg to move an amendment, that the words "of European race or origin" which appear in sub-clauses (1) and (2) of clause 4 of the Bill be deleted.

THE PRESIDENT : That should be done in the Committee stage of the Bill, as it is a matter of detail.

LT.-COL. THE HON. W. K. TUCKER : Mr. President, I rise to support this Bill, and I wish to associate myself with all that has fallen from the Noble Lord the hon. Member for Rift Valley, alike with regard to the worthiness of the cause that the Bill is intended to promote, the appreciation he has expressed of the committee's work, and, lastly, the point he advanced at the close of his speech as regards the name of the proposed new force.

I feel that someone representing Nairobi should say a few words on this subject since Nairobi provides such a very high percentage of the manpower. There is only one criticism I wish to advance. Perhaps criticism is not the word so much as to ask of the hon. mover some detailed explanation in his reply as to why in the organization of the old Defence Force, the organization of the Territorial Force in England, and similar forces elsewhere in the world, why in the case of this particular one it has been decided entirely to eliminate any liaison or contact with the civil population?

I submit even at this late stage that a mistake may have been made, and I put the question forward with quite a little experience, not only as chairman during the early years of the Nairobi Defence Force, but as one who for over twenty years was associated with the Territorial Force in England. In my humble opinion, we took part in the building up of the Territorial Force organization in 1908 when it took the place of the old country volunteer battalions and so on.

I say, with that experience, one has seen month after month how very helpful to a commanding officer, and to the force such as is proposed in this Bill, it is to have—I do not say all sorts of committees spread all over the country that the old Kenya Defence Force Ordinance provided for, that may not be entirely desirable—but I do say in practice the existence of, shall we say, an advisory committee to whom the officer commanding can look not for interference but helping along such lines, for instance, as recruitment, where I believe it is possible for civilians or lay members in these different communities very materially to help in the tremendous task which lies in front of this organization.

I would like to ask one question. I think the hon. mover would interest this Council by explaining why, in clause 3 (4), it has been decided to ignore clause 50 of the report by laying it down that the officers of the regiment shall be commissioned by the Governor, when in the report the committee say :—

"We are strongly of the opinion that the high privilege of holding their commissions direct from His Majesty the King afforded to officers of the Territorial Army in England should be accorded to the officers of the Kenya Regiment, and we recommend that representations to this effect should be made in the proper quarter."

Mr. President, it may be a small distinction, it may be a big one. It is a big one in the minds of many people. There is a sentimental reason why a commission, which is a great privilege for any man to hold, should if possible come from His Majesty the King; in precisely the same way as that privilege is enjoyed by, I believe I can say, all officers serving in every military force in England.

Moreover, I am told—and the hon. mover will confirm this or otherwise—that despite the departure from the recommendations of the committee there will still remain in this country one volunteer unit whose officers do enjoy commissions direct from His Majesty the King. I repeat, I am sure the Council will be interested to know precisely why this departure has been made. That is the main question I wished to raise.

If I may be allowed to quote two or three more words from the report, I should like to do so in support of the point made two or three moments ago with regard to an endeavour being made in some way to secure the help of other people; that is, to emphasize the first sentences in paragraph 42 of the report :

"We are aware that the success or failure of a force of this nature depends largely on the support which it obtains from public opinion, and we consider that it is essential that it should be given the active sympathy and support of every section of the community."

So far as I am concerned, and so far as certain bodies in this town are concerned with which I am associated, I desire to tell those primarily responsible for promoting this report that the spirit of this paragraph shall be carried out to the utmost of our ability. (Applause.)

DR. THE HON. A. C. L. DE SOUSA : Mr. President, I have only a few words to say, and they are to regret that Government could not see fit to have included in this Bill provision for the enrolment of members of the Indian community.

The Noble Lord said a few minutes ago that it would be the duty of everybody to take part in the defence of the Colony when the nations were at war with each other again. I submit that the Indian community has the same right to take part in the defence of the country in which they have made their homes as the European members. If I am not very much mistaken, the hon. the Colonial Secretary, in reply to a question, assured us that when the question of reorganizing the manpower of the Colony came up the Indian case would be considered.

Had it not been for the exclusion of Indians this Bill would have merited our unstinted support, but I hope Government will understand that our objection to this exclusion is not only a sentimental but a vital question to people who claim to be members of the Empire. We cannot forget that we have had both in our Motherland, India, and elsewhere, assurances from British sovereigns, especially from Queen Victoria, that as subjects of the British Empire we will have opportunities. This Bill not only constitutes an offence to the Indian manhood in this Colony, but, I will go a little further and say, this Bill is another offence to the great Indian nation, and I am sure that the repercussions of this Bill will be felt in that great portion of the British Empire, India.

THE HON. SHAMSUD-DEEN: Mr. President, I think the hon. Indian member Dr. de Souza has said all that was absolutely necessary to say from the Indian point of view to lodge a protest against British Indian subjects being excluded from the operations of this Bill. I will go a step further, and say there is absolutely no reason why, not only British Indian subjects, but all the African subjects of His Majesty the King should not be given equal opportunity to defend the country in which they live.

We have often been accused of bringing in racial matters in everything that comes before the House. Section 4 of this Bill makes it perfectly clear that it is an entirely racial measure and I think it is only fair that we should have it on record that we offer ourselves to serve the country of our adoption in case of any trouble in the Colony.

Of course, some of my hon. friends do not quite appreciate that in this Colony, in the phraseology of the European community, when they talk about manpower, they only mean European manpower, because they hardly consider non-Europeans to be men at all.

We have very often been accused of taking our local matters to the Government of India and to the people of India, but in this case, as the last speaker has hinted, I hope

we will not be accused if we were to place the whole of this matter, which really disgraces British Indian subjects, before the people and Government of India, and tell them that in case of trouble what is not good enough for this Colony should not be good enough for India, and if the British Government asks the manpower in Kenya to come forward and take part in defence in any trouble that may take place they will have a very good answer to give them if the Indians in this country are excluded.

It is rather strange that the British nation should adopt a method of this sort while other nations, such as the French, do not make this sort of peculiar laws. Under the French laws, whether you call it a privilege or responsibility to serve the country, it is open to all African subjects, as it is to all French people, to serve. I have seen Africans travelling from Madagascar holding commissions in the French Army, and I have never heard of any trouble on that account.

However, our sole object is to lodge an official protest against Indian and African subjects being excluded from the operations of this Bill.

THE HON. THE COLONIAL SECRETARY: Mr. President, I do not think it would be very profitable to pursue the line of argument raised by the hon. members Dr. de Souza and Mr. Shamsud-Deen, because I really do not think the issue they have raised has anything to do with the motion that these two Bills be passed into law.

The Bills are concerned with the reorganization of the existing European force, and have nothing to do with any proposal to raise additional forces of any other race or kind, and the passage of these Bills will not affect in any way whatever the issue as to whether or not we want an Indian regiment. If the time comes when circumstances seem to warrant the establishment of a new force of whatever kind, and if we are sure of getting the right kind of material, and the material would come forward—if all the circumstances, as I say, would seem to warrant such a departure from the existing practice, the passage of these two Bills would do nothing whatever to prejudice the acceptance of any such proposals.

Council adjourned for the usual interval.

On resuming.

LT.-COL. THE HON. J. G. KIRKWOOD: Mr. President, I rise to support the Bill before the House on general principles, but I would like to state that had Government taken the advice that was tendered them in the past there would be no occasion for this Bill to come before Council.

The Kenya Defence Force is a conscript force, which I am in favour of. I believe that if a country is worth belonging to it is worth fighting for. I also believe in conscription. I do not believe in any passive resistance movement or conscientious objections. The issue has been proved time and time again, especially during the late War.

I maintain now, as I always have, that had conscription existed in England in 1914 the war I refer to would never have taken place. It took them at least two years before conscription came in, and that prolonged the war for another twelve months, costing many millions of pounds and hundreds of thousands of casualties.

It has been seen fit, nevertheless, to bring in the Bill we are now discussing providing for voluntary service. But I do agree with the Noble Lord that clause 5 could well be amended to provide that anybody or everybody who serves in this force should be prepared to serve anywhere.

It is a matter of history that during the Boer War I belonged to the Colonial Division, and, passing through Cape Colony, we came to Orange River. Before we could pass from one territory to the other, it was quite news to everybody who had enlisted that we could not be taken over that river without volunteering for service outside Cape Colony.

It is also a matter of history that, when the Division was paraded and the difficulty was pointed out, all those who were willing to serve outside the Colony were asked to take one step forward. The whole regiment moved forward.

That will probably happen here if clause 5 is not altered. A uniform on a man and a gun in his hand have a wonderful influence on a man! Nevertheless, I should like to see clause 5 altered as suggested by the Noble Lord.

I should also like to reiterate his statement that there never was any intention of using the Kenya Defence Force in any shape or form other than the purposes for which it was formed. (Hear, hear.) I have taken my oath in this Council, and I am also well aware that it has been well advertised that I am still a member of the Vigilance Committee, and it has been well advertised too that we took an oath of secrecy.

That is perfectly true, but there was nothing in that oath, which was a very simple one, which conflicted with the oath I have taken in this Council, and there was nothing in that oath which I regret. It was purely a matter of secrecy and nothing else.

As regards the Bill to provide for the establishment of the Kenya Defence Force, I also agree that the name should be altered to Kenya Defence Force. There is a great deal in

a name. There are such things as regimental tradition and *esprit de corps*, and if you get those two you should get the third, morale.

There is a tradition still behind the Kenya Defence Force, and I am quite sure all those who enlisted in that force would like to see the new force carry the old name. I do hope Government will give attention to the wishes expressed. It is probably a small matter for Government to alter the title, but I am sure it will be appreciated by everybody in the Colony, more especially those men who intend, immediately the Bill passes, to enlist.

I am well aware that the Kenya Defence Force was to a great extent inefficient. It was not a question of spirit, it was not a question of the men who joined; it was a question of funds. The force was starved financially, and any force that is starved financially loses enthusiasm, and it not only loses enthusiasm but it loses efficiency. There was a great lack of permanent instructors, and the equipment, the quartermasters' stores, rifles and ammunition in my part of the country were cared for voluntarily. I maintain that is the wrong system, and that it will be very much better if the officers, N.C.O.s or whoever is in charge of the various items I have enumerated are paid. Such an appointment also carries responsibility, honorary duty is very often treated lightly and inefficiently.

I also hope that the clause referring to commissions will be altered, and that the officers of this regiment as well as the Auxiliary Force, as it is at the moment named, will carry His Majesty's commissions. I think there is a great deal in that. To carry His Majesty's commission means you serve His Majesty and the whole Empire, and I think it a very much better designation than to say you are carrying His Excellency's commission.

I have always understood that the difference is that behind the commission there is the uniform, which is an indication that you are carrying His Majesty's commission, and consequently every officer behaves as an officer and a gentleman serving His Majesty.

I do not wish to go into detail at the moment, but I do hope these points will be considered.

As regards this matter of the Bill being a racial one, I deny it. As far as I am concerned, and I think, as far as every Britisher and Imperialist is concerned in this Colony and every member of the old K.D.F., and every member likely to join the new force, has no racial feelings as regards military service. It is a question of money and expediency. If and when there is sufficient finance, and there are others, apart

from Indians, who wish to take part in the defence of the Colony, I am sure they will be welcomed. It is a question of money and expediency.

The history throughout of the whole of Africa as regards defence forces has been more from the point of view not of external aggression but of internal trouble. We are here—I am referring to Europeans—in the rest of Africa, a small white island in a solid sea of natives. The natives in this Colony are very loyal, they proved themselves in the late War a very sound rock on which to help the European forces, and also the forces which came from India and fought so magnificently on our side.

But it must be remembered that they are still natives, they are still in a great sense children, they are subject to panic. And if external aggression did start then everybody has got to watch out for internal trouble with the native population. It is not that they are disloyal, but it is a very different standard of civilization, and they are subject to panic.

We have had cases in the few years that I have been here. We had trouble in Nairobi where there was more than one casualty, which was due to panic, and I see no reason why past history should not repeat itself. It has a habit of doing so, and I am quite sure it may repeat itself, though I hope not. But the danger is there, and we must have a force to quickly mobilize to take up their posts. If we cannot do that we shall have more trouble here than we had in Natal in 1906. It flared up in a matter of a few hours, and took a great deal of money to suppress in a campaign lasting over six months with a large force in the field.

On general principles, Mr. President, I endorse the sentiments expressed in the Bill before us.

THE HON. T. D. WALLACE: Mr. President, with regard to the points made by the Noble Lord and by the hon. member who has just spoken, that the Auxiliary Force should be called by the Kenya Defence Force, this matter was considered carefully by the committee, and their conclusion was that, since the Defence Force, as at present constituted, dealt with the dual matters which it is proposed to deal with by these two specific Bills, it was advisable to change the name from Defence Force to Auxiliary Force. I have not the slightest doubt, however, that if this question is raised, as it will be, in select committee, it will receive the utmost consideration. (Hear, hear.)

With regard to another matter which has been the subject of remarks by various members, that clause 5 should be amended to provide that people who voluntarily enlist in the Kenya Regiment should voluntarily agree to serve outside the

Colony if so required, I understand it is unusual in the Territorial Force at home to require such persons to serve outside. I furthermore understand that 97 per cent of the persons who join the Territorial Force at home voluntarily sign declarations that they are prepared to serve overseas.

With regard to the point raised by the hon. Member for Nairobi North on clause 3 (4) of the Bill, that the officers of the regiment should be commissioned by His Majesty the King, this matter has received the consideration of the Secretary of State. He has definitely stated that it is contrary to the usual constitutional practice throughout the Empire, and that he regrets he was unable to accede to this request.

There is only one other point requiring an answer—the suggestion made by the hon. Member for Nairobi North as to the setting up of advisory councils. This matter was also considered by the committee during the course of its deliberations, and apparently they came to the conclusion that it was not very advisable. It is, I know, done at home, and the active co-operation of the civil population is a very helpful factor in the forces. I have no doubt this matter will be raised in select committee, and it will receive due consideration. I doubt if it could be incorporated in the Bill itself, but if it is considered desirable it might be possible to set up non-statutory advisory councils.

I do not think the remarks made by the hon. Indian members require any answer from me as they have already been answered by the hon. the Colonial Secretary.

The question was put and carried.

THE KENYA AUXILIARY FORCE BILL.

THE HON. T. D. WALLACE: Mr. President, I beg to move the second reading of the Kenya Auxiliary Force Bill.

I do not think any explanation is required with regard to the reasons for this measure. Suffice it to say that this is an endeavour to give effect to the recommendations of the committee that some sort of security force was necessary in order to deal with any internal disturbance.

Coming, then, to the details of the Bill.

Clause 3 provides for the establishment of the force, the members of which are liable to be called out on active service and to undergo such periods of peace training as may be prescribed by regulation.

Clause 4 provides that the Auxiliary Force shall be under the command of the Commander. Local Forces, who is to be responsible to the Governor for its administration, discipline and efficiency.

Clause 5 is merely administrative, providing that the Governor may divide the country into Auxiliary Force districts, and for the appointment in each of a commandant and such other officers as he may deem expedient.

Clause 7 provides that the Governor shall have power to delegate his authority.

Clause 8 provides for the division of persons into two classes: Class I, those between the ages of 18 and 30; and Class II, those between 30 and 35.

Sub-clause (1) of clause 9 provides that every British subject of European origin between 18 and 55 years must enrol in the class appropriate to his age, and failure to so enrol is an offence punishable by a fine of £10 or a month's imprisonment, or both. Sub-clause (2) provides that any male person who is not a British subject, but who has all the other qualifications—that is, that he is of European origin and is between 18 and 55 years of age—may, with the permission of the Governor, enrol and, if he does, it is mandatory that he takes the oath.

Sub-clause (3) provides that members of the medical and veterinary professions can only be enrolled in their professional capacity. Sub-clause (4) enacts that regulations may be made requiring persons to give particulars about themselves and requiring employers to give particulars of all persons in their employ. That is merely for the purpose of ascertaining what persons are liable to serve in the force.

Clause 10 provides that persons liable to serve in Class II, that is persons between 30 and 55 years of age, may enrol in Class I, with the approval of the Commander.

Clauses 11 and 12 deal with exemptions, and clause 13 provides that the District Commissioner of each district shall, at the beginning of the year, prepare a list containing the names of all persons liable for enrolment. After that, he holds a court to hear objections, and if he is satisfied that any objections are valid, he amends the list. Any decision of the District Commissioner is subject to an appeal to a first class magistrate.

Clause 14 provides that any person who is enrolled in the force shall notify any change of residence to the District Commissioner and to the District Commandant; and there is a penalty for failure to comply with this section.

Clauses 15 and 16 empower the Governor to provide rifles, and ammunition, and equipment to the members of the force, who shall be responsible for them.

Clause 17 merely provides that the peace training of the force shall be carried out in accordance with regulations, and that the time of this training shall be notified in the Gazette and such other papers as may be necessary.

Clause 18 provides that a District Commandant, with the approval of the Commander, may exempt any member of the force from the performance of his compulsory peace training.

Clause 20 provides a penalty of £10 or a month's imprisonment for non-attendance at peace training.

Clause 21 provides for the mobilization of the force in order to repel external aggression or to aid the civil authority in the protection of life and property. Sub-clause (2) provides that a Provincial Commissioner or a District Commissioner may, in the case of sudden and imminent danger, call out the force in the name of the Governor, and if either of such officers do so they shall forthwith report to the Governor.

Clause 22 makes the members of the force, when on active service or when called out on active service, subject to the provisions of the Army Act.

Clause 23 provides for the liability of the population to provide transport on the mobilization of the force, with a penalty of £100 or imprisonment for six months or both for failure to comply.

Clause 25 provides that failure to attend when mobilization is proclaimed is punishable with a fine of £100 or six months imprisonment. There is a proviso which states that no such conviction shall exempt a person from future liability to serve under the provisions of the Ordinance.

Clause 26 merely provides that a member of the force cannot be punished twice for the same offence; that is, under the Ordinance and under the Army Act.

Clause 27 provides that in the case of temporary absence of members from the Colony or during their service in the Kenya Regiment, the provisions of this measure will not, of course, apply to them.

Clause 29 is an important clause, and it is a matter about which the committee felt very strongly about. It deals with the co-operation of employers. The clause provides that employers who, by dismissing an employee, reducing his wages, or by any other inducement prevails upon or attempts to compel a person from abstaining from doing his service or peace training under the Ordinance is guilty of an offence punishable with a fine of £50 or three months imprisonment, or both.

Clause 30 provides that the Governor may award a gratuity or pension to any member of the force permanently or temporarily disabled by reason of any wound or injury received during active service. This is a similar provision to that contained in the Kenya Regiment (Territorial Force) Bill, that no gratuity shall exceed £250 and no pension shall exceed £100 per annum, except with the sanction of this Council. Sub-clause (2) provides that the Governor may grant to the widow or family of any member of the force killed on active service a pension or gratuity.

Clause 31 states that any person who contravenes or fails to comply with the provisions of the Ordinance shall be liable on conviction to a fine of not exceeding £50. This is the general penalty clause.

Under clauses 32 the Governor may make regulations to deal with various matters and again, in this connection, I may say that these regulations have already been drafted and on the enactment of this measure will be published.

Clause 33 provides that any member of the permanent staff may prosecute persons for offences against the Ordinance and gives him a right of audience in the magistrates court in which the prosecution is taken. Clause 34 is a similar clause to that in the Kenya Regiment Bill, in that there is a limitation of six months within which any civil action or any prosecution must be taken.

THE HON. THE TREASURER seconded.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Mr. President, I have not very much to say on this Bill. It seems to be practically on all fours with the old Defence Force Ordinance. There are, however, one or two small alterations which I would suggest.

One, perhaps the most important, is that under this Bill there shall be no officer commanding the force, only district commandants directly under the command of the officer commanding troops, and a staff officer. That may or may not be found by experience to be a good thing. I am quite open minded about it, but I do suggest there must be some direct line of authority. If there is to be no commandant of the Defence Force the staff officer shall be in a position of sufficient seniority so that he can speak for the whole of the force directly to the officer commanding troops.

While on this subject of the staff officer of the force, I should like to take the opportunity of paying tribute to one who has, I think, had scanty recognition paid him for the long service given this country, I mean the old staff officer

Colonel Fitzgerald. (Hear, hear.) At one time I had to work very closely with this officer, and I do know what tremendous trouble he took and how his heart was in the welfare of the Defence Force. His retirement was somewhat summary, and I should like to take this opportunity of saying that I am sure I am voicing the views of all that his services have been very greatly appreciated. (Applause.)

There is one defect, I think, in the organization of this force which has always existed, and I believe that legally it cannot be remedied. It does seem unfortunate that there is no sort of way by which a commanding officer, during the period in camp, has no powers of summary punishment for minor offences. I do not mean big punishment, but I believe he has no power to give summary punishment at all.

When I raised this question before, under the old Defence Force Ordinance, we were told that it could not be done, but it is a rather cumbersome method. I think to have to bring an action in the courts against anybody who misbehaves themselves. I do not know if it is possible to include anything in the Bill to get over this difficulty, but it would be of great importance if we could. I support the Bill.

THE HON. F. A. BEAUSTEN: Mr. President, the only criticism I have to make of this Bill is that it departs from the volunteer system which is certainly in the first Bill.

I am extremely sorry that I have to disagree with my hon. and gallant friend the Member for Trans Nzoia, but I have always held, and I think English history will probably bear me out, that a volunteer force is five times the value of a conscript force. (Lord Francis Scott: Question!)

The difficulty with a volunteer force in this country, I understand, is the question of men being able to leave their work for their drills. I am going to tell you that the difficulty with the Kenya Defence Force in the town I come from was not with the men at all, it was with their employers. They were the trouble.

A man was perfectly willing to serve, but his employer and I know this for a fact—would find that he could not be spared from the office, that he could not do this or the other and in two cases I know the employer would not stand up and assist the man when he got prosecuted and the poor fellow had to stand the trouble alone. Slight pressure like that is very serious.

I contend that if you had this as a volunteer force and at the same time used pressure—there are always ways and means of using it—on the employers and controllers of young

men, you would find you would get a better spirit in your local affairs and, further than that, you will get a better spirit in the organisers of the force.

I would refer you to the history of the volunteer movement in England, afterwards called the Territorial Force, and everybody will admit the excellence of that force. The remarkable way it stood up to its responsibilities at the time of the outbreak of the late war was due to the enthusiasm of the officers and the enthusiasm of the men. They believed in their duties, they believed in their force, and in consequence they believed in their duty to their own country.

I do think that if we do away, should it be possible, with the conscript idea from this force, and use the methods which you have to your hand for really encouraging recruitment and proper organization of the force in inculcating a spirit of patriotism among these men and their employers, the result would be a far greater success than under the proposed system.

THE HON. ISHER DASS: Sir, I oppose this Bill, and the reasons for such opposition have already been stated by my colleagues who spoke on the previous Bill.

In reply to the hon. the Colonial Secretary, I would inform him that two wrongs do not make one right. There is no reason why any injustice done in the past should be perpetuated instead of being rectified. I hope that the hon. the Colonial Secretary will once more give us an explanation, and this time a satisfactory one, with regard to the position created in clause 9 of the Bill.

In clause 9, sub-clause (1) refers to persons of "European origin or descent," and in (2) it says "subject to the permission of the Governor, any male person, who is not a British subject." We can hardly understand why, if this Bill is only intended for British subjects of European origin or descent, it permits non-British subjects of European origin or descent to enrol themselves.

If the hon. the Colonial Secretary thinks that this concession or privilege or duty can be entrusted to such volunteers, personally see no reason why British Indian subjects should not be trusted, and I hope the hon. member will give us some satisfactory explanation.

DR. THE HON. A. C. L. DE SOUSA: Mr. President, I am going to repeat what I have already said, but I should say much like the hon. and learned mover to turn to clause 29, first line, and explain in his reply what he means by "Any employer".

Does he mean the European employer, because obviously this Bill relates to European man-power, but does he also include the Asiatic employer? There are instances even now where Asians employ Europeans, as do Asian companies or firms.

If that be so, I think it is again adding insult to injury, as it has been an insult to Indians by permitting non-British subjects to enlist in this force while Indian British subjects are excluded.

THE HON. T. D. WALLACE: Mr. President, with regard to the matter raised by the Noble Lord, the Member for Rift Valley, that this force is to be under the command of the Officer Commanding Local Forces, that again is following out the recommendations of the committee, and I think it should certainly be given a fair trial.

With regard to the other point raised by the hon. member, that when the force is on its peace training the person in command of the camp is not empowered to punish members, that is so. Clause 22 merely applies to members who, when on active service, come under the Army Act, but whether it is necessary to bring them under that Act at any other time I am not in a position to judge at the moment. I believe it is a point which could be looked into in committee.

With regard to the point just made by the hon. Indian member Dr. de Sousa the words "any employer" includes a European or an Asian employer if the latter happens to be employing Europeans who are liable to serve under this Ordinance.

The question was put and carried.

THE HON. T. D. WALLACE moved that the Kenya Regiment (Territorial Force) Bill and the Kenya Auxiliary Force Bill be referred to a select committee consisting of:

The hon. the Director of Education (Chairman)

Major the hon. H. H. Brassey-Edwards

The hon. T. D. Wallace

The hon. Elected Member for Rift Valley

The hon. Elected Member for Nairobi North

The hon. Elected Member for Ukamba

THE HON. THE TREASURER seconded.

THE HON. SHAMSER DEEN: On a point of order, the hon. member Mr. Isher Dass wished to move an amendment to the Kenya Regiment Bill which you stated should be moved in the committee stage.

THE PRESIDENT: The hon. member will have his opportunity. The position is that the select committee will have to report back in the usual way to this Council. When their report is being debated, an amendment may be moved to that report to the effect indicated by the hon member Mr. Isher Dass.

The question was put and carried.

KENYA COTTON (AMENDMENT) BILL.

THE HON. THE DIRECTOR OF AGRICULTURE: Mr. President, I beg to move that the report of the Select Committee on the Kenya Cotton (Amendment) Bill be adopted.

At the outset of its deliberations the committee applied itself to the proposal made during the course of the debate on the second reading of the Bill for the establishment of a Cotton Control Board, and after full discussion, ranging over a wide field, the committee came to the conclusion that this question should be treated as a separate issue, and that it did not call for any amendment to this particular Bill.

It was felt that it would be necessary to go very carefully into all the functions and powers of such a body, and it would be necessary in detail to work out its composition, constitution and so on, and it was not quite clear as to whether such a body would be a statutory body, such as the Coffee Board or Sisal Industry Committee, or whether an advisory body such as the Pyrethrum Advisory Board or Wheat Advisory Board would not fulfil the purpose for which a Cotton Control Board would be required. In addition, before the establishment of such a board, it would of course be necessary to obtain the views of those who have interests in this industry.

Having come to the conclusion that this should be treated as a separate issue, the committee did not proceed to make any recommendations as to whether or not a board should be established. I, personally, have an open mind, and I am sure Government would not wish to prejudice such an issue. It was understood that there is nothing in this Bill which would prevent the establishment of a Cotton Board on the lines of the Pyrethrum Board, and should the industry or representatives of the industry or any member of this Council showing such interest in the cotton industry, wish to put up proposals, I shall be very glad to give them the fullest consideration and forward them to Government.

Coming to the alterations made in the Bill:

In paragraph 1 of the Report we have suggested a slight alteration to (b) of clause 3. Instead of prohibiting the importation of cotton seed and so on, we suggest controlling. That

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would be dealt with in the powers for making rules under the Ordinance. For example, it might be suggested that the Director of Agriculture should have power to control the importation of unginned cotton so that the seeds of this cotton would not be mixed with the seed to be distributed to cotton-growers.

In paragraph 2, a slight addition has been made prescribing the class of buildings which may be used for the ginning, baling and storing of cotton. It was considered that this was a very necessary provision to deal, for example, with bad stores or stores which are not rat-proof. But I should not like it to be thought that the stores, ginnery buildings, and so on in this country are bad, because they are not. They are very good indeed, but occasionally we find an insanitary or dirty store, and it is in these exceptional cases that it might be necessary to have rules to deal with them.

Paragraph 3 makes a slight addition to (g) of clause 2, by making it quite clear that the minimum prices which might be prescribed apply to cotton before ginned, and that there can be different prices in different areas.

Regarding paragraph 4, there was considerable discussion in committee as to whether or not we should retain sub-clause (h) of clause 2. After the fullest consideration it was considered that on the whole it would be better to retain it. The hon. and learned member Mr. Wallace has already said that it is not Government's intention to put forward any rules under this particular sub-clause at the moment, but I think the committee felt it would be best to retain it because we know the evil that has existed in other territories. At any rate, by keeping this sub-clause in the Bill is evidence that Government and others connected with the cotton industry are aware the evil exists and at some future date, two or five years hence, it may possibly be necessary to take steps to deal with it.

In paragraph 5 we have made an addition to the licensing sub-clause (i) for we have not only given the Governor in Council power to make rules providing for the licensing of cotton ginneries and so on, but we have gone on to prescribe the method of selection in those cases in which there is more than one applicant and only a limited number of licences are available.

The committee considered it necessary to make this addition so that it would be quite clear that the Government is actually following this procedure at present. It will be observed that, although power is given to prescribe the method of selection, there is nothing to say what that method should be, and if any hon. member wishes to put up any particular

idea with regard to the method of selection, I shall give it the fullest consideration. It may be considered, for example, that licences for new ginneries should be put up for auction, and the present method, of course, is that which the Government or Governor decides.

In paragraph 7 we have added an administrative officer to the list of officers authorized to take action, and we have provided that any orders issued verbally would only be legal when verbal to growers, because the committee realized that when dealing with native growers, even if only verbal orders are given, it is right that they should have the force of law, and when dealing with people such as ginneries, one should really give notice in writing, as this paragraph says.

THE HON. T. D. WALLACE seconded.

The question was put and carried.

THE MINING (AMENDMENT) BILL.

THE HON. E. B. HOSKING: Mr. President, I beg to move that the report of the Select Committee on the Mining (Amendment) Bill be adopted.

This report is unanimous, subject to the note of dissent on the part of the hon. and learned Member for Nairobi South.

We have amended clause 30 of the Bill, preserving to a certain extent the action *in rem* as well as the action *in personam*. It was felt, to take a concrete instance, that where A, having granted an option thereon to B, subsequently sold a mining property to C, B should not be debarred from an action *in rem*; he should be able to sue for the property if it can be proved that C actually knew about B's option, either because it had been registered or because he had actual notice of it.

I understand that actual notice, in legal parlance, includes any form of notice actually reaching the person concerned; it need not be by written notice actually addressed to him. If it can be proved that he knew all about it at the time he entered into the transaction, there is justification for an action *in rem*.

We had the advantage of the presence of the hon. member Mr. Fazan, the Provincial Commissioner of Nyanza, at the meeting of the committee, who stated this case for some regularization of occupation by more or less permanent houses in native reserves. The committee went most carefully into the question, and came to the conclusion that it was infinitely preferable that this matter should be dealt with if possible under the Native Lands Trust Ordinance. After all, it need not necessarily be applied solely to mining, and we were

generally averse to having special legislation for mining for a matter of general application. We felt that if it were found impossible to introduce any such provision in the Native Lands Trust Ordinance, the question of making special provision under the Mining Ordinance might be reconsidered at a future date.

Dealing with the note of dissent by the hon. Member for Nairobi South, I, as chairman of the committee held that I could not entertain argument on an issue that had not been referred to us by this Council. It did not occur in any clause of the Bill referred to the select committee, nor did I consider it consequential on any clause of the Bill, so I ruled the discussions on that particular point out of order.

THE HON. T. D. WALLACE seconded.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, I merely wish to say that the effect of the hon. member ruling me out of order was exactly the same as if he had ruled me in order, because I got my note of dissent attached to the Bill. I thought the hon. member would have been clever enough to have ruled that out of order. He has not, so I am quite satisfied! (Laughter.)

THE HON. CONWAY HARVEY: Mr. President, it is a new experience for me to find myself in complete disagreement with my hon. and learned friend the Member for Nairobi South, who is usually so reasonable and convincing. I do most cordially support the chairman's ruling in regard to the admissibility of the point raised by the hon. and learned member for discussion in select committee.

There is no doubt whatever that vital principles should not be introduced into select committee discussions unless such principles have formed the subject of a previous debate in Council. Select committees, as most people know, are appointed to consider details of a Bill the principles of which have been agreed to by Legislative Council, and of which this is important—due notice has been given to the public.

Had my learned friend made it convenient to be present at the second reading of this amending Bill, it is just remotely possible that he might have succeeded in raising a debate on the point he brought up. In any case, he would have been furnished then with convincing reasons why his proposal meets with little, if any, public support.

I am not going to be drawn into a detailed discussion on the merits or demerits of the judiciary and the chief executive authority.

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CAPT. THE HON. H. E. SCHWARTZ: On a point of order, surely, as this question was ruled out, it cannot be debated? I particularly did not debate it myself. I could say a lot, but as I was ruled out, by the chairman with the support of the whole committee, I submit it is irrelevant to this discussion.

THE PRESIDENT: Strictly speaking, I am inclined to agree, that as the point was not raised specifically by the hon. Member for Nairobi South it cannot be raised by anyone else in respect to something which has not been put forward.

THE HON. CONWAY HARVEY: Naturally, I bow to your ruling, Sir! (Laughter.) The hon. and learned gentleman gloated over the fact that the public were to be made aware of his views on a very, very important principle, which I believe to be thoroughly unsound, and as one of the representatives of the mining industry I was about to indicate to you how thoroughly unsound and undesirable such a course would be in the best interests of the mining developments. But, of course, Sir, I naturally bow to your ruling. (Laughter.)

The question was put and carried.

THE KING'S AFRICAN RIFLES (AMENDMENT) BILL.
THE HON. T. D. WALLACE moved that the Council resolve itself into committee of the whole Council to resume consideration, clause by clause, of the King's African Rifles (Amendment) Bill.

THE HON. THE TREASURER seconded.

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

In Committee.

THE KING'S AFRICAN RIFLES (AMENDMENT) BILL.
The Bill was considered clause by clause.

THE HON. T. D. WALLACE moved that clause 3 be deleted and the following clause substituted therefor:

"3. Sub-section (1) of section 73 of the principal ordinance is hereby amended by the deletion of the words 'a first term of three years' which occur in the second and third lines thereof and by the substitution therefor of the words 'his first term of service for a period not exceeding five years.'"

The question was put and carried.

Clause 4.
THE HON. T. D. WALLACE moved that clause 4 be deleted and the following clause substituted therefor:

"4. Sub-section (1) of section 75 of the principal ordinance is hereby amended by the deletion of the words 'three years' which occur in the fifth line thereof and by the substitution therefor of the words 'service not exceeding five years.'"

The question was put and carried.

THE HON. T. D. WALLACE moved that the King's African Rifles (Amendment) Bill be reported to Council with amendment.
The question was put and carried.

Council resumed its sitting.

THE PRESIDENT informed Council that the Bill had been reported with amendment.

THIRD READINGS.

THE HON. T. D. WALLACE moved that the following Bills be read a third time and passed:—

The King's African Rifles (Amendment) Bill.

The Kenya Cotton (Amendment) Bill.

The Mining (Amendment) Bill.

THE HON. THE TREASURER seconded.

The question was put and carried.

Council adjourned till 10 a.m. on Tuesday,

29th December, 1936.

TUESDAY, 29th DECEMBER, 1936

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, the 29th December, 1936, HIS EXCELLENCY THE ACTING GOVERNOR (A. DE V. WADD, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

OATH OF ALLEGIANCE.

The Oath of Allegiance was administered to:—

NOMINATED OFFICIALS:—

Cecil William Hayes Sadler, Esq., Acting Deputy Colonial Secretary.

MINUTES.

The minutes of the meeting of the 22nd December, 1936, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table:—

By THE HON. THE ACTING COLONIAL SECRETARY:

Report of the Standing Finance Committee on the Draft Estimates of Revenue and Expenditure for the year 1937, Part II.

By THE HON. THE TREASURER:

Report of the Select Committee on the Licensing Bill.

By THE HON. THE DIRECTOR OF AGRICULTURE:

Eighth Annual Report of the East African Agricultural Research Station, Amani, 1935-36.

NOTICES OF MOTIONS.

The following notices of motions were given:

By THE HON. THE ACTING COLONIAL SECRETARY:

"That the Report of the Standing Finance Committee on the Draft Estimates of Revenue and Expenditure for the year 1937, Part II, be adopted."

By THE HON. THE TREASURER:

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

ORAL ANSWERS TO QUESTIONS.

INDIAN GIRLS SCHOOL, MOMBASA.

No. 65.—THE HON. ISHER DASS asked :—

1. Have Government finally decided to engage a European lady principal for the Indian Girls School, Mombasa, as from the beginning of next year?

2. If the answer to the above be in the affirmative, will Government give the names of the Indian educational and other public bodies whom they may have consulted in the above matter?

3. Was the Advisory Council on Indian Education consulted on this subject and, if so, was the decision of that body on the engagement of a European lady principal for the Indian Girls School of Mombasa unanimous or by a majority?—

THE HON. THE DIRECTOR OF EDUCATION: 1. The answer to this question is in the negative.

2. Part 2 of the question does not arise.

3. Members of the Advisory Council on Indian Education have been circularized with regard to the provision inserted in the draft Estimates, and the following replies have been received:—

In favour of the employment of a European Principal ... 2

In favour of the temporary employment of a European Principal, pending the appointment of a suitably qualified Indian lady ... 4

Against the employment of a European Principal ... 4

ORDERS OF THE DAY.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, may I have your indulgence to ask whether it is the intention of Government to perpetrate this type of agenda such as we have in to-day's Orders of the Day in the future? About a week ago we met for some ten minutes, and a similar state of affairs would appear likely this morning. It is very expensive, and I would suggest that Government work out an agenda to carry us through the whole morning.

HIS EXCELLENCY: The suggestion of the hon. and gallant member will be borne in mind. All I would say is that the agenda is decided on to meet the convenience, so far as possible, of hon. members of Council, taking into consideration the necessities of Government.

MOTION.

DR. THE HON. A. C. L. DE SOUSA: Your Excellency, I beg to move:—

"That the words 'unanimously, the member speaking not voting on such motion,' be inserted between the words 'carried' and 'the' in the fifth line of sub-Rule (viii) of Rule 43 of the Standing Rules and Orders of the Council."

Your Excellency is aware of the circumstances in which I have been compelled to bring this motion before Council. Those circumstances occurred during the course of this session, when the closure was moved and carried while an hon. Indian member was speaking on the Railway budget. If they had not occurred then, they would have at some future date, so that I believe it is necessary such a motion as this should be brought forward.

I say that because colonial legislation, as far as this and similar councils are concerned, is modelled on the lines of the rules of debate in the House of Commons, and I consider that some sort of analogy should exist in this Council between the rule regarding the closure in the House of Commons and ours.

I would quote to you one of the practices as far as the closure is concerned in the House of Commons. There are two items in the procedure which affect the motion to-day. One is the prerogative of the Chair to close the debate on a motion that the question be now put, and that is done without any discussion. But that prerogative is curtailed by one consideration: that is, if the motion for the closure constitutes an infringement of the rights of the minority as against the ruling party.

Neither section of the House, the minority nor the majority, has a member as the Speaker. I believe that the Speaker of the House of Commons is a man who is not a party man, who is not allia politically to either the majority or the minority of the House. You will agree, Sir, that in this Council the Speaker of the House is really the head of the Administration, which is in the majority in this Council, and the elected and nominated unofficial members are in the minority. Therefore, as it is necessary to keep the scales even in the House of Commons between the two parties, it is even more necessary in this Council where Government has a standing majority and the head of Government is the Speaker of the House.

The second part of the relevant procedure of the House of Commons is that when a division is taken not less than 100 members have to vote in the majority in support of the motion

for it to be decided in the affirmative. There is thus another protection in the House of Commons that at least 100 members must vote for the motion for it to be carried.

These two considerations I bring to the notice of Government, because in our constitution nothing of the kind occurs. The other day, when the motion that the question be now put was brought, it was made as provided for in our rules, and it was accepted before we on this side of the House were aware of it. We were given no indication that an unusual thing was going to happen that morning or the next day for a motion of that kind to be brought up and for Government to accept it.

Some of the hon. Indian members had spoken. The Indian member who was speaking at the time was compelled to speak on a subject which was very important to the Indian mercantile community. Rightly or wrongly, the hon. European Elected Member for Nairobi North had made certain statements which we considered were not quite correct or not in the interests of the Indian community.

No explanation was given when the motion for the closure was accepted, and it was a question of Government policy or Government convenience—it might have been expected that a Government member would have moved the motion. Perhaps you are acquainted, Sir, with the correspondence between the Indian Elected Members Organization and His Excellency Sir Joseph Byrne. We protested, and gave reasons why the motion for the closure should not have been accepted, and we have requested that the Governor should give us an assurance that an incident of that kind would not occur again.

We have been given an explanation as the result of that correspondence, and the explanation is that it was decided that morning that the debate on the Railway budget should be closed on that particular day, as there was a meeting of the Standing Finance Committee the next day. If that was so decided, the ordinary procedure would have been for the President to have announced that procedure at the beginning of the sitting, so that members could have been aware of the limitation of time imposed for the sake of Government convenience. But that was not done, and we have not yet been given an assurance that Government will see that a similar incident will not occur again.

Even at this stage, if such an assurance were forthcoming, I should not have wasted the time of the House; I should have been satisfied to have withdrawn this motion.

I wish to assure hon. members that this motion has not been brought about as a sort of censure on the learned President of the Council that morning. Even if this incident had

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not occurred, it would have been necessary for us to have some sort of protection, for in this House what I call the minorities are in a very strange position. We have two members representing native interests, and two representing Arabs, there are five Indians as against eleven European members—all these on the unofficial side of the Council.

Circumstances may arise when on some motion Government may consider themselves indifferent to the matter, and it may be that the question is between the elected and nominated unofficial members. You can see what the position would be if the motion for closure were brought about by one of the European elected members, and the official benches refused to participate in an unofficial affair. Even if all the members representing Arabs, Africans and Indians were to vote together, a motion of this kind would be carried by the European elected members.

I think that is clear, and that is the reason why some sort of provision should be made in our Standing Rules and Orders to safeguard the interests of the majority. In this particular instance we might have had several points to contribute to the debate, and on that particular issue raised by the hon. Member for Nairobi North. At least one hon. Indian member had not spoken on the motion before the Council.

Again, the Government position has been that what was done was done well. I repeat that, should an assurance be given by Government that this will not occur in the future, I will withdraw the motion. I hope, however, Government will accept it in the spirit in which it has been offered, and if they do not accept it, that they will consider the need of some protection being afforded in our rules to the minority.

THE HON. F. A. BEMBERT: Your Excellency, I beg to second the motion.

The reason that I second this motion is because I want to emphasize the necessity for a proper regulation of consecutive order in this House. I am not an admirer of long speeches, and I will say honestly that on the day when the motion was moved that the question be now put I thought it was very wise, because I thought the debate had gone on long enough.

But what I was surprised at was the difference in the treatment of one European member putting a similar motion and another member moving it. On the 30th October a debate took place occupying up to page 313, seven pages of Hansard, on a motion in connection with the letter of the hon. the Chief Native Commissioner with regard to the Dairy Industry Inquiry Committee, and anyone reading that debate will note that by the time page 313 had been reached every point had

been covered. There was no question about that. Every opinion had been listened to, when the hon. Member for the Coast said this:—

"I suggest, Sir, that the debate has drifted right away from the original intention of this motion, which was in no way a reflection on the Civil Service of the country; but to draw attention to a particular letter and to suggest that it might have been better had it not been written. The victim of this motion is in a position where the steam-roller will be used to 'Save me from my friends!' And I move that the question be now put."

That is in accordance with our Standing Rules and Orders. Yet that debate went on. It had already gone on for seven pages, and it went on for fifteen or sixteen more.

How is it possible for a member to think and to realize that that rule, which is a good one of its kind—there is no question about it—but where the application is along one day one way and another day another way and the time of the House wasted—and I say really wasted for seventeen pages—I do not know how long that takes—on a question that had been debated, listened to from all points of view, and yet when that motion is put, I presume the convenience of Government was not sufficient. But it was a serious question, and the motion of the hon. Member for the Coast should have been listened to. Yet we see this complaint that this rule is put into effect for something that might have saved the House four or five minutes.

I do not think that consistent, and that is the whole reason why I support the motion.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I find myself in a somewhat anomalous position to-day, as I am replying both on the question of the motion before the House and, at the same time, in a sense, indirectly defending the action which I took about three weeks ago in connection with a motion which was moved in this Council.

It is perfectly clear that the hon. member who has moved the motion under discussion is not really serious that it should be passed in the form in which it appears on the Order of the Day. All he appears to desire is, to use his own words, some assurance from Government that the rights of the minority will not be overlooked. The suggestion underlying that is, of course, that in the past they have been overlooked.

Before I come to deal with that particular question, I should like to dispose at once of the point made by the hon. Member for Mombasa when he drew an analogy between the

motion moved by the hon. Member for the Coast some six weeks ago on the same subject. I would only remind him of this: as he well knows, according to the Standing Rules and Orders of the Council, a motion has to be seconded before any notice can be taken of it. On that occasion the motion of the hon. Member for the Coast was not seconded, and therefore, quite naturally, the President—who was His Excellency at the time—was not in a position to take any notice of it. For that reason, and for that reason only, no ruling was given by the President at that time, and it was passed over without any further ado. I think that answers that point. (Mr. Bemister: I did not know that.) I noticed it at the time because I was anxious to see what would happen, but nothing could happen under the circumstances.

It has been suggested that Government should amend these Standing Rules and Orders in order that the rights of the minorities should be respected. It is also suggested that in the past, on one occasion on which this rule has been utilized, they have not been respected. I should like to remind Council of what the position was on the day in question.

We had been debating (this was the second day) a motion which hon. member after hon. member had stood up and said was a complete waste of time, because it had to go through no matter what was said, and therefore, to all intents and purposes, it was non-controversial. That was the first point.

The second point was that this Council, as everyone was well aware at the time, was becoming extremely pressed for time. We were pressed for time for various reasons, one being—and I am not saying this in a spirit of criticism—that hon. members in the debate on the Colony's budget took too long. One member had taken up two and a half hours, and that particular hon. member was again on his feet.

It was therefore necessary, if possible, and if no injustice was to be done to the particular speakers, that we should close the debate on that day.

The hon. mover of this motion has suggested—I do not say deliberately but erroneously—that it was of great importance to the Indian members to express their views with regard to the necessity for a member on the Railway Council, a point which had been raised by the hon. Member for Nairobi North. That point had been answered by the hon. member who was speaking, and he then proceeded to discuss certain matters raised by the hon. member Mr. Pandya. And at the moment the motion was moved, the hon. member was proceeding to tell us a story—no doubt a very interesting one—about a professor in a train. It was at that stage that the hon. Member for Nairobi South rose and moved the motion which I considered he was entitled to do.

I would also point out to this Council that out of the five hon. Indian members three had already spoken; the fourth had spoken on the only new point which had been raised, and answered it, and it seemed to me a very proper moment when the closure might be taken. In this I received the entire support of the Council, because when the question was put to the Council there was not, as far as I could hear, a single voice saying "No", but a chorus of "Yes." At the moment it was put I received, I suggest, the assent of the Council almost unanimously. In fact, I think I am right in saying that one hon. Indian member, in asking a question afterwards, certainly indicated to me that he entirely agreed with the fact that the motion had been put, although he suggested a slightly different procedure should have been followed. So that even in the Indian ranks they saw some reason for the motion being put.

This motion now before the Council, if the hon. mover will forgive me, is absurd, and no self-respecting Government could possibly accept it, as it would make itself ridiculous in the eyes of every similar assembly in every part of the British Empire to imagine that the Government of the Colony should allow itself to be in the hands of any two windbags who happened to desire to debate for weeks or months or years. (Laughter.) Because that is the position into which the amendment would lead you; the moment you get two persons in opposition the motion could not be passed.

I think the Council would be the last to consider the motion; at any rate, as it stands. But the hon. mover has made it perfectly clear that it is really not his desire to move this amendment. He merely wants an assurance that such a thing shall not happen again. That, too, is equally absurd, because how could anybody decide now what some future President is going to do when he happened to be in the chair, or what the attitude of the House would be at some future date?

I look upon this rule as it stands now as the only possible rule that any self-respecting Council could have in order that it can conduct its business in an orderly manner. For that reason, I have no hesitation in saying that, of course, we have no doubt that every President will look after the rights of the minorities, just as the last President did when he ruled on this particular question; and that he will in fact look after those rights no matter what is said.

I will sympathize with the hon. member to this extent: that it was something new in the Council, and it was even surprising to me that it went through so quickly, for the whole thing was over in a flash, so to speak, and the unfor-

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unate member found he had no right any longer to address the Council. But I am sure that now everybody in the Council realizes the procedure, he will not suffer from surprise any longer! (Laughter.)

I do not think there is any more that I can say, for the simple reason that it is impossible to give the undertaking asked for, and even more impossible to accept the motion. Incidentally, although I have no intention of going into it, there would have to be a further amendment to this motion if it were taken seriously, because what would happen in the case where a member was not speaking when the motion was put? One person would be able to get up and stop the whole thing. But I will not go into the details of that at the moment.

I do not think, Sir, that there is anything else I can usefully say, except that Government is unable to accept this motion or to give the undertaking, and it has no intention of putting a premium on procrastination. (Laughter.)

MAJOR THE HON. E. S. GORAN: Your Excellency, I move that the question be now put.

MAJOR THE HON. SIR ROBERT SHAW seconded.

THE HON. SHAMSUD-DIN: Your Excellency, before the question is put, the permission of the Chair must be obtained. That is the one big flaw in this matter, and had it been obtained recently members in this part of the House would not have been taken by surprise. I hope that omission will now be rectified.

HIS EXCELLENCY: I was about to say when the hon. member rose that in this case I am not prepared to give the necessary permission. Some other hon. members may wish to speak. If no other hon. member wishes to speak, I will call on the hon. mover for his reply.

DR. THE HON. A. C. J. DE SOUSA: Your Excellency, I have very little to reply to in this debate.

I certainly had a feeling that the remarks of the hon. and learned Attorney General would have been different, and with regard to certain of them I personally consider—and many members will agree with me—that he should not have gone into oratorical taunts when he mentioned such things as bagpipes and windpipes. It was improper for an officer of Government to indulge in these taunts, which were more fitting for a schoolboy than the Attorney General of this Colony.

As I said, my object in moving this motion is, and I have not had a reply, that the rights and privileges of the minorities might be safeguarded, not only of the hon. Indian members, but of all on this side of the House. I brought a case to the notice of Government, and a minority on this side of the House has got to be protected against the other side, which is in the majority, of which the Speaker, who has to hold the scales, is at the head.

That is the problem, and I have had no reply, and if legislation has to be made, legal that is not my business; I am a layman. I put up a motion which might not be quite in order, and it is for the people who are paid by the Colony to suggest what should be done to it. But we want a more adequate reply than we have received, and a simple one, and not the taunts which have been given us.

I know the members on the official side are going to vote against it, and from the applause which the hon. the Attorney General has had from the European unofficial members, that they are going to object to it. I know that the hon. member Mr. Pandya did say "No," but, as I said before, before we knew where we were, the whole thing was over in less than five seconds.

That is not a matter of congratulation but rather of sincere regrets, which could have been expressed to us, particularly when this procedure is followed for the first time in the life of this Council. The hon. the Attorney General took great pride in telling us that before we knew where we were everything was over. It is an objectionable procedure.

If it had occurred in a bigger country there would have been more trouble taken with the motion, and I am dissatisfied with the manner in which Government has replied to my question.

The question was put and negatived.

Council adjourned till 10 a.m. on Wednesday,
the 30th December, 1936.

WEDNESDAY, 30th DECEMBER, 1936

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, the 30th December, 1936. His EXCELLENCY THE ACTING GOVERNOR (A. DE V. WADIA, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 29th December, 1936, were confirmed.

ORAL ANSWERS TO QUESTIONS.

FARMERS ASSISTANCE ORDINANCE.

No. 66.—LIEUT. COL. THE HON. LORD FRANCIS SCOTT asked:

(1) How many applications have been made under the Farmers Assistance Ordinance?

(2) How many of these applications have been forwarded to the Conciliation Board?

(3) How many of these applications have been—

(a) granted?

(b) rejected?

(4) Of those applications that have been rejected, how many were rejected owing to refusal of consent by secured creditors?

(5) What are the financial obligations of those applications that have been granted?

THE HON. THE COLONIAL SECRETARY:

(1) Nineteen applications have reached the Secretaries.

(2) Nine.

(3) One tentatively approved, awaiting final decision as to amount of advance. Four rejected.

(4) One. It does not necessarily follow, however, that assistance could have been afforded in this case if the consent of the secured creditors had been obtained.

(5) Secured creditors £772/10/23.

Unsecured creditors ... £235/13/02.

CAPT. THE HON. H. E. SCHWARTZ: Arising out of that answer, Your Excellency, is Government satisfied that the Conciliation Board are working on the principles which were

intended and hoped would be working when this Ordinance was passed?

THE HON. THE TREASURER: I am a member of the Conciliation Board, and my answer to that question will be in the affirmative.

CAPT. THE HON. H. E. SCHWARTZ: Arising out of that answer I would ask if it is not a fact that the application was made which was supported by all the secured creditors, by the secretary of the Agricultural Advances Board, and by all the unsecured creditors, but was nevertheless rejected?

THE HON. THE TREASURER: Your Excellency, I would draw the hon. member's attention to section 20 of the Ordinance, which states:—

"The Board shall not grant any application made by a farmer for an advance or formulate or submit or bring into force any scheme for the adjustment of the debts of any farmer unless it is satisfied that by so doing the farmer who is to be so assisted is deserving of assistance and will be enabled to continue his farming operations with a reasonable prospect of success."

CAPT. THE HON. H. E. SCHWARTZ: I am grateful to the hon. member for reading that, but it does not answer my specific question. May I press for an answer? The hon. member has only got to say "Yes". We all know it is correct.

THE HON. THE TREASURER: The decision rests with the Board. All these applications are considered very carefully and sympathetically, and the decision reached so far as that particular application was concerned was quite unanimous.

CAPT. THE HON. H. E. SCHWARTZ: I am not suggesting that the Board did anything wrong, but whether it is not a fact that all the secured creditors and the secretary of the Agricultural Advances Board supported the application.

THE HON. THE TREASURER: That is so.

MAJOR THE HON. G. H. RIDDELL: Is Government satisfied that the answers as disclosed show that the Conciliation Board is in fact functioning in the way it was intended to by Government without the principle of compulsion which is the case in New Zealand?

THE HON. THE TREASURER: The answer is in the affirmative.

KENYA-UGANDA TELEPHONE.

NO. 67.—THE HON. SHAMSUD-DEEN asked:—

"Has the attention of Government been drawn to a statement which is reported to have been made by the Government of Uganda recently, in their Legislative Council, to the effect that if and when the Government of Kenya extended its telephone communication to the borders of this Colony the Government of Uganda would consider extending the same to Kampala and other places in Uganda?"

If so, when does Government propose to extend the line, especially taking into consideration that the telephone line is already in existence up to Eldoret, from which place the distance to the border of this Colony is not very great?"

THE HON. THE POSTMASTER GENERAL: The Government of Uganda has approached this Government upon the question of the interlinking of the telephone systems of the two dependencies which forms the subject of this question.

Before the necessary trunk telephone from Eldoret to the Uganda border can be undertaken it will be necessary to complete the programme of reconstructing the wooden pole route along the railway. Under present arrangements it is expected that this will be completed by 1938. It is the aim of the Posts and Telegraphs Department to effect this interconnection and, as soon as it is practicable, this Government, subject to the approval of Council, will allocate the necessary funds.

SUSPENSION OF STANDING ORDERS.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that Standing Orders be suspended to enable the following Bills to be passed through all their stages without due notice:—

- The Native Hut and Poll Tax (Amendment) Bill.
- The Northern Frontier Province Poll Tax (Amendment) Bill.
- The 1937 Appropriation Bill.
- The Dangerous Petroleum Tax (Amendment) Bill.
- The Education and Poll Taxes (Repeat) Bill.
- The Non-Native Poll Tax Bill.

As hon. members are aware, the necessity for this suspension is due to the fact that it has been quite impossible to publish these Bills in order that they should be before the public for the usual fourteen days until the Report of the

Standing Finance Committee had been laid and the committee had come to some conclusion as to the taxes necessary for next year.

THE HON. THE TREASURER seconded.

The question was put and carried.

Standing Orders having been suspended.

BILLS.

FIRST READINGS.

THE HON. THE ATTORNEY GENERAL moved that the above-named Bills be read a first time.

THE HON. THE TREASURER seconded.

The question was put and carried.

The Bills were read a first time.

SECOND READINGS.

THE NATIVE HUT AND POLL TAX (AMENDMENT) BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER. Your Excellency, I beg to move the second reading of the Native Hut and Poll Tax (Amendment) Bill.

This Bill, in clause 2, deals with one of the recommendations of Sir Alan Pim that the age liability to pay poll tax be raised from sixteen to eighteen years. In this connection I should like to make it quite clear that the words "adult male native" used in clause 2 of the principal ordinance and in this Bill refer only to poll tax; in every other case the word native as used refers to hut and poll tax.

Clause 3 of the Bill amends section 4 of the principal ordinance, as doubts have been raised as to the interpretation of that section. Clause 4 provided that if a man had more wives than huts he should pay a tax for each wife, but the law has been held to be ambiguous in connection with the case of a native who has more huts than wives.

Sub-section 2 of section 4 provides that the native shall pay one tax for each wife, and sub-section 1 that he shall pay a tax for each hut. It is ambiguous in the case of a native who has only one wife and possibly several huts.

The new clause makes it perfectly clear that, in the case of a native with more wives than huts, he pays on the huts.

It is a common practice among the tribes that nearly always a native provides a separate hut for each wife and, in practice, a count of the huts in any village would give you

the number of women on which the tax should be paid, except, of course, where there are exemptions. It very seldom happens that a native will have more huts than wives.

In this connection, in nearly every village there are huts—or, to avoid confusion, we will call them structures—in which the young unmarried men, visitors, and children sleep. These huts are variously called among the different tribes: "simba" in parts of Kavirondo and "thingira" in parts of Kikuyu. The tax is never levied on these huts, for the very obvious reason that no native pays both hut and poll tax and children do not pay either.

Clause 4 of the Bill amends section 6 by adding a provision that a court has power to grant exemptions. District officers already have the power to grant exemptions, but it has been argued that if such an officer is sitting as a magistrate he would lose the power that he had in his executive capacity. This clause therefore gives power to a court to grant exemptions if necessary. I would only say in this connection that the word court does not include native tribunals.

THE HON. THE ATTORNEY GENERAL seconded.

VICAR ARCHDEACON THE HON. G. BURNS: Your Excellency, I should like first of all to express my sincere appreciation of the fact that the age limit has been raised from sixteen to eighteen years. I appreciate very much what Government has done in that respect, and I should also like to express my appreciation to the Finance Committee in accepting that situation.

We cannot expect to get everything at once, we who are responsible for the native interests in this Council. All we can hope is that if things improve, as we hope they will improve, throughout the Colony in the near future, it will be possible to implement the other points raised by Sir Alan Pim in his Report.

The hon. the Chief Native Commissioner has explained that in every village there is perhaps one extra hut, there may be two extra huts, which do not belong to individuals. In Kavirondo, where of course the hon. member knows the situation very well, these huts are provided as a means of protection for the young and unmarried girls, and also for young fellows who are not allowed to sleep in the huts belonging to the wives of their fathers.

I should like very much indeed to express my feeling that on these old and married men who have a multiplicity of wives this tax may bear very hardly. It has to be remembered that we are told that the natives are not paying as much tax as they should pay and we are told that the tax they are

paying does not bear very heavily on them." That statement I must emphatically challenge. The natives are paying to the limit of their powers by taxes in this country, and not only paying the direct taxation imposed on them, which we have in the beginning of the Report before us, but the natives have also assessed themselves during 1937 to contribute £52,531. That is the amount at which they assess themselves, and they pay it into their own organizations to do, I have no hesitation in saying, work which Government should do for the natives who pay their direct taxes regularly.

Not only that, but we have heard a great deal since I have been in this Council that the amount of indirect taxation is almost entirely borne by the European population of this country. Again I challenge that statement.

The condition of things which existed some years ago, say five years, has entirely and absolutely changed, and the needs and demands of the natives to-day are such that they are contributing to the revenue of the Colony in indirect taxation in a way in which they did not contribute five or six years ago. When you come to think of it, therefore, the native is paying into the revenue of the Colony by means of direct and indirect taxation, and in addition the £52,531 which I have mentioned for work in the reserves which I again say Government should certainly do, or some of it. Not only that, he is called on to do unpaid labour, communal work, in the reserves to a very large extent.

That question I will not go into at the present time, but while we are grateful—and I do express my pleasure as well as I am sure, as that of my hon. colleague—to Government and this Council for giving us so great an advance, for I look upon it as a great advance and a great help to the natives of this country, and especially to the young boys, we do hope that if in the near future things improve in Kenya that a greater measure of relief will be granted to all the different classes of people who have been mentioned in connection with this Bill.

THE HON. CONWAY HARVEY: Your Excellency, I should like to express my sincere disappointment and complete lack of appreciation of this measure, which I honestly believe to be thoroughly unsound in principle, and very difficult to apply in practice. Nevertheless, of course, I shall not vote against this measure, although I cannot vote for it, because I believe it is quite definitely one item in a sort of general agreement which has been reached by a number of people sincerely concerned with the cessation of political and industrial strife and genuinely desirous of doing what they can to promote the welfare of this Colony.

30th December, 1936

There is, however, one question to which perhaps the hon. mover will reply.

We are entitled to ask him how he reconciles this particular Bill with the attitude adopted by Government and very fully explained in Kenya Despatch No. 441 of the 4th August, 1931, in which it is stated:

"For practical purposes, at any rate, a native reaches manhood and is capable of doing a man's work and earning a man's pay at the age of sixteen, at which age the average European boy is still at school."

As recently as August of this year that statement was ratified, confirmed and supported by the hon. mover and his hon. colleague the Treasurer, when they say on page 52 of their Report, paragraph 21:

"We recommend against any alteration in the age at which a native becomes liable for taxation assessment."

That leaves some of us in rather a whirl, and I am quite sure the hon. gentleman with characteristic facility, as I succeed in dispersing our impression that there is perhaps some little lack of consistency in Government's attitude in this matter.

MAJOR THE HON. E. S. GROOM: Your Excellency, I merely wish to express my sincere sympathy that my hon. friend the Chief Native Commissioner who, after many years of very efficient work in this country which has inspired the respect of all of us on this side of the House, should be subjected to the possible indignity of having to get up and propose a Bill which is the exact negation of the conclusions which he and his colleague arrived at after long, careful investigation of the position, supported by years of practical experience. (Hear, hear.)

The lesson to be deduced is this. The whole of the proceedings here are nothing in the world but a ridiculous farce, that this Government nor this Council have anything whatsoever to do with the government of this country. The government of the country fluctuates from day to day from the last peripatetic who comes along or the last gentleman who happens to be in temporary possession of the Colonial Office.

I really and sincerely feel that the Bill is a monstrous indignity heaped on this House, and especially on the hon. the Chief Native Commissioner. (Hear, hear.)

THE HON. ISHER DASS: Your Excellency, on behalf of my colleagues on this side of the House I associate myself with every word spoken by the venerable and hon. member

Archdeacon Burns. I also congratulate the hon. the Chief Native Commissioner on one thing: that if he, two months ago, was of a certain opinion, and after consultation with the Imperial Government now confesses in this House that that opinion can be rectified, there is no shame in that attitude, and I congratulate him on this bold measure to help the natives of this country.

DR. THE HON. C. J. WILSON: Sir, I rise to associate myself with my venerable and hon. friend in supporting the Bill.

I must say that I was rather taken by surprise, I had no idea that the second reading of the measure was going to be taken this morning. But I welcome the Bill as a step in the right direction, that it is a recognition of the fact which had been generally recognized in other quarters a long time past, that the native has been heavily taxed.

I am not going to say whether I consider Government was right in accepting that recommendation of Sir Alan Pim's, which he pressed the less insistently. I would only say that so long as eighteen years is taken as the taxable age of Europeans and Indians in Kenya and of natives in Uganda and Tanganyika, I do not see how anybody could possibly argue for a lower age for the natives of Kenya.

Whatever the merits of this Bill, in particular I welcome it as an indication that Government is going to carry out its promise to implement as far as possible all the recommendations of Sir Alan Pim.

I am perfectly certain that such recommendations as he made for the adjustment of the system of taxation will not be forgotten. In paragraph 86 of this Report he says (he is referring to the lower age and the tax on extra huts):

"These are, however, only preliminary steps, and sustained efforts should be made to evolve a system of taxation better suited to the conditions of to-day."

In paragraph 408 he says:

"These suggestions are only preparatory to the introduction of an improved system of native taxation to replace the present hut and poll tax, a change which is recognized as essential."

I trust, therefore, that Government will, in the near future, make further attempts to put the whole question of native taxation on a sounder and fairer basis, and for that reason I welcome the Bill as an indication of the intentions of Government.

I do not propose to criticize it in any detail, but I would just say a word about clause 3, which seems to me rather offensive. It is very tactfully explained in the objects and reasons:—

"If a native has more wives than huts, he must pay a tax in respect of each wife, and if he has more huts than wives, he must pay a tax in respect of each hut."

I do not know why it is necessary in an amending Bill to repeat what I think is liable to be an injustice.

We have the word of the hon. the Chief Native Commissioner that huts used for such purposes as he described are not taxed, but the definition of a hut means a hut constructed according to native custom, or any building used by a native as a dwelling other than those maintained or erected by his employer.

I may be wrong, but I should imagine that if a native wished to improve his living quarters and wanted something better than his one room, if he cannot afford to build a two- or three-roomed house he might add a second hut for the purpose of a general living room apart from sleeping. I assure the hon. the Director of Medical Services would approve of such an arrangement.

But there is nothing in the Bill to prevent a native being taxed again for a second hut, although the hon. the Chief Native Commissioner says it will not happen. There may be one result, that instead of repeating his first insanitary hut the native will build a reasonable two- or three-roomed house. I do not think it was the intention of the Bill to promote that advance on the part of the native. Of course, he would be for it if he tried to smuggle an extra wife into one of the spare bedrooms.

I suggest the clause is not a good clause, but I welcome the Bill as a step in the right direction.

LIEUT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, it has been explained in this House very clearly, on both sides why, in the opinion of Government and of all other people, to tax the native at the age of sixteen years is justifiable, and therefore it can be quite well argued, as has been done, that it is inconsistent to introduce this Bill at the present moment.

The reason which actuated me to agree to this proposal in the Report of the Standing Finance Committee is briefly this. If the whole of the proposed income tax had been wiped out and the other taxes reduced, it would have resulted in a net decrease of taxation on the non-native communities of

about £80,000. At the same time, the natives would have got no reduction in taxation at all. I think that is the position, which would have been open to very serious criticism.

On many occasions members on this side of the House have given vent to their views that natives were over-taxed and should have some remission of taxation. I have never said that myself, and have never believed that they were over-taxed, and that view has been confirmed by the Report of the hon. the Chief Native Commissioner and the hon. the Treasurer. But, in fact, it did seem to some of us on the Standing Finance Committee that some relief should be given the natives. We have recorded in the Report of the Committee the point of view put forward by the venerable and hon. member Archdeacon Burns, that their indirect taxation has increased and it has to be taken into consideration.

If we were to give something back to the natives in their taxation, it seemed that the best way of doing it was to accede to the demands which have been made from many quarters, that the age should be brought up to the age of eighteen in conformity with the age of other races and also of the natives in the adjoining territories.

I believe we all had very much the same view, that actually it is perfectly justifiable and equitable that a native should start paying at the age of sixteen years but, under the circumstances, we believed this change was the best method with the least dislocation in the country of giving something back to the native peoples of the country at a time when it was possible to make very considerable remissions of taxation on the various communities. (Hear, hear.)

MAJOR THE HON. SIR ROBERT SHAW: Your Excellency, I do not propose to add anything to what has already been said by my hon. colleagues as regards the anomalous position created by Government's decision to introduce this Bill. The reasons for it are well known and have been referred to by one or two hon. members, and I can only associate myself with what was said.

There are, however, one or two general remarks that I should like to make, and the first is this. It has been made very clear to us, both in discussions that have taken place on this subject in recent months and the Report recently published over the names of the hon. the Chief Native Commissioner and the hon. the Treasurer, that the shortfall in native taxation which has occurred of recent years, and which is very regrettable, is in fact due to what they seem to describe as reluctance on the part of the native to meet his just dues.

Outside this House, where one is not restrained by Parliamentary usage, one may describe that reluctance in very different terms! What this amounts to, and unfortunately is, that a native taxpayer is receiving relief, it appears on the face of it, from taxation as a result of passive resistance to paying his just dues to the state. That, I think, is a very unhealthy item in this admittedly difficult subject.

I would refer also to the fact that it is well known, I think, that the proportion of exemptions which have been granted, apart from remissions to different tribes by Government, by district officers in some districts is very considerable indeed, and I can only express the hope that the matter will be reviewed, and if natives are to receive this relief the process of collection will be so tightened up at least that the just dues to the state are really properly paid. Otherwise, I fear, some very unfortunate interpretation may be placed on this measure by the natives of the country.

Another point I should like to take up was mentioned by the venerable and hon. member Archdeacon Burns. He welcomed this Bill, and said he hoped in the near future one would get everything one wants, as he expressed it. I presume he referred to the remainder of Sir Alan Pin's recommendations as regards the plural hut tax.

VEN. ARCHDEACON THE HON. G. BURNS: On a point of explanation, I said one cannot expect to get all one wants.

MAJOR THE HON. SIR ROBERT SHAW: I apologise to the hon. member, but in actual fact it makes no difference at all to what I propose to say. The expression "what one wants" is really the fundamental part of it.

I do suggest that at present, at any rate, nobody in this country really wants that system of payment on plural huts to be revised. At the present time I think it is admitted to be the only method so far devised whereby the native can be, to some extent at least, taxed according to his capacity to pay.

Admittedly the system is not as sound as it was; it is beginning to break down, and it is a system which should be modified in some way, and I believe the Administration is giving very earnest attention to that matter. But I do claim that until some better system is devised, we cannot allow it to go, and we do not want it to go, for it is the only system whereby a native can be taxed somewhere in regard to his capacity to pay.

If the venerable and hon. member is consistent, I think he only meant that he does not want to see the richer native contribute his properly larger share to the funds from which

native services are financed. I think that is very inconsistent and a foolish attitude to adopt, and I hope and believe it is not the attitude of Government.

The venerable and hon. member also said, though I could not quite follow it, that the demands on the native in direct taxation at the present time are very different to what they were five or six years ago. Does he refer to the fact that in 1930 the amount actually collected from the native hut and poll tax was over £591,000? I think his remark is a little bit inconsistent with the statistical facts.

Finally, I can only say that while I hardly approve of the principles of the Bill I do not oppose it, because I realise it is part of an arrangement involving very much greater issues and which I hope will lead to greatly improved conditions in the country in the coming year.

VEN. ARCHBISHOP THE HON. G. BONNS: On a point of explanation, may I be allowed to explain that I did not mention direct taxation but indirect taxation?

MR. THE HON. SIR ROBERT SHAW: In that case, I beg the hon. member's pardon, and I am quite satisfied.

MR. COL. THE HON. J. G. KIRKWOOD: Your Excellency, I am opposed to this measure. It is unsound legislation, it is unscientific, and cannot be justified by facts. It is the result of Sir Alan Pim's Report of which the Secretary of State is stated to have said he generally approves.

Knowing the Secretary of State in the past, I can take no assurance from the present Secretary of State, as we have been let down by Secretaries of State in the past, and it is quite obvious to me that history will repeat itself—the Pim Report will be implemented by the Secretary of State as far as he wishes it to be implemented.

In the objects and reasons of this Bill it says:—

"Clause 4 is designed to give to the court power to remit the whole or any portion of the tax due if the defaulter proves that he is without sufficient means to pay."

Similar provision is provided in the measure which is being amended, that is, power to give remission of taxes. Very large remissions have been granted, up to £50,000 in one year, to natives, and I maintain that provided it has the sympathetic consideration of officers throughout the whole of Kenya, as well as of the European population, as the principal ordinance stands no injustice is done to the native.

I do not agree that the native is overtaxed, and he definitely is not overtaxed.

References have been made to the fact that in raising the age limit we are conforming to the opinions held in the adjoining territories, but those speakers did not remind this House of the other side of the picture: that in the other territories the tax payable by natives is very much heavier than what it is in Kenya. In one adjoining territory it is Sh. 32.

I know the natives, I live among them, and have employed them over a long period of years. I have come to the conclusion after signing on boys, and seeing their kipandis, that they are not overtaxed, but I have definitely come to the conclusion that they do under work. You will find a boy for a long period of years employed by one employer, but he is absent at times for twelve months, a year, or two years, and you ascertain that in the great majority of cases he is not in goal during that period, which means simply that he is rusticated in the reserve and allowing his women to work for him. He does not come out to earn what he is capable of earning, for the simple reason that his tax is remitted, and there is no inducement to work where undue sympathetic consideration is given to him.

The venerable and hon. member has definitely stated that the native is paying a greater proportion of the tax than other races. That is not true, definitely it is not. Take the Moyno Report. On page 500 of Hansard, Volume IA of 1933, will be found the contributions, services and surpluses which he gave of the Europeans, Asians, and natives. He says:—

"Europeans, by far the smallest community, are thus paying the largest contribution of any of the three groups towards the cost of common services."

That was true when Lord Moyno reported, but the Europeans, since that Report was issued, have had a greater burden of financial responsibility in the form of taxes placed on their shoulders, and they are paying out of all proportion to their numbers and out of proportion to their ability to pay to-day. The country definitely has been crushed under a burden of excessive taxation.

I cannot agree with or vote for this Bill for the reasons I have stated.

It has been mentioned during the course of the debate that this is the result of a decision of the Standing Finance Committee. It is no such thing. It is the decision of the Secretary of State dictated to this Government from Downing Street. It is true it has been made by the Standing Finance Committee in the form of a bargain, if one may call it so.

Reasons have been given by different members. I maintain that this Government is not a government at all. We are not allowed, nor His Excellency or whoever happens to be here, he is not allowed to rule. That is done by the Secretary of State, and this legislation is dictated by him to this Government, so that it is futile to argue or even state that this was a decision of the Standing Finance Committee.

I would suggest under the circumstances, and at the moment Sir Joseph Byrne is retiring, that as a new Governor has been appointed, if he is not allowed to rule as a Governor and is not given any of the responsibility of the man on the spot, why have him? 'Why not close up the two Government Houses, and, if we want remission of taxation for the natives, let them have the amount we so save!'

I definitely maintain that the Colony can only be administered financially as a result of savings of administrative costs. We have been at it for years, and for years we are likely to be at it for a great many seem to doubt if we shall ever succeed. We may or we may not, being an optimist, I hope we shall get some measure of success in the future.

I have the greatest sympathy also with this Government, and I have the greatest sympathy with the committee which Government appointed to go into the question quite recently. That committee consisted of the hon. the Chief Native Commissioner and the hon. the Treasurer. I think they issued a very valuable Report, and they disagreed in toto on this question with the Secretary of State, another instance of being ruled from Downing Street.

Even experienced officers, unbiased officers, after very long years of experience in this Colony, after a very great deal of trouble in investigating and reporting their conclusions, are ignored by the Secretary of State. It is getting almost intolerable. Your Excellency, and I do hope the time will come in the future when the people of the Colony will unite.

At the moment, I am sorry to say, they are disunited throughout the Colony. That is unfortunate, but if only they could make up their minds to unite they can dictate to the Secretary of State the moment they are anything like unanimous. It has been proved before. It was proved in 1923, and it will be proved again.

The effect of this legislation and other legislation which will be passed during this session is to emphasize my point: that even the Government of this Colony is not allowed to govern. For those reasons, and many more with which I need not detain the House, I oppose the Bill. It is a foregone conclusion that Government have been told this is to pass, and

consequently it will. The Secretary of State says it is to go through and naturally it will, but I hope to be one in the future to prove to the Secretary of State that the time will come and must come when this kind of dictation to the Colony has got to cease.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, the debate on this Bill seems to have drifted quite a lot, and Your Excellency has allowed considerable latitude, but I do not propose to take up the time of the Council by going into the question of whether the natives are overtaxed or not. There are two points of view, and I daresay some will never agree with the others.

Only two points have been raised in connection with the Bill itself.

One was raised by the hon. member Dr. Wilson, who queried the advisability of clause 3, which amends section 4. I tried to explain at the beginning of this debate that this merely explains more fully the real intention of the original section. It does not alter the shape in any sense or form.

The hon. Member for Trans-Nzoia, I am sorry to say, said he will not vote for the Bill, and queried the necessity for clause 4, which amends section 6. Again I tried to explain that this does not go any further than what has always happened, but that it puts right what may have been an anomaly: that a district officer, sitting as an executive officer, has power to grant exemptions, but when he gets on to the bench in his court he no longer has that power. He is the same officer and we give him the same power in each case.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: On a point of explanation, I did not query the necessity of clause 4. I only referred to it to point out that the power of remission was still retained and that the power which existed previously was quite sufficient without new legislation.

The question was put and carried by thirty votes to five, three members not voting.

Ayes.—Messrs. Bale, Boulderson, Major Brassey, Edwards, Archdeacon Burns, Messrs. Fazan, Gardner, Hamp, Harragin, Hayes-Sadler, Hedder, Hosking, Isher Dass, La Fontaine, Logan, Mangat, Montgomery, Morris, Pandya, Dr. Paterson, Mr. Pilling, Major Riddell, Capt. Schwartze, Lord Francis Scott, Dr. de Sousa, Mr. Stronach, Col. Tucker, Messrs. Wallace, Walsh, Waters, Dr. Wilson.

Noes.—Mr. Bemister, Major Grogan, Mr. Hoey, Col. Kirkwood, Mr. Wright.

Not voting.—Mr. Conway Harvey, Mr. Shamsud-Deen, Sir R. Shaw.

THE NORTHERN FRONTIER PROVINCE POLL TAX (AMENDMENT) BILL.

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

This Bill, a very short one, merely deals with the same recommendation which we have just discussed in the previous Bill. It raises the age of liability of natives in the Northern Frontier Province to pay poll tax from sixteen to eighteen years of age. The tribes in that province merely pay poll tax, not hut tax.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

THE 1937 APPROPRIATION BILL.

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, I beg to move that the 1937 Appropriation Bill be read a second time.

This Bill is usually known as the Appropriation Bill, and normally a Bill of this nature follows the completed debate in this Council on the Report of the Standing Finance Committee. But this year, for reasons which it is unnecessary for me to enlarge on at the present time, the Report of the Standing Finance Committee has been divided into two parts.

The first part contemplates gross expenditure amounting to £3,437,298. That part of the Report has been debated in this Council and approved. The Bill provides for that expenditure during the coming year.

The second part of the Report, dealing with revenue and estimating a gross total for the year of £3,442,311, has not yet been debated although it has been laid on the table of Council.

The two parts of the Report contemplate a surplus for the year of £5,013.

The schedule to the Bill sets out the proportions allocated to the various heads of expenditure.

I do not think it is necessary for me to say any more, because the Bill is regarded as a rule as formal.

THE HON. THE TREASURER seconded.

The question was put and carried.

THE DANGEROUS PETROLEUM TAX (AMENDMENT) BILL.

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, I beg to move that the Dangerous Petroleum Tax (Amendment) Bill be read a second time.

It is unnecessary for me to enlarge on the scope of this amendment, which is required necessary in order to give effect to one of the recommendations contained in the fourth paragraph of the Report of the Standing Finance Committee on the Draft Estimates of Revenue and Expenditure for the year 1937, which was presented to the Council yesterday and which it is hoped to debate in the near future.

In view of the additional revenue which it is anticipated will be received mainly from Customs duties, the Committee has recommended reductions in various items of existing taxation, including a reduction of £15,000 in the Petrol Consumption Tax.

Clause 2 of the Bill provides for a reduction in the rate of the tax from 35 cents to 37 a gallon, which is estimated to reduce the yield of the tax by £15,500, which is £500 in excess of that recommended by the Standing Finance Committee. The explanation of this increase is that to arrive at a reduction in yield of approximately £15,000 would necessitate reducing the rate of tax by a half cent, which would not be practicable.

I am happy to be able to say that I understand the Oil Companies, through their local representatives, are making every effort to add to this relief by themselves bearing a further 2-cent reduction (representing approximately £4,000 per annum), thus allowing for a total reduction in the price of petrol to consumers of 10 cents per gallon. That is, 8 cents which Government give up and 2 cents the companies are prepared to give up. This co-operation on the part of the Oil Companies is much appreciated by Government and I am sure will be equally appreciated by the public.

THE HON. THE TREASURER seconded.

MAJOR THE HON. E. S. GROGAN: Your Excellency, I propose to oppose this Bill on the ground that it is a case of *lèse-majesté* in that it is in contradiction to one of the recommendations of Sir Alan Pim, who is the new *de facto* Governor of the country!

On page 234 of his Report it says:

"It has been further contended that one of the most urgent needs in the interests of producers is a reduction in the tax on petrol. This is, however, essentially a

grievance of the up-country area and could be better dealt with by approaching the Railway Administration for a reduction in the rate charges for the carriage of petrol. Mombasa has no grievance in this respect."

That is all I have to say.

LIEUT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, I beg to support the motion before the House.

In this very topsy-turvy country, one has to assume many roles, but I never thought it would fall to my lot to have to get up and defend Government against one of my colleagues because they propose to reduce taxation for the country. (Major Grogan: Transpose!) Perhaps the hon. member is not aware that the Railway have done their share and have considerably reduced the cost of petrol so far as the Railway is concerned.

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, I think the Noble Lord has answered the point raised, and I associate myself with what he said.

The question was put and carried.

THE EDUCATION AND POLL TAXES (REPEAL) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of the Education and Poll Taxes (Repeal) Bill.

This Bill is self-explanatory, and merely repeals the two taxation measures which, in the ordinary course of events, would be reimposed as from the 1st January of next year. Those taxes form no part of the new financial structure and must therefore be repealed before the end of the year.

THE HON. THE TREASURER seconded.

The question was put and carried.

THE NON-NATIVE POLL TAX BILL.

THE HON. THE TREASURER: Your Excellency, I beg to move the second reading of the Non-Native Poll Tax Bill.

This Bill is intended to be an improved edition of Chapter 53 of the Revised Edition of the Laws and reverts to the principle of a poll tax not related to income. Clause 3 is, however, a departure from the provisions contained in Chapter 53.

Sir Alan Pim recommended the merging of the old basic poll tax of Sh. 30 and the education tax of Sh. 30 in the case of Europeans and Sh. 20 in the case of Indians into a single basic poll tax of Sh. 50 per head.

A Bill to repeal the education taxes has just passed its second reading and, in considering the Bill now under discussion, this must of course be taken into account.

Clause 3 of the Bill as drafted would provide a yield of £52,000 a year, the scales so far as non-Europeans are concerned being more generous than the figure recommended by Sir Alan Pim, as it was felt that there should be some differentiation as between the various non-native races. I propose, however, during the Committee stage to move an amendment to Clause 3 giving further relief by making the tax payable by Europeans Sh. 40 per annum and the tax payable by Asians Sh. 30 per annum. This will be considerably more generous than Sir Alan Pim's recommendations and will reduce the yield to £40,000 per annum, the basic taxes being reduced from Sh. 60 to Sh. 40 in the case of Europeans, from Sh. 50 to Sh. 30 in the case of Indians, and from Sh. 30 to Sh. 20 in the case of Arabs, which I suggest is a very handsome reduction.

Turning to the detailed provisions of the Bill, there are very few clauses to which I think I need draw attention.

Clause 2 defines European and Asiatic in the terms of the Education Tax Ordinances.

Clause 5 provides for double payment in the event of failure to pay by the 30th April. This clause repeats section 4 of Chapter 53 as amended by section 2 of Ordinance 1 of 1935. The penalty clauses have been brought into line with other legislation by rounding off maximum penalties.

Clause 17 will be deleted in the Committee stage as provision for repeal has already been made in a previous Bill.

These are the only variations of any consequence and, as I have already stated, the yield under the Bill would be £52,000 as printed, or £40,000 per annum if the amendment to which I have alluded is passed in committee.

THE HON. THE ATTORNEY GENERAL seconded.

THE HON. J. B. PANDYA: Your Excellency, I should like to take this opportunity of expressing my gratefulness to Government for reducing this basic rate for Indians to Sh. 30. It will be remembered that Sir Alan Pim in his Report recommended, as the hon. mover said, that the basic tax should be Sh. 50. At the proper time I made representations on this matter, and Government agreed to reduce it to Sh. 40. The Indian community was unanimous and very anxious that the basic tax should be reduced to Sh. 30. The Indian elected members, the Indian Congress, and various mass meetings of Indians pressed this viewpoint.

grievance of the up-country area and could be better dealt with by approaching the Railway Administration for a reduction in the rate charges for the carriage of petrol. Mombasa has no grievance in this respect."

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The question was put and carried.

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Sir Alan Pim recommended the merging of the old basic poll tax of Sh. 30 and the education tax of Sh. 30 in the case of Europeans and Sh. 20 in the case of Indians into a single basic poll tax of Sh. 50 per head.

A Bill to repeal the education taxes has just passed its second reading and, in considering the Bill now under discussion, this must of course be taken into account.

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THE HON. J. B. PANDYA: Your Excellency, I should like to take this opportunity of expressing my gratefulness to Government for reducing this basic rate for Indians to Sh. 30. It will be remembered that Sir Alan Pim in his Report recommended, as the hon. mover said, that the basic tax should be Sh. 50. At the proper time I made representations on this matter, and Government agreed to reduce it to Sh. 40. The Indian community was unanimous and very anxious that the basic tax should be reduced to Sh. 30. The Indian elected members, the Indian Congress, and various mass meetings of Indians pressed this viewpoint.

I feel that it is very fortunate that we have been able at this time at least with success to obtain this reduction to Sh. 30.—I am quite sure it is very much appreciated by the Indian community. In this connection I should like to pay tribute and to express my gratitude to Your Excellency and to the Hon. Treasurer, who was very sympathetic, for without that support and sympathy it would not have been possible to achieve this result. We are very thankful for what the hon. the Treasurer has done for us.

I complained during the budget debate that we had not received sympathy and consideration in matters affecting the Indian interests from the European elected members. In fairness, therefore, I should like to say that on this question I received the greatest sympathy, consideration and support from the Noble Lord, the hon. Member for Rift Valley, and other European unofficial members of the Standing Finance Committee.

We went on to that committee with divergent views, but we were able to get on remarkably well, and I should like to say this: this was very largely due to the very good atmosphere which Your Excellency, as Chairman of the Committee, was able to create. (Applause.)

I should like to say, if I may, that a very desirable beginning has been made in regard to creating mutual goodwill and mutual sympathy, not merely in words but in actions and in matters affecting the interests of both the communities, namely, Europeans and Indians. I hope that this will be continued, not only to the benefit of both communities but to the benefit and interest of the country as a whole.

I should like to assure those critics who might say this kind of thing is: "You scratch my back and I'll scratch yours", that this sincere expression of opinion, of my feelings, is nothing of the sort. It is the honest and sincere expression of one who, in public life, is bound to acknowledge the co-operation and sympathy of those with whom we come in contact, and I think it is only fair I should acknowledge publicly this appreciation of sympathy and pay tribute where it is due.

It was open to the European unofficial members to oppose, if they so desired, this concession of the reduction in this basic tax, and I know that they were themselves not very anxious to get the reduction in the poll tax for the European community. It would have made certainly a little bit of difference, and we should not have been able to get this thing through with ease. It is only fair that I should publicly acknowledge this thing from the Indian members.

There is only one point to which I should like to draw attention before I conclude, and that is that I was anxious throughout not to have any differentiation in this basic poll tax figure between Europeans and Indians. I pressed very hard indeed to get the European poll tax to Sh. 30, but this was not acceptable. While one has got to be satisfied with what one gets and it is not possible to have everything one wants, I personally feel it would have been far better and perhaps more equitable and just if the European tax had been reduced to Sh. 30 in comparison to even a reduction of the petrol tax. In that case it would perhaps have been distributed more equitably.

This Bill reduces the payment of this direct tax by Sh. 20 in the case of both communities, Europeans and Indians, but I should like to say that I should have preferred to let the European community have the reduction to Sh. 30. However, on sentimental grounds I do not think we should be justified in asking our community to pay Sh. 40 in order to have a paper equality, because it is quite well known that in the scales of salary received in the Civil Service and in other matters Europeans enjoy better privileges, and if therefore they are willing to pay the extra Sh. 10 towards the revenue of the country we should not take any objection.

LIEUT. COL. THE HON. J. G. KIRKWOOD: Your Excellency, I wish to register my opposition to this Bill on principle.

Again I want to reiterate that the Secretary of State has said that he accepts generally the Pim Report. This is not in the Pim Report, and is the third instance this morning where that Report has not been accepted.

I wish to detain the House for a moment in connection with clause 4 (2) of the Bill, and in the committee stage I propose to move its deletion. It is an iniquitous penalty to double the tax if it is not paid by the due date. I have known many instances of real hardship. It was not a question of evasion. These cases will occur again. It is a question partly of memorising the date on which the tax should be paid. I hope at a later stage that consideration will be given to this clause.

MAJOR THE HON. SIR ROBERT SHAW: Your Excellency, I had proposed to rise to make the precise proposal made by the hon. Member for Trans Nzoia.

This Bill presumably is to lay down what is the proper contribution of the various members of the community under this head of revenue, and I do think that for failure to pay by the prescribed date it is illogical to double the people's

ability as taxpayers. It seems to me that the obvious way a person should be dealt with should be through the courts, and it is not difficult or cumbersome.

If the tax is not paid by a certain date, the person is summoned before a magistrate who examines the case. If he finds that failure to pay is due to reluctance, a fine or imprisonment is the proper punishment; if he finds it is due to forgetfulness he may order him to pay within a week, and failure to do so would render the person guilty of contempt of court. That is a simple way of dealing with the matter, and very much better than this.

MR. THE HON. E. S. GOGAN: Your Excellency, I wish shortly to oppose the Bill on similar lines to those laid down by the hon. Member for Trans Nzoia. There is no justification whatsoever for these reductions, as far as I can see. The Indian community pay very little to the revenue of the country, although they earn large sums here, and there is no reason they should earn in their own country, and there is no reason for the reduction. However, the debate has elicited one fact of interest from the hon. member Mr. Pandya, that the Indian community value their civic dignities at ten bob per head!

MR. THE HON. A. C. L. DE SOUSA: Your Excellency, I have a few remarks to make, and one is in connection with clause 2, the definition of the term Asiatic.

Asiatic is defined here as meaning "a male person of Asiatic race or origin but shall not include an Arab or a Somali". I am very sorry that the hon. Arab members are not present, but I understand that the Arabs always claimed to be Asiatics as I myself claim to be, because to some extent they obtain certain privileges such as under the Liquor Ordinance, for they can consume European liquors. I am sure they are proud to be Asiatics as I am myself.

I cannot understand why Arabs should be excluded from Asiatics, and should very much like an explanation, for if this is not forthcoming, at the proper stage I propose to move an amendment to this definition.

In clause 3, with regard to this differentiation between the European and Asiatic contribution, the hon. member Mr. Pandya said he made almost desperate attempts to get equality on this issue, and I suppose he has failed, and we shall see it in the Ordinance. He said that his proposals were not acceptable.

In a Bill of this nature it should be made clear why that is so. What is it that makes Europeans in this Colony contribute more than the Indians. What is it? Is it exaggerated

patriotism or an ardent desire for self-sacrifice on behalf of the other communities? I think in a Bill of this kind which establishes this differentiation, the least Government can do is to give an explanation of why such racial distinctions are brought in in a measure which is not racial in itself in that it affects all the non-native communities.

At the proper stage I propose to move an amendment equalising the non-native poll tax; that means, people who are not natives who pay this tax should pay an equal tax.

In this connection I should also like Government to consider, if it can at this late hour, to revert to the old poll tax. I think Government would have been wiser to have done so. In the olden days, the tax was of Rs. 15 and Rs. 15 was equivalent to a pound, and if the pound to-day is Sh. 20, all that non-natives should be called on to pay should be Sh. 20.

I listened to previous speakers on the subject of doubling the tax as a penalty for failure to pay at the proper time. I fully support that proposal, and think it iniquitous that a man who, through some unforeseen circumstances, fails to pay on the due date but pays the next morning has to pay double the amount.

I associate myself with the hon. member Mr. Pandya in his expression of appreciation of yourself, Sir, because I know to what extent you have contributed in bringing about an atmosphere of settlement in this very acute crisis, and particularly with the hon. member's appreciation of the European unofficial members of the Standing Finance Committee.

I think this is an occasion when we can look forward to a cessation of these racial feelings which have marred not only the proceedings of this Council for some years but also the relationship as between the various sections of the non-native communities of this Colony.

Council adjourned for the usual interval.

On resuming:

THE HON. SHAMSUD-DEEN: Your Excellency, I wish to make the strongest protest against this Bill.

My idea is that this poll tax is a very primitive tax which dates back, I think, to the Roman Empire, when such a tax was imposed on people deprived of their civic rights and so forth. It is an insult to a civilized community that any tax bearing the name of poll tax should be inflicted.

If you read past history, when the world was not so civilized as it is to-day, you will see that tyrant nations imposed this sort of tax on people who were branded with the brand if

inferiority and were exempt from military service and so on. In a country like this, where income tax is inevitable, I do not think there is any justification whatever for what we call a basic tax to be imposed on a person who has no basis of any income at all.

I have had some experience in helping these unfortunates who have no income at all and who have been called on to pay this tax. Unfortunately, I have never been able to impress Government with the extent of the unemployment that exists in this Colony, but I think the Revenue Officer, who is responsible for collecting this tax, knows something of the difficulties of getting the tax.

In the Indian Association we have been occupied for six months a year at least, once a week up to 10 and 11 o'clock at night dealing with applications, pathetic appeals, for exemption. Had it not been for the very tactful and humane Revenue Officer, Mr. Minstead, this tax would so easily have been turned into a sort of inquisition.

I submit that a tax of this nature ought not to be introduced into a Colony like this, and it would not be tolerated in any other civilized community. There would be a system of negotiation in a country where income tax was being tried if this sort of thing were introduced.

I listened with a certain amount of amusement to the remarks of my hon. friend the Member for the Coast when he said the Indian community should be called on to pay a similar tax. I am always an advocate of equality, and if there were equal opportunities for Indians and if this inquisition was to be imposed I would certainly say: "Yes, let us have an equal share of it." But that could only be said if we have equal opportunities.

To me it seems that the reduction of this tax from Sh. 50, including the education tax, to Sh. 30, is akin to where a slave was smitten with a cat-o'-nine tails you say that he should now only be beaten by a cat-o'-three tails, and the hon. Member for the Coast says: "Don't make any differentiation, don't strike the Indian with a cat-o'-two tails and the European with a cat-o'-three tails, but strike both of them with a cat-o'-nine tails."

I do not agree that this is any favour on the part of Government at all to reduce this tax. I think this tax ought to disappear entirely, but if it is an inevitable evil which is original basis of £1. per head. I think the hon. member Dr. de Sousa has explained how Government got Sh. 2 for every rupee that was due till after the fixation of the currency, but while they had to pay out they paid in a rupee of Sh. 1/6.

I think the worst thing Government can do, if they want to brand the community of the Colony with the brand of inferiority, is to have a uniform tax of £1 per head, but when we come to double the tax, as the hon. member Dr. de Sousa said, overnight to Sh. 60, I think it is the height of absurdity.

THE HON. ISHER DASS: Your Excellency, I entirely agree with the suggestions put forward by the hon. members Dr. de Sousa and Mr. Pandya, that there should be a uniform payment of tax for all non-natives, Europeans and Indians alike. I do not see any reason why Europeans should pay more through no fault of their own, and if the argument is unfortunately put forward that Europeans are anxious to pay more tax I am afraid it is not so. Probably there are people in the constituencies outside who are not aware of the fact that their representatives would not agree to any such proposal for reduction.

The second suggestion of the hon. member Dr. de Sousa was that we should revert to the former tax of £1. If as I understand funds are not available now to permit that being done, I hope at a later date, should the financial conditions of the Colony improve, it will be taken into serious consideration.

I failed to understand the hon. member Mr. Shamsud-Deen when he stated that this sort of basic tax was introduced in olden times when people were not so civilized. But I did not hear him oppose the imposition of a poll tax on the natives of this country, though when it comes to a question of non-natives he comes forward and suggests all sorts of questions of civilisation and the Roman Empire.

THE HON. SHAMSUD-DEEN: On a point of explanation, I thought I made it clear that natives are not liable to pay income tax and non-natives are.

THE HON. ISHER DASS: That is my point. Natives are not required to pay income tax. I cannot understand why, if the sons of the soil are called on to pay at least Sh. 10 or 12, non-natives who have greater facilities to earn a living should not be called on to pay a single cent. But it is left to my colleague to understand that sort of thing.

THE HON. THE TREASURER: Your Excellency, in the first place I should like to express my appreciation to the hon. member Mr. Pandya for the generous terms of his remarks.

Several members have raised this question of differentiation. Several factors come into that: the matter of equal capacity to pay and so on. It has been approved by Government and the Standing Finance Committee, and I am afraid

that if the differentiation were removed the lift would have to be upwards.

The hon. member Dr. de Sousa complained of the definition of Asiatic, and rather inferred that Arabs and Somalis would be hurt by the definition. I would point out to him that the only reason why this is framed as it is is that Arabs and Somalis will in future be called on to pay Sh. 10 less than they would be called on to pay if they were not excluded from the definition of Arabs.

The hon. Member for Trans Nzoia denounced the Bill because it was a departure from the Pim recommendations. In that connection I would point out to him that the departure is not a very grave one. Sir Alan Pim suggested that the education tax should be merged with the old poll tax, and it is really only a matter of the tax which is leviable. In this connection, Sir, I have your authority for saying that the Secretary of State has informed you that Sir Alan Pim in conversation stated that he would have no objection to a reduction of the European poll tax to Sh. 40.

MAJOR THE HON. E. S. Grogan: Can we have that again, Sir? (Laughter.)

THE HON. THE TREASURER: The hon. members Dr. de Sousa and Mr. Shamsud-Deen suggested that the poll tax should be reduced to £1. Both apparently have forgotten the fact that the education taxes are being repealed and that we go back to the old poll tax, which must take the education taxes into account.

The hon. member Mr. Shamsud-Deen raised the whole principle of the poll tax, and I think that has been sufficiently dealt with by the hon. member Mr. Isher Dass. (Laughter.)

The hon. member also raised the point of the poorer people being hard hit by this tax. Then he went on to say that the present Revenue Officer went into these things very carefully, and apparently wound up by thinking there was no hardship at all, because clause 13 gives the Governor power to remit the whole or any part of the tax due.

Several members have raised the question of the penalty of double the tax, which is provided for in clause 1. That is a very general provision. The tax is a small one, and although due at the beginning of the year, four months are allowed in which to pay. If this clause were removed or a smaller penalty imposed, I can say from my own experience that the cost of administration would increase very considerably and the number of evasions would increase, too.

In fact, what happens is that there is a spate of payments on the last day of April; and thereafter a number of payments from people coming back to the country is very small, and if some sort of misunderstanding or anything of that sort occurs it is considered sympathetically, in the same way, as I have explained, in regard to indigent people.

Those are, I think, all the points which were raised.

The question was put and carried.

THE HON. THE ATTORNEY-GENERAL moved that the Council resolve itself into committee of the whole Council to consider, clause by clause, the six Bills which had just been read a second time.

THE HON. THE TREASURER seconded.

The question was put and carried.

Council went into committee.

In Committee.

The Native Hut and Poll-Tax (Amendment) Bill was considered clause by clause.

The Northern Frontier Provinces Poll Tax (Amendment) Bill was considered clause by clause.

The 1937 Appropriation Bill was considered clause by clause.

The Dangerous Petroleum Tax (Amendment) Bill was considered clause by clause.

Clause 2—

LIEUT.-COL. THE HON. J. G. Kinkwood: Your Excellency, I move that clause 2 be amended by the substitution of the words "twenty-five" for the words "twenty-seven" in section 3, for the reason that while we have undertaken to reduce petrol by 10 cents—and by a method of which I do not approve—there is no guarantee that the 10 cents will be removed. That is, Government have taken off 8 cents and are leaving it to the oil companies to take off 2 cents. I suggest that this clause should read 25 cents, for 2 cents will not make a material difference to the revenue, and there is also the point that we are on a decimal coinage here so that 25 will be much easier for calculation.

THE HON. THE TREASURER: Your Excellency, the hon. member appears to be under some misapprehension. Government did not give any undertaking to reduce the petrol tax by 10 cents. It was agreed that £15,000 should be set aside for a reduction in the duty, which really worked out at 7 cents a gallon, so that Government are going beyond what was originally intended.

LIEUT.-COL. THE HON. LORD FRANCIS SCOTT: Did I not understand that the oil companies have given a definite undertaking that they will reduce petrol by 10 cents a gallon? Is that not so?

THE HON. THE TREASURER: Yes.

The question of the amendment was put and negatived.

The Education and Poll Taxes (Repeal) Bill was considered clause by clause.

The Non-Native Poll Tax Bill was considered clause by clause.

Clause 2—

DR. THE HON. A. C. L. DE SOUSA moved that clause 2 be amended by the deletion of the words "but shall not include an Arab or Somali" which appear in the fourth line thereof.

THE HON. THE ATTORNEY GENERAL: That will mean that Arabs and Somalis will pay Sh. 30.

DR. THE HON. A. C. L. DE SOUSA: I propose to move an amendment to clause 3 reducing the non-native poll tax to Sh. 20.

THE HON. THE ATTORNEY GENERAL: I would point out, in that connection, that if the hon. member makes the point that Arabs and Somalis are excluded from the definition of Asiatic he is quite right, but the reason why that exclusion was made is because it is a tacit admission that these two peoples are in the ordinary way Asiatics but for the purposes of this Bill in view of their poverty it is not desirable that they should pay the Asiatic tax.

The question of the amendment was put and negatived.

MR. CHIEF JUSTICE: THE HON. J. G. KIRKWOOD: Your Excellency, I move that clause 2 be amended by the deletion of the word "eighteen" in the twelfth line thereof and the substitution of the word "twenty-one" therefor. I think it is iniquitous to have the age of payment fixed at eighteen years when no political rights of any sort are given until the age of twenty-one. I should like to see that altered. They are really children according to law but are taxed. I hope the amendment will be accepted by Government.

THE HON. THE ATTORNEY GENERAL: Eighteen has always been the age and I see no reason why it should be altered at this stage.

The question was put and negatived.

Clause 3—

THE HON. THE ATTORNEY GENERAL moved that clause 3 be amended by the deletion of the figures 50 at the end of the fourth line and the figures 40 substituted therefor and by the deletion of the figures 40 at the end of the fifth line and the substitution therefor of the figures 30.

DR. THE HON. A. C. L. DE SOUSA moved that clause 3 be amended by the deletion of lines four, five, and six, and the substitution therefor of the words "Sh. 20".

The question was put and negatived.

THE HON. ISHER DASS moved that clause 3 be amended by the deletion of the figures 50 at the end of the fourth line and the substitution therefor of the figures 30.

The question was put and negatived.

The question of the amendment moved by the Hon. the Attorney General was put and carried.

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

Clause 4—

MR. CHIEF JUSTICE: THE HON. J. G. KIRKWOOD: Your Excellency, I move that clause 4 be amended by the deletion of sub-clause (2).

I think that double the tax is an iniquitous penalty and I am not aware of any other Ordinance in which the penalty is a statutory doubling automatically as in this instance. I maintain that under clause 8 a magistrate has power, which is quite sufficient, that a person can be summoned and a penalty imposed. In clause 10 again, there is penalty of imprisonment if the tax is not paid, and that is the penalty prescribed in all other Ordinances in this Colony.

THE HON. CONWAY HARVEY: Your Excellency, there is one point that might possibly be elicited here: There is some slight confusion, certainly in my mind. It says that every non-native who fails to pay by the due date shall be liable. Perhaps we might be told whether that means it is left to the discretion of the licensing authority or court, or whether if he fails to pay by the due date through inadvertence he has to pay double automatically? It would help us if that point were clarified.

MR. CHIEF JUSTICE: THE HON. SIR ROBERT SHAW: Your Excellency, I am in support of the amendment of the hon. Member for Trans Nzoia. I should like to draw attention to the fact that a consequential amendment would be necessary to clause 9, the last line but one, where the penalty mentioned obviously refers to the penalty in the sub-clause which the hon. member wishes deleted. Consequently, I think the proper course would be for me to propose an amendment when we come to that clause, to the effect that instead of the words "penalty" there should be substituted the words "penalty not exceeding two times the amount of the unpaid tax". Instead of making the penalty automatic that gives a magistrate power under the Bill as at present drafted to make the penalty fit the crime.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I hope this amendment will not be pressed. It has operated for the last eleven years, without hardship and, in reply to the hon. Member for Trans Nzoia, there is power of remission in cases where it is felt proper that the tax should be remitted. As I see it, in a country like this it is extremely difficult to collect this tax, and the actual fact that if people do not pay by the 30th April the tax is doubled is sufficient inducement to make them pay without undue hardship. If this is deleted it will certainly increase the cost of administration very considerably and increase the difficulty of collection.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I wonder whether the mayor of the amendment and Government would accept an amendment making an automatic addition to those who do not pay by the 30th April of 50 per cent. I do agree that double is much too harsh, and I have always thought so. While it is true there are powers of remission, the real point of the hon. Member for Trans Nzoia is that if you do not pay by the 30th April the tax is automatically doubled and then you have to go and get exemption, which is extremely difficult I expect, because you say you forgot. I do not know whether it is better to add 20 per cent. or give discretion to the collector to charge people double in certain cases if they deliberately do not pay. It is not an undue penalty, but the hon. Member for Trans Nzoia does not want an automatically doubled tax for a genuine mistake. We ought to be able to get a *via media* to satisfy both sides. May I suggest that we report progress until to-morrow?

THE HON. THE ATTORNEY GENERAL: I think we can arrive at a satisfactory solution now. We are prepared to agree to 50 per cent. In the case of a European that would make another Sh. 20. I do not think that would be unreasonable.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: I would much prefer to accept the amendment suggested by the hon. Member for Nairobi South. After all, I am not against penalty, but I am against this iniquitous doubling with no redress, for it is practically impossible to get exemption, and the administrative officer must impose the penalty because it is the duty imposed on him; he has no right of remission at all. I am quite prepared to accept 20 per cent.

THE HON. THE ATTORNEY GENERAL: Your Excellency, how this works out in actual practice hon. members probably know. The Governor delegates his duty to the Treasurer to remit these penalties, and the clerk has only to telephone the Treasurer and explain the facts and the remission can be granted on the spot. There is no real hardship. The hon. member asks for a *via media*, and on behalf of Government I am prepared to agree to 50 per cent. instead of the present 100 per cent.

THE HON. F. A. BEMISTEN: Your Excellency, I would point out that it does not work out actually as the hon. the Attorney General says it does. Take my own case. (Laughter.) My tax was tendered on the 1st January, but the receipts were not ready at Mombasa. My clerk brought the money back, and forgot to go again and pay it. It is true it was my fault, and the District Commissioner at the time told me, but it was after April, and I automatically had to pay Sh. 50; the tax was then Sh. 50. I got no redress automatically, but it was quite obvious the boy had been to his office and tendered the money.

THE HON. THE ATTORNEY GENERAL: I would ask if the hon. member made application for remission?

THE HON. F. A. BEMISTEN: I did, and the D.C. said he had no power whatsoever, I must pay. There were two of us. It is rather serious.

THE HON. THE ATTORNEY GENERAL: The point is, as it was such a serious amount surely an application should have been made to headquarters.

CAPT. THE HON. H. E. SCHWARTZ: On the principle of half a loaf I am prepared to accept Government's proposal if the mover of the amendment will.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: Half a loaf is better than no bread, but I would much prefer to toss for it! (Laughter.)

HIS EXCELLENCY: I am afraid that method cannot be considered. It would not be consistent with the dignity of Council! Government does not want a penalty, but merely a deterrent to compel people to pay it at the right time, and I suggest that 50 per cent is a reasonable compromise which I trust hon. members will agree to.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: I am prepared to accept 50 per cent, but still consider it unreasonable.

HIS EXCELLENCY: I am grateful to the hon. member for meeting us in this manner.

The amendment was by leave withdrawn.

CAPT. THE HON. H. E. SCHWARTZ: I move that the word "double" be altered to "half".

THE HON. THE ATTORNEY GENERAL: No! (Laughter.)

CAPT. THE HON. H. E. SCHWARTZ: I knew it but hoped he would not. (Laughter.)

THE HON. THE ATTORNEY GENERAL moved that clause 4 be amended by the deletion of the words in sub-clause (2) "double the amount of such tax" and the substitution therefor of the words "an increase of 50 per cent. on the amount of such tax".

THE HON. F. A. BEMISTEN: I suggest an amendment, that after the word pay "or tender" be added.

THE HON. THE ATTORNEY GENERAL: I have not the slightest doubt that in practice, if any taxpayer could prove he had tendered his money before due date, it would be iniquitous if the authorities did not remit the penalty.

ALIAS: THE HON. SIR ROBERT SHAW: To clear the whole matter up, my remarks regarding clause 9 are now withdrawn.

The question was put and carried.

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

Clause 9

The Hon. Member for Nairobi South moved that clause 9 be amended by the deletion of the words "or tender" on lines 7 and 8 and the substitution therefor of "one".

The question was put and carried.

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

Clause 17

THE HON. THE ATTORNEY GENERAL moved that clause 17 be deleted.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL moved that the following Bills be Reported to Council without amendment:

- The Native Hut and Poll Tax (Amendment) Bill,
- The Northern Frontier Province Poll Tax (Amendment) Bill,
- The 1937 Appropriation Bill,
- The Dangerous Petroleum Tax (Amendment) Bill,
- The Education and Poll Taxes (Repeal) Bill,

and the following Bill with amendment:

- The Non-Native Poll Tax Bill.

The question was put and carried.

Council resumed its sitting.

The President informed Council that the five Bills above named had been considered clause by clause in committee of the whole Council and had been reported without amendment, and that the Non-Native Poll Tax Bill had been considered clause by clause and had been reported with amendment.

THIRD READINGS.

THE HON. THE ATTORNEY GENERAL moved that the six Bills above named be read a third time and passed.

THE HON. THE TREASURER seconded.

The question was put and carried.

The Bills were each read a third time and passed.

Standing Orders having been resumed.

THE LICENSING BILL.

THE HON. THE TREASURER: Your Excellency, I move that the Majority Report of the Select Committee on the Licensing Bill be adopted.

As stated in the preamble to our Report, we looked upon this Bill as a reversion to the principles of the 1919 Ordinance, and for this reason did not give detailed attention to various suggestions for the inclusion of specific licence fees for certain classes of business such as banks, insurance companies and so on, which would have been outside the scope of the Ordinance as drafted. Nor did we feel that it would be proper at this stage to give any opinion as to the advisability or otherwise of amending the Bill drastically by incorporating importers' licences.

We have recommended an alteration of the short title in clause 1 to read "Traders' Licensing Ordinance", which is more in conformity with the long title and follows exactly the title of the 1919 Ordinance. It was suggested to us that the title should be the "Traders' Taxation Ordinance", the point being made that this might be held to be a taxation rather than a controlling measure. The propriety of raising revenue by singling out one particular section of the community was questioned by certain witnesses, but it was generally felt this was a matter for joint representations to Government by the trading community in due course and was not a matter upon which the Committee was called upon to express any opinion.

In clause 2, the definition of "hawker" has been amended by the deletion of the words "and for that purpose travels about from place to place with goods on any vehicle or with a pack animal or carrier". The definition now substituted is an improvement in drafting, because in the 1934 Ordinance there was a differentiation between hawkers and pedlars, and in making the amendment in the Bill it was not done quite properly.

The proposed addition to clause 4 (2) is the adaptation of section 24 (c) of the 1919 Ordinance, and allows a period of

grace for payment of three months. The proviso suggested reads as follows:—

"Provided that no person shall be prosecuted for trading during the period between the first day of January and the thirty-first day of March inclusive in any year, without a trading licence, if he takes out the appropriate trading licence before the expiration of such period."

Some important alterations have been made in clause 6, sub-clause (1). A proviso has been inserted excluding domestic produce not for sale direct to the consumer from the valuation of goods on hand. In consequence, the smaller traders have been brought to the 1934 level, those holding stocks not exceeding £100 being charged a fee of Sh. 30 per annum in municipalities, townships and trading centres, and Sh. 10 per annum elsewhere. An intermediate licence fee of Sh. 75 for traders holding stocks between £100 and £300 has been introduced, and the fee for the larger trader reduced from Sh. 300 to Sh. 250 per annum.

A fee of Sh. 250 has also been introduced to cover a short period commercial traveller's licence, the fee for a licence valid for a year remaining at Sh. 400.

In view of these reductions it was considered equitable that the licence fee for manufacturers' representatives should be similarly reduced to Sh. 250 per annum.

The proposed amendments to clauses 7, 8, 10, 11 and 14 are drafting amendments.

Clause 19 has been amplified to exempt from the provisions relating to hawkers the sale of poultry, eggs and native handicrafts, also the sale of religious and instructive literature to non-natives as well as natives.

Clause 23 has been amplified to exempt from the provisions of the Ordinance auctioneers, brokers and coffee dealers.

A new clause 27 has been inserted giving the Governor power of reduction or exemption generally or specifically, the Committee having particularly in mind charity bazaars and similar activities which can more conveniently be dealt with by administrative order than by specific exclusion from the scope of the Ordinance.

Schedule A has been amplified in order to place the licensing officer in possession of the information required under clause 22, which gives the licensing officer discretionary power to refuse a licence to a person who has had his licence cancelled or is a minor or is an undischarged bankrupt. It will be seen from the note of dissent that the hon. Member for

Mombasa objects to the grant of this discretionary power, but other members of the Committee feel that it is a wise and necessary provision.

The yield under the Bill as amended is estimated at £22,500 as against an actual yield under the 1934 Ordinance of approximately £33,000.

As regard the Minority Report of the Hon. Mr. Shamsud-Deen, I can only remind him of the fact that the intention of the Bill was made perfectly clear at the time of the second reading; that was, to give effect to Sir Alan Pim's recommendation that the trades and professional licence fees imposed in 1933 and 1934 should be modified to the standard of the former trades licences. If he wished to convert the Bill into a Traders, Merchants, and Business Mens Licensing Ordinance or, alternatively, into a Traders' Registration Ordinance, I suggest that he should have opposed the second reading.

There is just one further point in regard to the figures quoted by the hon. member. Sir Alan Pim appears to have taken the yield from the old Traders' Licensing Ordinance in 1932 (the worst year of the depression) which was in the neighbourhood of £19,000, and deducted this from the estimated yield under the new Ordinance which was £35,000, thus giving a reduction of £16,000. With improved conditions and onerous scales recommended by the Committee the yield will be £22,500.

In conclusion, as Chairman of the Committee I should like to pay tribute to the spirit of accommodation manifested by all witnesses who came before us.

THE HON. THE ATTORNEY GENERAL seconded

CAPT. THE HON. H. E. SCHWARTZ: Sir, on the second reading of this Bill the hon. Member for Nairobi North made it perfectly clear that the commercial bodies of this Colony felt very strongly that there could be no justification for signalling out traders as opposed to any other collection of entities for such taxation.

When the witnesses from the Chamber of Commerce and Traders Association gave evidence before the Committee, they made it abundantly clear that any evidence they gave in regard to the details in the schedule was without prejudice to the attitude they had always adopted. It was not possible to incorporate their evidence naturally in the select committee's report, but the Treasurer promised, and has carried it out, that he would let House know that that viewpoint had not been retracted from.

On the second reading also, the hon. the Treasurer, in answer to the hon. Member for Nairobi North, did say there would be little doubt that if representations were received from all interested parties they would have proper consideration, and I would only suggest now to all Chambers of Commerce and all Traders Associations and all parties interested that they should get together and make those joint representations to Government that the whole matter be inquired into.

This is no place to argue the pros and cons of that contention, but that it is a contention with a very serious foundation cannot be denied; and I hope the hon. the Treasurer in his reply will give a definite assurance on behalf of Government that if these joint representations really representing the whole of the trading communities in the Colony are received there will be a proper inquiry instituted.

Apart from that one point, that very important initial point, that these bodies took, I think I am right in saying that both the Nairobi Chamber of Commerce and the Traders Association accepted the actual rates now proposed as being satisfactory; that is, the rates pure and simply. I would emphasize that the actual result to the traders of this Colony under the Bill now before the Council will, in fact, give greater relief than if the proposals of Sir Alan Pim had been carried out to the letter and we had merely gone back to the 1919 Ordinance.

This Bill it is now proposed to pass as amended by the select committee, is much more generous and gives considerably greater relief than was proposed in the Report of Sir Alan Pim. It is of great importance that people should not be misled by the figures of 1919, and remember that the £16,000 which he put in his Report was based on a complete misconception of the position.

THE HON. SHAMSUD-DEEN: Your Excellency, I think I have said all I need to in my minority report, and I will only elaborate one or two points.

The last speaker said he though the present Bill gave great relief to traders. May I be permitted to ask him a question as to whether the relief granted the traders has been in the same proportion as the relief granted to him? I understand that lawyers up to recently paid £15 per annum; they will now only pay £3. What does a trader get? The biggest gets a refund of Sh. 50.

My impression was that in the committee the chairman promised to include in the preamble to this report that this measure was definitely agreed to be a taxation measure, rather than a licensing measure, but rather to my surprise I do not find it in the majority report at all.

I only wish to say that if sauce for the trader goose is sauce for the Civil Servant gander, I see no reason why both should not be licensed before they begin to make their living.

It has been said that a trader is licensed because he trades for profit. He does trade for profit; but he also risks losses, whereas the Civil Servant and other servants only work for profits and very seldom have any losses at all. That is the more reason why both should be made to pay a licence, or else, no such innovation should be introduced into this Colony.

I submit that this Ordinance is another evil that exists and is peculiarly of this Colony. There is no such thing, I understand, in England, there is no such thing in Indian and other civilized countries. I understand that it does exist in some of the big colonies, but that is no reason why, after paying indirect taxation in the form of Customs and freight, the trader should not be at liberty to distribute his goods to his customer without any other form or direct tax. It only means that this tax is passed on to the consumer, and is the third form of direct taxation. You have passed the poll tax which is direct, we are also going to have income tax, which is direct, and there is Customs duty, railway freight, and on top of these there is this Ordinance. I submit that the whole thing is absolutely wrong in principle and must not appear on the statute book of the Colony.

As regards the figures mentioned by the hon. mover, of £16,000 and £19,000, I agree there is a certain amount of ambiguity in the figures quoted; but I took the trouble of analysing the yields from 1920 to 1934 and came to the conclusion that the average was only £16,000.

Again, the hon. mover said in his opening speech that the desire was to adopt the principles of the 1919 Ordinance. What has been done? We are simply slavishly following that Ordinance, including the schedules, but now is the time for investigating the whole question of licensing traders in this Colony. If you say that on representations being made by all the trading communities you will investigate it I think you are asking for something that is really humanly impossible, because nobody will come forward and say "Alright, we did pay a tax, now you have let us go, but we are quite prepared to pay again." Even if you investigate the matter at some future date and rope in some gentlemen who have been allowed to go scot free, it is simply following a policy of the cat and the mouse, letting a person go now and after a while he has to pay again.

I submit that this is the proper time when the whole thing should be gone into and thoroughly examined and brought up to date. After all, these alternative taxes which, according

to the unofficial members, were temporary taxes and, according to Government, were permanent as a substitute for income tax, were not arrived at just in a moment. I think they occupied the attention of the unofficial members for weeks together, and were the result of a thorough search for money and the exhaustion of all avenues. Having done that, I think it is almost stupid to waste all that was gained and simply go back to the 1919 Ordinance.

THE HON. THE TREASURER: Your Excellency, with regard to the remarks of the hon. Member for Nairobi South, I can only repeat what I said during the second reading, that if concerted representations are made to Government by the trading community they will, of course, receive Government's most serious consideration.

As regards the remarks of the hon. member Mr. Shamsul-Deen, I cannot remember having given any undertaking that anything would be inserted in the report to the effect that this was a taxation measure. I thought I made that perfectly clear during the second reading, that it was perfectly obvious this money is collected from the trading community and it is, at least to a considerable extent, a revenue measure.

He also said that he had taken the average yields between 1920 and 1932. I cannot see much point in that, because we have the actual figures of payment. What the average was during those years seems a matter of secondary importance.

He also drew a parallel between the Civil Servant and the trader, but I think he himself pointed out the differences. In the case of the trader he said the tax would be passed on to the consumer, but obviously in the case of the Civil Servant the consumer does not come into the picture.

So far as the 1919 Ordinance goes, it is a fact that it was imposed in 1919; it is also a fact that it remained without any amendment until 1932 and was operated quite smoothly until replaced by the Licensing Ordinance of 1933.

The question was put and carried.

THIRD READING

THE HON. THE TREASURER moved that the Traders Licensing Bill be read a third time and passed.

THE HON. THE ATTORNEY-GENERAL seconded.

The question was put and carried.

The Bill was read a third time and passed.

Council adjourned till 10 a.m. on Thursday,
the 31st December, 1936.

THURSDAY, 31st DECEMBER, 1936

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, the 31st December, 1936, His Excellency THE ACTING GOVERNOR (A. DE V. WADE, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 30th December, 1936, were confirmed.

PAPERS LAID ON THE TABLE.

The following paper was laid on the table:

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

Report of the Select Committee on the Distress for Rent Bill.

NOTICE OF MOTION

The following notice of motion was given by the Hon. the Commissioner for Local Government, Lands and Settlement:

"That the Report of the Select Committee on the Distress for Rent Bill be adopted."

MOTIONS.

MR. C. G. BISHOP: GRATUITY.

THE HON. THE TREASURER: Your Excellency, I beg to move:—

"That this Council approves the payment of a special gratuity of £7-10-5 to Mr. C. G. Bishop, late Instructor in Stock, who retired from the service of this Colony with effect from the 28th September, 1936, this gratuity being additional to that for which Mr. Bishop is eligible under the Regulations."

The officer in question, Mr. Bishop, joined the Tanganyika Government service in 1923, transferred to Kenya in 1927, and retired on the abolition of his office as instructor in stock on the 28th September of the present year. Had he remained in Tanganyika for the whole of his service; or in Kenya, or had the Superannuation Acts which were in force at the time of his joining the service in Tanganyika remained in force on transfer to Kenya, the necessity for putting a motion before this Council would not have arisen.

The regulations, however, as they stand, only allow the grant of a gratuity based on service in Kenya. The 4½ years' service in Tanganyika is not taken into account so far as computation is concerned, a method of adjustment which to my mind is clearly inequitable. The Government of Tanganyika have recognized the justice of the claim; and have granted Mr. Bishop an *ex gratia* gratuity, and this sum of £7-19-5 is the Kenya share of the additional gratuity computed on the total service. This procedure has the approval of the Secretary of State.

THE HON. THE ATTORNEY-GENERAL seconded.

LT.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I rise to oppose this motion.

It is stated in the motion that this gratuity is additional to that for which Mr. Bishop is eligible under the regulations. I suggest that the regulations should be complied with. I see no rhyme or reason for regulations being continually broken by this House. It is a small matter, it is true, in this instance, but there are many others, and I cannot see the justice or necessity of it.

THE HON. THE TREASURER: Your Excellency, the point is that a gratuity is approved so far as pensionable posts are concerned; but it is a very unusual thing for a non-pensionable officer to be transferred from one colony to another in a non-pensionable post. The possibility was apparently not envisaged by the Secretary of State at the time, although the inequity was quite obvious, and representations have been made to him asking whether, in his view, it is necessary to amend the regulations.

The question was put and carried.

REMISSION OF ELECTORAL DISQUALIFICATIONS.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, I beg to move:—

"That, in the opinion of this Council, the action of His Excellency the Governor in refusing to accept the following question—

"For what public purpose His Excellency the Governor purported to set aside the law on the subject of the remission of the disqualifications imposed on Mr. W. G. Lillywhite, which action has since been declared by the Secretary of State to be illegal?"

put by the hon. Member for Aberdare, was an abuse of the prerogative conferred on him by section 29 (ix) of Standing Rules and Orders of Legislative Council."

I should first of all like to point out that I gave notice of this motion about two months ago, and it is somewhat unfortunate that it has been delayed so long that it now takes place after His Excellency, to whom it refers, has left the Colony. I understand that the reason for the delay was that Government were not quite sure whether my motion was in order or not, and had to refer it to a higher authority. I trust that when I receive a reply Council will be informed exactly what the ruling was that was received, so that members shall know for future occasions:

I am raising this question purely as a question on the principle of constitution. Two days ago, an hon. Indian member moved a motion with the object of safeguarding the interests of the minorities. We were unable to accept the motion as put up, but one must be in sympathy with anybody who wishes to protect the rather scanty constitutional rights which minorities have in this Council. I submit that Government stretched their rights under Standing Rules and Orders to an unpardonable degree so as to safeguard themselves from answering an awkward question in this case.

I do not want to detain the House too long, but I think it is necessary briefly to go over the events which led up to this.

It is within the knowledge of everybody that, about a year ago, owing to the much-lamented death of our old friend Major Robertson-Eustace, it was necessary to hold a by-election for the Coast constituency. There were two candidates who stood on that occasion—the present hon. Member for the Coast and Mr. W. G. Lillywhite.

In the Ordinance which controls this Legislative Council, and which was revised very recently and very thoroughly, there is a definite clause which necessitates any prospective candidate publishing, fourteen days before nomination day, any contracts which he may hold with Government, and the details of those contracts. That is not just mere form. That proviso was put in with a very definite object, and the object is this: that electors should know, when they are voting for a member to represent them, exactly to what degree he may be indebted to Government for part of his livelihood, and therefore to what degree his complete freedom of action as a representative of the people may be limited.

In this particular case, it was well known that Mr. Lillywhite did have contracts with the Government, and, thanks to the generosity of his opponent—who took the trouble to send a message to Mr. Lillywhite reminding him of this clause, through, I think, the Administrative Officer—Mr. Lillywhite

did publish the two contracts he held with Government, but not the details thereof, and omitted altogether to publish a further contract.

The election took place, and, as you know, the Coast constituency has a small electorate, and as the result of that election Mr. Lillywhite was elected by three or four votes over his opponent. The next thing that happened was that one of the electors lodged an objection; or whatever the right expression is, to Mr. Lillywhite's election, on the ground that he had broken the law in respect of his failure to publish the details of his contracts with Government.

There was no dispute as to the facts. Mr. Lillywhite appeared before a magistrate, and was disqualified. I think he was fined Sh. 20, which was at the discretion of the magistrate who tried the case, and he was automatically, under the law, disfranchised for a period of seven years. That had nothing to do with the magistrate who tried the case, for he had no option under the law other than that automatic disqualification.

I can assure you, Sir, that I do not suppose anybody in this House has any wish that a worthy citizen, such as Mr. Lillywhite is, should be disfranchised or should have any disabilities placed on him in that way, but it is the law of the land, and as he transgressed that law he had to bear the consequences.

The next thing which happened, which I may say must have been a great surprise to everybody, was that it was announced that His Excellency the Governor had taken it upon himself to overrule the law and wipe out those disqualifications.

As I have said, there was no personal feeling against Mr. Lillywhite, but in any question of constitution and principle such as this, the interests of the individual must be sacrificed to the interests of the community at large. Consequently the European Elected Members sent a letter of protest, pointing out that in their opinion His Excellency had acted *ultra vires*. That protest was referred to the authorities in London, and the reply came back that His Excellency had acted *ultra vires*, and that the disqualifications must stand.

Not only had the law been illegally overruled, but it was the law of the particular Ordinance which controls this Council, and one would have thought that when, no doubt by inadvertence, His Excellency the Governor had transgressed the law governing this Council, at the first possible opportunity he would have apologized to this Council for having done so. However, that did not happen, and the hon. Member for

Aberdare sent in a question which I have already quoted in my motion, to know for what public purpose the Governor had taken the action he did in disallowing the question.

I submit that it was a completely proper question to be asked, and I should like to read out what it says in Standing Rules and Orders:

"Questions may be put to any official member of the Council relating to public affairs connected with his department and to other members relating to any Bill, motion or other public matter connected with the business of the Council in which such member may be concerned."

It did affect the business of the Council, and Standing Rule and Order No. 22 says:—

"The object of a question shall be to obtain information on a matter of fact within the special cognizance of the member to whom it is addressed; and the right to ask such questions shall be governed by the following rules, as to the interpretation of which the Governor shall be the sole judge."

I submit that that question was to obtain information on a matter affected within the special cognizance of Government. It was certainly not within the cognizance of anybody else, and such a serious breach of the constitution of this Council having been committed, I think it was only right and proper members of this Council should be given the fullest information why that had been committed.

Personally, I should have thought that this question would have been welcomed, as it gave Government the opportunity of stating their case and putting themselves right with the public. But that was not the line taken by Government, and they sheltered themselves behind the following sub-section:—

"(ix) A question may be disallowed where in the opinion of the Governor it is an abuse of the right of questioning."

Now, Sir, how on earth can anybody say that this question was an abuse of the right of questioning?

It is very unfortunate that the Governor himself should have ruled on this question when he himself is the sole judge of a question which concerned an action he had taken.

I do, Sir, bring this matter up with all seriousness, because if the precedent is going to be allowed that whenever a question is put up which puts Government into a hole, and they do not quite know how to answer it, they are going to shelter themselves behind this sub-section and say it is an abuse of the right of questioning.

I beg to move the motion, and trust that Government can give us a very satisfactory reply.

CAPT. THE HON. H. E. SCHWARTZ seconded.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I would like to congratulate the Noble Lord on two things with regard to his speech. One, on the brevity of it and the conciseness and clearness of it; two—for which I am very grateful to him—the statesmanlike manner in which he avoided personalities in what might have been a very provocative motion. And I intend to follow in his footsteps.

With regard to the first question, I will answer at once why the motion has been delayed so long.

The point for consideration was whether the prerogative of the Governor, which is the one handed down to him from the King, could be questioned in this Council, and it was a matter upon which higher ruling was required. The answer was, simply, that we will come to the other details of the question later—as far as the motion was concerned it appeared to be in order and in accordance with the Standing Rules and Orders of this Council, and also in accordance with the Rules of the House of Commons, and therefore it was fit and proper for debate in this Council.

That is all the information I can give and all we have got.

With regard to the other point. As the hon. member has stated, it is entirely a constitutional question, and it is on these lines (and these lines alone) that I shall argue this morning. My line of argument will be, of course, that no constitutional question is involved whatsoever.

With regard to the facts which the Noble Lord put before you, they are correct and are common knowledge as to what happened in the Coast by-election. There are, however, one or two details which I should like to add, namely, that the court in which this case was tried did say in its judgment that it regretted the law of the land was so severe, and that disqualification followed what the magistrate indicated was in his opinion not a very serious matter. That is a very small point, though it does give hon. members some idea of the line of thought of that particular magistrate when giving judgment.

So often in this Council hon. members on the other side have to tilt at the moon; they do not know who really to tilt at. They are told that some nebulous creature called the Government or Governor or Governor in Council or head of some department is responsible for some particular act the subject of their questions, and very often they never discover

exactly who is at the bottom of it. In this case, hon. members are extremely fortunate, because I can expose the nigger in the woodpile to them—because he stands before them and is speaking now!

I would like to say at the outset that, with regard to the legal action taken, I—and I alone—was responsible. The matter was referred to me in the ordinary way, long before it ever got near the Governor, as to whether it was possible for the Governor to take action. Having considered the Letters Patent under which this point was governed, I may say, although it may be against myself, that after deep consideration and consultation, I came to the conclusion—and I will read you the particular clause I was endeavouring to interpret—I came to the conclusion that it could be done. The particular clause reads as follows:

"When any crime or offence has been committed within the Colony, or for which the offender may be tried therein, the Governor may, at his special discretion, in Our name and on Our behalf, grant a pardon to any accomplice in such crime or offence who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders, if more than one; and, further, may grant to any offender convicted of any crime or offence in any court or before any judge or other magistrate within the Colony, a pardon, either free or subject to lawful conditions, or any remission of the sentence passed on such offender, or any respite of the execution of such sentence for such period as the Governor thinks fit, and may remit any fines, penalties, or forfeitures due or accrued to Us. Provided always that the Governor shall in no case, except where the offence has been of a political nature unaccompanied by any other grave crime, make it a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself or be removed from the Colony."

My interpretation of that was that the word "penalty" covered any penalty, whether inflicted under the authority of the law of course, by a magistrate or judge, or whether it was inflicted by the law itself.

Hon. members on the other side of the Council did not agree. A referee was appointed, or appointed himself, and the matter was referred to the Legal Advisers of the Secretary of State. The decision reached by them after some six months of consideration or more was that in fact my interpretation was incorrect, although at the same time I may mention, for the information of the House, that they said it was not an unreasonable interpretation.

However, we have been brought up to play to the whistle, and the referee declared that I was offside, and a free kick was given to my opponents, and the ball was placed back exactly where it had been before the whistle blew. I would have thought that was where the matter might have ended.

Whether I agreed with the decision or not has nothing to do with the question because it has been given against me, but it is no more important as a constitutional question than if my hon. and learned friend opposite and I disagreed on some other law or Letters Patent or whatever it might be, and went to another referee, be it a court or anywhere else; and it was decided against me. There again it might be said that a constitutional question was raised, but it seems a small point that could have been put right so easily and, incidentally, would have been put right in due course, as the matter could have been brought before the courts of the Colony at the next elections.

What was the next step? The next step was the question to which the Noble Lord made reference.

The first point about the question to which I wish to draw attention is, "for what public purpose" it starts. Who in this Council could suggest any public purpose? (Lord Francis Scott: Why was it done?) Here was a person who had been convicted. If he had been convicted by the magistrate without any special reference in the law as to penalty, there is no question that action could have been taken by the Governor. At any rate, it was an entirely private matter.

This man had been convicted, and the magistrate had recorded in his judgment that the penalty inflicted by law was severe, as in fact it was. A petition was made to the Governor who was told that he could, if he saw fit, from a legal point of view, exercise his clemency, and he agreed with the point of view expressed by the court and, in fact, exercised his clemency in the way you have heard.

That is the first point; there was in fact no public purpose whatever to be considered.

The second point I should like to draw attention to is the wording of the particular rule which the Noble Lord has already read out, and, with your permission, Sir, I will read it again.

"The object of a question shall be to obtain information on a matter of fact within the special cognizance of the Government or the member to whom it is addressed; and the right to ask such questions shall be governed by the following rules, as to the interpretation of which the Governor shall be the sole judge."

The first point I make with regard to that is that this Council deliberately made a referee as to who the judge should be as to whether a question should be answered or disallowed. It appointed the Governor as referee, and the Governor has so done. I say my first point is, that it is beyond the competence of Council to discuss it. You have made him the sole judge, he has adjudicated, and he has decided against you, and it seems to me a very poor reason now to wish to make the whole Council the judge instead of the Governor alone.

The next point is with regard to the object of the question. What possible information could have been given to the hon. member asking the question that he did not know already? The whole of the facts were public property; every detail was public property; even, I should imagine, though this was not actually published, that I had advised the Governor that legally he was entitled to take the action he did. So that I suggest there was nothing whatever in that question which required an answer, because the answer was already in possession of the hon. member asking the question.

There was no public purpose whatever; it was to rectify an inequitable position which had arisen by blindly following the law. This was a case where the law had overridden equity, and that fact was self-evident to everybody who knew the facts.

I therefore suggest that it was a private matter. There was a prerogative vested in the Governor to do a certain act when he thought it right and just to exercise that prerogative. A question was asked; he had the sole right under the rules to say whether it should be answered. He decided that, and I say decided rightly, because there was nothing whatever he could inform Council about that everybody did not know already. I think, if for no other reason—that is my submission—it was an abuse of the right of questioning.

The right of questioning is a very clear one, and it is to discover knowledge of which you are not in possession yourself, and where it is self-evident you know as much as the person who is going to answer the question I think you are certainly abusing the privilege.

I do not think there is anything more I can say on this matter. It seems to me it would be just as sensible to ask the Governor why he remitted a sentence from 15 to 10 years, which happens from time to time in the course of the year. He is exercising a right which he has, and it is not a public question but a private matter to rectify a private injustice where the law, as it occasionally will do, oppresses hardly on one particular individual. The Governor was given this right

in order to rectify that error, and I submit he did it equitably and justly, and I do not believe any reasonable person cavilled at the result.

CAPT. THE HON. H. E. SCHWARTZ: Sir, the hon. gentleman in his profession has, as part of his duties either in this House or elsewhere, occasionally to argue a case which he knows to be an untenable one. On this occasion, I suggest to this House that he has the weakest case to defend that he has probably ever had in his existence. I say it with no spirit of animosity, that he has entirely failed to make anything of the case, not through his own inability or lack of ability, but because the case was so pitifully weak that no one could make anything of it.

He started the first part of his speech by telling us why he came to the conclusion he did with regard to the legal position which arose, as to whether the Governor had the power to remit this penalty or not. This is no place to argue the interpretation of that section of the Royal Instructions or Order in Council. That is a thing of the past, and nobody thinks the worse of the hon. gentleman because he happened to put an interpretation on the clause which was afterwards held by the legal advisers of the Colonial Office to be a wrong interpretation.

But whether that interpretation was right or wrong—and we know he gave it with a perfectly impartial mind—that has nothing whatever to do with the point. He was simply asked, as legal adviser to this Government: Can the Governor do this? He considered the matter, and said that in his opinion he could. He did not say whether the Governor should. He said, "Legally, you can."

The point we are at is this: Why did the Governor want to do it? That is the real point, and the question of the legal interpretation does not enter into the matter at all. It entered into it at first very much, because we on this side, disagreeing with the interpretation, were compelled to refer the matter home with our arguments to the legal advisers to the Colonial Office, because a very important principle in regard to statutory penalties had arisen. But the moment that was decided that was out of the light, and has nothing whatever to do either with the question of the hon. Member for Aberdare or this motion.

The question was: For what public purpose did the Governor purport or desire to remit this penalty? In other words, what special circumstances existed which actuated the Governor in a desire to remit statutory penalties?

The hon. and learned member himself has just said that the reason the Governor wanted to do it was because he thought a great hardship had been inflicted on Mr. Lillywhite for what was a technical offence in his eyes and the eyes of the magistrate, and therefore he wished to exercise clemency.

If that was so, why not say so in answer to the question? (Hear, hear.) There would have been no difficulty at all. If the answer had been given two months ago to the question asked by the hon. Member for Aberdare in the way the hon. the Attorney General has, in fact, answered it to-day, there would have been no trouble. There might have been supplementary questions, but at least we should have had an answer.

I am not going to try to drop the tone of the debate from the purely constitutional point of view, but I must say this, and let it go at that: If this question had been answered, as it should have been answered, I respectfully submit, in the way that the Attorney General has answered to-day, there would undoubtedly have been supplementary questions as to whether that was the only reason or whether the Governor was not actuated by the individuality of the gentleman who instituted the prosecution. I am not going into that now, but it would have been asked as a supplementary question.

We were not satisfied that it was merely his desire for clemency for a technical offence that actuated the Governor in inquiring from his legal adviser whether he could take a certain action. The question would have gone down to history that the Governor was actuated by no motive except to do justice or exercise clemency in a case which he considered a very hard case for what in fact was a technical offence. There the matter would have ended, and would not have been debated to-day.

But for the hon. the Attorney General to stand up in this House and tell us with every verisimilitude and assurance that he considered that the question was an abuse of the privilege of questioning, is childish, childish. (Hear, hear.)

What is it an abuse of? The Governor does something—it does not matter what, or whether it is right or wrong; he may do something to-morrow—is it an abuse of questioning to ask why he should do it and get a straight answer? If there was nothing to hide, why not answer it? Why give the answer to the hon. the Attorney General has given to-day? No, we won't allow the question because it is an abuse of the process of questioning. Where is the abuse in asking what motive actuated the Governor in taking a certain line? If he had a good motive, why not say so? If not, why put up the Attorney General and make us believe he had, as he has this morning? But he hid it behind an abuse of questioning.

and you, Sir, the Attorney General, and every single member knows quite well, it is not and never could be an abuse of questioning.

Now I suppose this motion will be taken, and, for the last time, or perhaps the last time but one in 1936, the old steam-roller will once more groan out its happy new year to us!

THE HON. E. H. WRIGHT: Your Excellency, it had been no part of my intention to take part in the debate at all, as I was confident that my hon. friend the Noble Lord would submit the case from the point of view he did: that is, as a purely constitutional issue. And I am glad the hon. the Attorney General has recognized that the case was put to him in every sense properly and was conducted with decorum. The hon. and learned Member for Nairobi South has been such a splendid counsel for my part of the case that there is only one thing to add.

It is, that since the hon. the Attorney General saw fit to suggest and to keep on persisting in his suggestion that there was some subtle motive about my question, I would merely like to ask if, in this Legislative Council, it is not competent for any one of us to ask a question vitally affecting the legislation of the land, or even concerning a case wherein a violent flugration of that law has taken place?

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, there is just one matter on which I would like to say a few words.

The hon. Member for Nairobi South asked, Why had the Governor acted in this matter? I thought the hon. the Attorney General had made that point quite clear in his speech.

The Governor acted because he had received a petition asking that the sentence, or the penalty, which had been imposed on Mr. Lillywhite should be remitted. As that petition was based very largely on the remarks of the magistrate who tried the case, to the effect that he considered the penalty was unduly severe, and as the Governor was advised that he had the legal power to remit that undue penalty, His Excellency exercised his ordinary prerogative in exactly the same way as he does from time to time during the year when petitions are received from criminals or from others on whom penalties of various sorts have been imposed.

The Governor exercises that prerogative of clemency many times during the year, and the exercise of his prerogative in such matters has not been questioned previously by anybody.

There was no public purpose connected with this case at all; it was purely and simply the exercise by the Governor of clemency in circumstances which seemed to call for the exercise of clemency.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency: I have very few remarks to make in reply to this debate.

First of all, my hon. friend opposite tried to take all the blame on himself; but I submit that that is not a position I can accept. The Governor of the Colony is the person responsible for his actions, and we cannot overlook that, and any subordinate officer, whatever advice he gave the Colonial Office in any capacity, must stand by his acts, whether for good or bad, whether he gets credit for being right or blame for being wrong, and nobody else can take that responsibility.

My hon. friend said there was nothing we did not know before. Quite frankly, I never knew before. I imagined there was some great public purpose. I did not think the Governor would go out of the way to overrule the law because he was sorry for a nice old gentleman who lives at the coast! It seems to me an entirely inadequate reason for taking such a grave step.

It has been argued that it was an inequitable decision, that the penalty was unduly severe, and so on. That clause has been in the law of the land for a long time. The Ordinance was recently revised, I think under the chairmanship of the hon. and learned Attorney General, and that clause was not one of those which was amended. Therefore I submit that in the opinion of those people who dealt with that Ordinance in Select Committee and in the opinion of this House that was a correct penalty for people who transgress that particular law.

There is one other point which the hon. member made, and that is, that as the Governor was the referee in this case, we must abide by his decision. But if it is not clear from what he said—he means that when the referee is the player in the game who is accused of being offside; I do not think one can altogether suggest that he should be the sole arbiter of whether he is offside or not, and, if he is offside, the other side should have a free kick.

I have no more to say except this: I do trust that Government will not shelter themselves in future behind that sub-section unless there is very grave cause why they should do so, as otherwise the position becomes quite intolerable for members on this side of the House.

The question was put and negatived by 21 votes to 8, 6 members not voting.

Ayes.—Messrs. Conway Harvey, Hoey, Col. Kirkwood, Major Riddell, Capt. Schwartz, Lord Francis Scott, Sir R. Shaw, Mr. Wright.

Noes.—Mr. Bale, Major Brassey-Edwards, Archdeacon Burns, Messrs. Jazair, Gardner, Hamp, Harragin, Hayes-Sadler, Hebden, Hosking, La Fontaine, Logan, Montgomery, Morris, Dr. Paterson, Messrs. Pilling, Stronach, Wallace, Walsh, Waters, Dr. Wilson.

Did not vote.—Messrs. Bemister, Isher Dass, Mangat, Pandya, Shamsud-Deen, Dr. de Sousa.

Council adjourned for the usual interval.

On resuming.

INCOME TAX.

MAJOR THE HON. E. S. GROGAN: Sir, I beg to move the following motion:

That income tax as a method of taxation is not equitably applicable to the present conditions and circumstances of Kenya.

I was rather startled yesterday when my hon. friend the Treasurer

THE HON. N. S. MANGAT: On a point of order, Your Excellency, I would ask whether this motion is not hypothetical? There is no Income Tax Bill before the House, and there is no information as to whether the tax is coming in or not. It is an entirely problematical question which the hon. member is moving now.

HIS EXCELLENCY: My answer is that it is not problematical at all, but very definite. The wording of the motion is: "as a method of taxation is not equitably applicable to present conditions". It might be hypothetical if the hon. mover said it would not be applicable if certain other conditions eventuate. My ruling is that the motion is in order.

MAJOR THE HON. E. S. GROGAN: Sir, I was rather startled yesterday when being addressed by the hon. the Treasurer to hear him state, if I understood him correctly, that he was authorized to state that Sir Alan Pim had no objection to a reduction of taxation.

HIS EXCELLENCY: I think I will intervene for one moment to explain that the Treasurer yesterday misquoted me. It was merely the report of a conversation, and the report was that Sir Alan Pim, on being consulted in conversation, said he

personally could see no objection. I think the hon. the Treasurer said he would have no objection. It seemed to me an unimportant point, and I did not think it worth while referring to it then, but there is a difference.

MAJOR THE HON. E. S. GROGAN: I thank you. I only raised the matter because I understood that was what the Treasurer said. I was startled to find that an over-lengthy list of dictators had increased by another one, and to point out that I had not cabled home to ask whether Sir Alan Pim had any objection to me moving this motion. (Laughter.)

The purpose of this motion is not, I trust, to waste the time of this Council. It has a perfectly clear, definite purpose in my mind. We have got into rather a complex at the moment, and things are a little bit illogical, and the only useful purpose of this Council at the moment, as far as I can see, is to tabulate facts and opinions which will go on permanent record in Hansard, which will be used by historians when they come to analyse this almost unimaginable position.

The real purpose of the motion is to give Government the opportunity of displaying before us the rate and refreshing fruits which are supposed to inhere in that blessed term—*income tax*.

On one or two occasions lately, in highly controversial matters such as devaluation—a relief every country in the world, practically speaking, except the Colonial Empire, has had—we have tried very hard to give Government the opportunity of giving their reasons for not allowing this country the same relief other countries have had, but have failed completely. The issue was evaded. This motion is to you a definite challenge to tell us here, so that it can go on permanent record, what are the real reasons behind this insistent question of income tax.

Another ground which I have for offering the motion is that the arguments against it and for it may be properly tabulated. It will probably save a large amount of time eighteen months or two years hence after we have income tax, if we have it, when the new fight begins to get rid of it.

The only point I see in any of the arguments for this tax is what one may describe thus: a form of fiscal savagage machine which is useful to Government in times of stress. In other words, one form of tax whereby Government has only got to turn the tap and multiply to infinity, quite regardless of the conditions of citizens and their individual sacrifices. Against other forms of tax, citizens have some form of protection, by the simple expedient of stopping payment, by refraining from buying.

The history, which I think should be recorded in the annals of this Council, because it has never been adequately recorded, is a simple one.

In or about 1921 you will remember, some of you, that this country was in a very serious state of distress, comparable with the state in which it found itself in 1933, and the Government and the elected members—the latter were really candidates, because it was a period of election—were hunting for every conceivable source of revenue to try and save the ship of state from complete collapse.

As far as I remember, all the elected members then contesting constituencies, put into their election addresses that they were in favour of income tax. I was also contesting a seat at that time, although I was in England and did not know it! But when my attention was drawn to the fact that I was, I said I would have nothing to do with income tax or death duties, and I was soundly and properly defeated on the issue.

But, as happens sometimes, people who do not seek for the immediate plaudits of the multitude and look further ahead, come back into their own. After the tax was applied as the result of the election, and, as far as I remember, with the universal approval of everybody in this Council, a committee known as the Bowring Committee was appointed to go into the state of the country and find out what could be done to relieve the position which was then in so desperate a plight. Everybody, including the Government, had got the wind up right and proper!

The Bowring Committee, among other things, investigated the question of income tax and the effect of it on the country. I want to point out that the difference between then and now is not a very great one, but a fundamental one as far as this tax is concerned, because at that time the country was entering into, or rather was in the depths of, a general catastrophe, financial and fiscal, comparable with the present one. Therefore, if there was a case for income tax at all, it was then rather than now.

A very large number of the present members of the Council have not been here long enough to remember that period, and I often hear it stated that income tax should be applied and so on as if it were never heard of in this country before.

What I want to put on record is this: that at that time there was a long, protracted, and very earnest investigation, calling of witnesses and so on and so forth, as to the applicability and suitability of income tax and its effect on the community. As a result of that protracted inquiry, it was unani-

mously recommended by the Bowring Committee that income tax at that time was a serious menace to the country, and at all costs it should be eliminated.

Those recommendations were forwarded to His Excellency the Governor; they were promptly accepted by him; they were submitted to the Secretary of State, and he said, "If you can find alternative sources of revenue for this amount, I will agree to its excision." As a result of that various inquiries were made and a system of high protective duties introduced for the purpose of providing the necessary amount, £100,000, to enable the country to get rid of this income tax.

There is, as far as I remember, only one old colleague of mine left sitting in the House to-day, my hon. friend Mr. Shamsud-Deen, and therefore I know that I can count on his support in this motion (laughter) because he was one of the people who unanimously reported against income tax. He will bear me out when I tell you—because it is not on record; we kept no records of the evidence given, the only records were of the conclusions come to and the recommendations, usually tersely defined and submitted to Government.

During those investigations we had the advantage of a very remarkable person from Somerset House, who was administering the income tax law of the country. He helped us materially in those deliberations, and he came and gave evidence apart from your function as a tax collector, and speaking as a man to men, do you believe that there is any justification whatsoever for attempting to apply the principle of income tax to this country at its present stage of development? His answer was a perfectly clear one: "None whatsoever." We then asked him another question (there had been great difficulties in collection, well recognized in a country of mixed communities): Would he tell us what would be the necessary cost to enforce the law equitably throughout the entire community? And the answer was: "Not less than £30,000."

We pass from that period to 1933, when we were hit by a comparable cyclone and the position became very desperate. Lord Moyné was sent out here as a special investigator, first of all to inquire into a very narrow issue indeed, as to the relative burdens of taxation carried by the native and the non-native populations. As far as my recollection goes, that was the limit of the original term of his reference.

After he and his very able collaborator had gone into the matter quite exhaustively he was, as an afterthought, instructed to widen his inquiry to the entire fiscal position of the country.

Lord Moyne had a career in the Treasury at home, and the result of the Treasury work at that time led to a great catastrophe. It was not a very remarkable one, and therefore there is no reason why one should attach very much importance to anybody who took any part in Treasury work at that time in England, because since then the whole policy has been completely reversed as having been found to be entirely wrong.

But the main point is, his inquiry into the general fiscal condition of this country was necessarily a short one and a very superficial one. I find the privilege of seeing quite a lot of Lord Moyne. His inquiry consisted of the ordinary business of going round among a few Government departments, asking a few questions, talking to an odd person he might meet in the bar and so on, but never any real inquiry of any comprehensive form was made. It was more or less incidental, just as Sir Alan Pim's was more or less incidental, though in much more reasoned terms. His task was to look around for sources of revenue, and assuming that expenditure must be a fixed quantity and therefore we had to milk the cow to fill the pail, he, as usual, drifted into the question of income tax.

Income tax, after this very cursory investigation, was suggested, and as a preliminary another very able gentleman, with a large convoy of native friends with appropriate costumes were hustled into the position, and it resulted, as many a member must know, because it is quite modern history, in general approval.

The community as a whole said: The question before the country to-day is to find the means of raising the necessary revenue to carry the ship through the tornado, and this income tax—which is obviously in itself a permanent form of taxation, because it involves the elaboration of a large *ad hoc* administration—is entirely improper for this occasion. And for that reason, and this was the only reason, the community accepted the principle of graduated poll tax in substitution.

It has been stated on behalf of Government that these were not emergency taxes, though all the facts show quite conclusively, and all the arguments raised here, and all the terminology used since, conclusively prove that on both sides and by everybody they were recognized as temporary taxes raised for the purpose of dealing with an emergency. If not, why so grotesque in form?

It was argued, and I think wisely argued, that graduated poll tax would find the necessary amount of revenue, did not involve much administration and a large department to give effect to it, and, further, was a proper substitute for income tax, so that, when the emergency passed, it and everything

connected with it could be eliminated from the body politic. For that reason the Secretary of State, being at that time a reasonable person, prepared to listen to argument, agreed, and we had these emergency taxes.

People imagined, of course, that this emergency was going to pass very much more rapidly than it did, because a lot of people believed it was the ordinary swing of the tide, and I found it extremely difficult to get people to agree with me that it had nothing to do with the swing of the tide, but was the inevitable result of the monetary policy of England, against which there was only one possible counter, namely, devaluation, as applied by every other country in the world.

No adequate steps having been taken to protect the community here from the impact of the deflation, the tragedy went on, and eventually the country, in despair, exhausted of all reserves, in an attempt to stop the economic rot, asked for the appointment of Sir Alan Pim to see whether or no economies could be effected in the cost of carrying on the Government.

He was also entrusted with another term of reference, which was never asked for at all, and, after another very cursory investigation, merely wandering around Government departments in the ordinary way, never calling evidence of any kind, meeting a few of us at dinner, and so on—he produced a report on these particular issues.

I will say this, that this report is a very much more comprehensive one and a more able one than the report which preceded it, the Moyne Report, and whatever else it did not do, it provides a useful compendium, a useful mass of information, not readily available to ordinary citizens.

But I maintain that Sir Alan Pim had no special qualifications for giving a really impressive opinion on highly complicated matters which involve a large amount of special knowledge of African conditions, and the suggestion that he, after three or four months' trotting round this country, is better entitled to advise the Secretary of State what ought to be done in respect of the distribution of the burdens of taxation of the country as between races, is a better judge than you, Sir, and your colleagues, who have been here for many years with every opportunity of studying the matter and working earnestly on the Colony's behalf, is a bit of confounded impertinence, in my opinion!

Let us deal for one moment with Sir Alan Pim. If you read his report carefully—and I am rather inclined to believe that nobody except myself has done so—you will find that his references to this particular question of income tax (I do not

propose to waste time in quoting them, because, although most of you have a free copy of the report, the others at least can buy one if they have the money. I are nothing in the world but a gigantic tail of unanswerable argument against it. The only conclusion he comes to is, that every other source of revenue having been explored—and he cites many of them—and turned down as absolutely impossible or impracticable, therefore, as a *pis aller*, we are compelled to have income tax. That is his argument.

He produces a very large number of special points—if I may say so, some instigated by myself—pointing out very special local difficulties of applying equitably the principles of income tax to this particular colony.

From that we pass on to the beginning of this session, and you will remember, Sir, a very able essay which you read out to us on the laying of the budget. I do not want to be unkind in any way, because you know that is not my habit, but if you will refresh your memory with page 344 of Hansard you will find a considerable reference made by yourself, Sir, to this particular question.

I am not going to quote it in detail, because anybody has access to it, but I will summarize it.

You followed the line taken by Sir Alan Pim, that because of lack of money and because of lack of other resources, unexplored sources of revenue, therefore you were driven to the conclusion that it was only possible to balance the budget by introducing some form of income tax. And you also stated in the budget before you that you entirely agreed with your two leading colleagues, the hon. the Treasurer and the hon. the Chief Native Commissioner, that the portion of the burden allocated to the native was generally admitted to be a reasonable one.

That address, I may remind you, was given during the period which, in the kindness of my heart, I have described in this Council as a period of somnambulism. Since then, I do not know why, because I have never noticed any large economic changes in the circumstances of the world in the last few weeks, for some mysterious reason the somnambulists have woken up and put an entirely different picture before us, and the main thesis of your able address is no longer true; the somnambulist period has now been completely refuted by the facts. If you take the revised position laid before us to-day, I submit it is probably the most complete *reductio ad absurdum* to be found in the history of any country!

In the matter of the history of this thing, some little time ago, I think in 1933, when Captain Claud Anderson and myself were sent home as two of the representatives of these three

territories to interview the Secretary of State in the hopes that we might make him see how very serious the position of the country was becoming, the Colonial Office asked me and Captain Anderson if we would put down for their consideration our arguments against income tax as a principle in so far as it might be applicable to these territories.

We did that at great length. It has never been published. I do not know why. Probably because there was never any special occasion for it, or because the matter went out of the picture. This is the document, and there is a large amount of material temperately and reasonably put, and it does embody most irrefutable arguments against income tax as being applicable to this country. I ask you, Sir, if you will be good enough either to have this document typed or printed and circulated for the benefit of members; I do not want to read extracts, so that if any members are interested in this matter—and certainly they are, or they jolly well ought to be—they will have the opportunity of considering an abstract economic argument put down with a great deal of thought, and laid before the Colonial Office. It may have had some effect at the time, but in any case it was never refuted or challenged. If you will do that, Sir, I will hand the document to the Clerk of the Council.

Turning to the general principles of this so-called policy, I have always been of the opinion that a proper method—after all, we have got to carry on the State, somebody has got to find the money, it has to come from somewhere—the proper method of statecraft is to extract from the pockets of citizens such moneys as are necessary to carry on, to perform those functions which can only be performed continually, and not individually, with the least possible disturbance of the individual circumstances of the individual citizen and of the collective activities of the country as a whole.

It has always struck me that you could not possibly have a more clumsy way of doing it than by an arbitrary assessment of the money a man is supposed to control, whether liquid or not, tearing it out of his pocket at the most inconvenient moment of the year, and leaving him to carry on as best he can, quite regardless of the uses to which he intends to put that money.

Surely the most sensible, proper method of extracting such moneys as the State must have is from those particular channels which are flowing into consumption. In other words, wherever a man decides to use his wealth for his personal use, for his personal enjoyment, these are the channels to take it from, because these are the moments when it is liquid, easily got at, and easily paid. It always seems to me that the first

principle of taxation should be to tax a man, not in accord with what he controls, but in accord with the use to which he puts the money he does control.

That is particularly important in a very young country where nothing is stable, where there are no large accumulations of reserves, where it is absolutely impossible for the country to adjust itself rapidly to changing circumstances, and where the country has never had the opportunity of building up reserves to enable it to do so, and where 99 per cent of all basic citizens of the country are still in the development stage.

I do not know, and I know the country as intimately as most people, with the exception of a very small number of coffee plantations in the Kiambu area, one single farm or plantation that can be described as having been completely and finally developed. A very large proportion of them are in the embryonic stage, and a large proportion are in the half-way stage, and unless those people have such means over and above their own necessary expenditure which they derive from the sale of their produce, to increase the general development of their property, where can they get the money from except by borrowing? It is a question of the growth of capital which will have either to come from overseas or to accumulate internally.

Another point always to be remembered, and it is a very important one, is this curious assumption that seems to linger in the minds of many people that if you take so much money out of one pocket there is exactly the same amount of money in the trousers!

If you take money away by direct taxation, quite obviously it reduces a fellow's buying capacity, and a very large proportion of the money you take by direct taxation you would otherwise have got through some indirect channel. Therefore, to go and display a budget which assumes that under the heading of income tax you will get £40,000 or whatever it is, and not make any difference to other items is, of course, a most childish economic fallacy, and I am perfectly convinced that the application of a tax of that nature to this country at the present time will not only not give you any more revenue but will lead to a net reduction in the gross revenue of the country.

On these matters of general principles I am in the happy position of being able to rely on the mental support of my hon. friends the Treasurer and Chief Native Commissioner, and it is their assistance and mental support to which I attach the very greatest value, because these gentlemen, having plunged into an investigation of economic subjects, produced an important document to which they yesterday produced a

legislative negation, and laid down certain principles enunciated by a gentleman named Adam Smith, who was also a Customs officer strayed from his proper channel! (Laughter.)

The principles laid down by Adam Smith were perfectly simple basic principles on which taxation ought to be assessed, and they met with the full concurrence of my hon. friends, opposite, and although Adam Smith was merely a plagiarist, and no person of particular account, being merely one who borrowed from the French physiocrats, he wrote considerable common sense at times in his life.

Adam Smith's first principle which my hon. friends quoted was:

"The subjects of every State ought to contribute towards the support of the Government as nearly as possible in proportion to their respective abilities to pay

their ability, Sir.

Quite obviously, if you take the case of a man trying to develop a farm largely on borrowed money, his ability to pay in proportion to a theoretic income based on book entries and nothing else in the world, is an entirely different one to that of a relatively highly paid Provincial Commissioner living on the Northern Frontier border. Also the gentleman living on the northern border has obviously got greater ability to pay than another of his colleagues who is unfortunate enough to be the Provincial Commissioner, Mombasa, where he is obliged to spend a very large proportion of his total emoluments in entertaining and doing all kinds of things on behalf of people for whom, perhaps, in many cases he has no particular care! (Laughter.)

I think, if you examine that principle carefully, and lay emphasis on the term "ability to pay", that it will be found that that rules out income tax as a thesis altogether.

The next principle is:

"The taxes which each individual is bound to pay ought to be certain and not arbitrary."

No possible Income Tax Bill, and we have had one laid before us, could possibly be anything but arbitrary in this country, because if it were otherwise, it would cost twice as much to apply as you would ever get in collections, and the whole purpose of that Bill is to enable an arbitrary application. It provides in nearly every one of its clauses that the gentleman who sits in the local Somerset House is the man who decides what you have to pay.

If you put in how much you are prepared to pay, he challenges it, or says, "You have to pay so much," and if you do not like it you have to go to court and get Captain Schwartz and pay him 25 guineas to find out why you should not pay.

Obviously, the whole theory of the thing is arbitrary, and everybody subject to Somerset House in England knows perfectly well that the application of income tax is nothing in the wide world but an arbitrary and absolutely irresponsible system of blackmail.

The third principle is:—

"The time of payment, the manner of payment, and the quantity to be paid ought to be clear and plain to the contributor and to every other person, and every tax ought to be levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it."

That, obviously, would apply perfectly to the case of the cattle farmer being assessed on an increase in cattle with his farm in quarantine! There is no doubt whatsoever that, if you read it carefully, it rules out this tax as a system of taxation.

Adam Smith then says:—

"Every tax ought to be so contrived as to take out and keep out of the pockets of the people as little as possible over and above what it brings into the treasury of the State."

If there is one tax of all others in the world which costs a man more to pay above the amount of the tax, quite obviously income tax takes the cake. It is not only paid at the most inconvenient time, but, as distinct from indirect taxation, which troubles no one and is hardly noticed, it also costs the individual an enormous sum of money to protect himself against the arbitrary enforcement of the tax.

So that I am in the happy position of being assured of the mental support—of course, I shall never get their voting support—of gentlemen compelled to vote as they are told; I can surely count on the support of my two colleagues opposite.

The arguments against income tax are easily dealt with, because I also have got the assured support of three very important people—Mr. Calder of the Colonial Office, Sir Alan Pim, and the Treasurer of Uganda.

Sir Alan Pim, in his report on Zanzibar, wrote:—

"I have considered the alternative of a general income tax, but do not consider it practicable in the circumstances of Zanzibar. In the first place, agricultural in-

come would have to be excluded as already subject to the very heavy clove duty, and moreover, exceedingly difficult to ascertain. In the second place, a large proportion of the tax would fall on the Indian commercial community. An income tax can be imposed on them as Indian experience has shown, but even after the long experience of the working of the tax in India evasion is extensive and Zanzibar has no officials with the special qualifications and knowledge required for dealing with Indian accounts. The income tax levied in Kenya in 1921 had to be abolished within two years though its administration was under the direction of an officer seconded from the Inland Revenue Department in England. The Tanganyika Government has also taken the view that an income tax is inworkable.

The Treasurer of Uganda, as lately as this year, wrote:—

"I do not recommend the introduction of income tax at this stage: it would be extremely difficult and costly to collect, and its yield would be too small to have an important effect on the budget."

Mr. Calder, of the Colonial Office, protesting the administration of Tanganyika against the fierce attacks of that great gentleman—I forget whether he came from Venezuela or Switzerland!—who claims to play a large part in the control of the British Empire under modern conditions, stated:—

"The extra staff required for collecting the tax would be disproportionate to the revenue obtainable. An other reason was the decision not to impose the tax in neighbouring territories, as, if income tax were levied in Tanganyika and not in neighbouring territories, capital would be deterred from entering Tanganyika and firms would establish themselves in other territories."

I can therefore count on the support of those three eminent experts on the matter.

Turning to the other argument, the argument for it, as far as I have been able to gather, you, Sir, stated in your address that you believed it to be an equitable tax. I will deal with that a little later, as you will bear with me for a few hours longer. (Laughter.) I consulted an eminent gentleman on the front bench the other day as to what argument he had for it, and the only one he gave me was that "Everybody was doing it." Everybody is doing all sorts of things, but it does not necessarily follow that anybody not doing them should do them.

Most of you gentlemen are so young that you have to be reminded of the period to which I belong, and I come from the days when income tax was regarded as the most deadly fiscal

disease known to man, and that had no less an authority than the late lamented and happily dead William Ewart Gladstone. (Laughter.) He said, and very properly said—and he was always regarded, mark you, as one of the greatest Chancellors of the Exchequer England ever had—that income tax was the last resort, the war tax, the final resort, only to be brought up in case of extreme emergency to save the State.

For a number of reasons—obvious to anybody who thinks about it now—as a result of having been in a desperate war time multiplied until it has become an integral and ineradicable part of the taxation of England, it has driven thousands of good citizens away from any possibility of living in their own homeland, and some portions of the world are maintained exclusively almost by the expenditure of English people driven out of England by the intolerable burden of this tax. It seems very foolish that the Empire, looking at it from an Empire point of view, should not retain some *asile* for drawing these people back with their buying power into the Empire.

There are still two or three places immune to this hideous disease, namely, Jersey, the Isle of Man, Barbados, and the Bermudas. All these places, as a result of being immune to this hideous disease, are so packed with people that there is no more room, and it seems to me a very sensible thing that Africa, having a large amount of room, and having a very troublesome future ahead of it on account of ominous happenings on the northern border, should do everything it possibly can to collect every possible unit for a British force to hold this country against the perils of the future.

That seems to me most important. After all, what is the sense in having these people plastered all over Majorca and God knows where, instead of bringing them to this attractive country with their large reinforcements of personnel and finance. If I raise that argument, and it always seems to me an irresistible argument, I meet with the incredible reply, "Oh, Grogan is supporting tax-dodgers." People must have gone rmented if they regard the issue in that light, that a man has no right to choose the country which suits him best. Have we got to the point of regarding taxation as so much an essential part of the social structure of society that it is everybody's bounden duty to look all over the world to find a place where they pay the highest taxes, and then go there? That being so, people ought to flock to New Zealand, where income tax is now 13s. 4d. in the £.

It is claimed, and you, Sir, claimed, that this is an equitable tax. I propose to deal with that under various heads to show you it is not and never could be, and is, in fact, the most inequitable tax in the world.

We come to the question of exemptions. Of course the whole idea of income tax grew up in the minds of salaried people, and very often appeals as a thesis to salaried people; but although the proportion of them to non-salaried people perpetually increases, do let me remind you that it is the non-salaried section of the community which really matters, because if they cannot carry on and provide the necessary funds there will not be any salaried peoples. This position appears from entirely different angles to the salaried person assured of his salary and to the person who lives on the margin, he may make out of his enterprises.

Admittedly, if every person was a salaried person and exemptions were adequate, so that everybody had exactly the proportionate amounts of exemption according to his children and other domestic obligations, and, what is still more important, if proper provision were made not only for these domestic obligations but what is equally effective, for his conventional obligations after all, people's conventional obligations vary to infinity, and are as inevitable as the physical domestic obligations—it might be possible to contrive an equitable application of income tax.

You cannot refer a man with a letter of introduction to the village pump for a drink; you have to entertain him. All have different conventional obligations, and unless you have a body entrusted with all the investigations not only of a man's physical needs—he may be a sick man—but with the number of his family, whether they ought to be educated so as to follow in the footsteps of the parents, but also their conventional obligations, how could the tax possibly be equitable?

It shows it is nonsense even in a country where there is a homogeneous population, and when you come to a country with a heterogeneous population of three different races and different standards of living, every one of those disabilities is multiplied a thousand times. To say that a Masai chief with unlimited access to free land and 10,000 head of cattle, with his right of exemption and his total buying need which does not exceed one pound a month—for he does not know how to spend any more—to say that his right of exemption should be the same as a judge of the High Court or a commissioner or somebody with all kinds of conventional obligations is absurd.

On these grounds alone I submit that it is utterly impracticable to draft any Bill which would give even the semblance of equity in respect of exemptions in a country with different races.

It is said that this is an increased direct tax which ought to be pushed upon the non-native section of the community in order to equalize conditions—that is an argument adduced

quite recently—and that the native must be taken into consideration. Of course he must, everybody agrees with that. But I agree with it so profoundly that I have not a word to say about it, submitting that it has always been my practice for over 36 years to give the native a square deal. I think he is much more likely to get one from those who distribute their money among the natives than those who collect their stipends from the native!

But we forget that the native population of the country has access, free of all rent, to a vast proportion of the best lands of the country, and, to that extent, they enjoy a vast advantage over all the other communities. In a great number of places where to-day natives are occupying land free and using it, they have no more right in theory to that land than I have, because it was only a question of who went there first. In many parts there was there a long time before they were, and can show you large tracts of Africa where, in any time, we used to hunt, and there were no natives at all. Since then, those lands have been invaded by natives, destroyed by natives, and are again reverting to wilderness.

We often forget that the native is peripatetic, and that he pursues a system of farming which eats up the land. Sometimes the recuperative forces of nature are sufficient to maintain the balance. But, in equity, or principle, or any form of title you can invent, no native enjoying the land to-day has any better right than I have when I was there before the native.

You have people always talking about the wrongs of the native. Of course, most of the natives had a rough time during the slump when they were dependent on the sale of their produce for the payment of their taxes and also had many cattle diseases. The European industries also had a rough time, but circumstances change quickly, and I entirely agree with my two colleagues opposite that there is now no special case for the natives. Let us not forget that they have the enormous initial advantage of access to unlimited land free of all rent.

Touching this little matter of equity again, let us deal with the position of the various sections of the community in the country.

I can see some of my colleagues getting bored, but they will have to be, because it is essential that these things should go on permanent record. Therefore I do not care whether I am boring anybody or not. It is a sense of duty! (Laughter.)

There have been two catastrophic phases: the first slump of 1921, a slump enormously aggravated in this Colony by the rupee crisis, and the present slump, brought about by appre-

ciation of the English pound sterling. The three main sections of the community affected were the Civil Servants, the natives, and the landed interests, and, of course, also the Indians, who are to some extent the middlemen of the country.

We have to deal with the effect of the rupee because it all comes into the question of the equity of the applicability of this form of tax to present conditions. The effect of the rupee crisis was, of course, very beneficial to the Civil Servants. It led to an enormous increase, amounting at one time to 150 per cent, in the general standard of the emoluments of the Civil Service, and it was the rupee which started that by adding 50 per cent to the original sterling value of their emoluments.

It hit the native very hard, because his taxes were expressed in terms of money, and therefore increased by 50 per cent. But that was remitted on the instigation of the Boyring Committee.

When you come to the other community, the Indians, it did not make so much difference, because their money was largely linked to money moving at the same rate, and their fixed obligations were comparatively small compared with other sections of the community.

As far as the landed interests were concerned, every single landowner to-day is paying 50 per cent more for the right to occupy that land than he should have paid in accordance with the original contract. A very large number of them are also subject to long-term money contracts which increased 50 per cent, and it had the effect of very nearly smashing the whole landed industry of the country, because the main brunt of the shock rested on them. Therefore they started with an enormous initial disadvantage in this recent slump.

As far as the recent slump is concerned, the effect on Civil Servants was quite negligible. They have had a relatively trivial cut in their salaries, but in actual buying power the value of their money has increased in greater proportion than the amount of the cut. Whatever real shock would have fallen on Civil Servants was thrust on the unfortunate individuals who were selected to be slung into the sea and despatched for the relief of those who retained their jobs.

Whether that was a wise or fair policy is for the future to judge and for you gentlemen opposite to think about at your leisure.

The tribal natives had a bad time during the slump because taxes remained theoretically constant, although all the relief they were entitled to was generally given them by the powers that were inherent in the Administrative Officers to

give exemptions. But there is no doubt about it, many in the reserves dependent for their tax being paid for by their produce, had a thin time. The point was, if the native could not pay the tax he simply said so, and that was the end of the argument, and he emerges from the slump virtually unharmed, because no native could borrow money or pledge his land, and therefore, when the tide turns, he starts in *status quo ante*.

Dealing with the Indian community, they, being mostly middle people, adjust themselves from day to day to changing circumstances, and although a good many had a rough and tumble like the rest of us, they have emerged virtually unscathed, and many with a largely improved position, because, no doubt as a result of the slump, the Indian real estate holdings in these territories have been materially increased.

Therefore the whole burden, the residuary burden, of the slump still rests on the shoulders of the landed element.

To suggest that, as soon as they have in fact got a margin over and above their costs of production, a proportion of that margin shall be taken away before there is any opportunity of restoring what capital they had lost during that catastrophic period of carrying the burden, is an injustice.

Another question of the incidence of collection is the matter of residence. You are going to find it impossible, in my opinion, to define residence in any effective way in an Income Tax Bill. If you do, it is going to be grossly unfair and inequitable, because those people who, to all intents and purposes residents, like the country and want to live and spend their money here, and do not depend on local but on overseas resources, but are free to define their residence as they like, as distinct from those who put their all into this country, will take the necessary steps to establish non-residence and so escape the tax. Therefore the more fortunate part of the community will be put in the position of not having to pay the tax, whereas those who have gone the whole hog and put their all in the country have to pay it. So that I do not think the tax can be claimed to be equitable in that connection.

Again, in the matter of assessment. How can you possibly assess really what is the income of a complicated proposition like a coffee *shamba*? Nobody in the world to-day, although they have had many years' experience, some good, some disastrous, possibly can put down all the items, so that there will be nothing more than a guess against 90 per cent of them.

Any form of tax that would take away a portion of a man's profit when he makes it and leaves him with his losses when he does not, could not possibly be equitable, and there are no

conceivable means whereby it would be possible to devise a formula which would protect those people from the tax becoming, in fact, a capital and not an income tax.

Another small point. It is very essential to the equitable application of income tax, if such is possible, that you should have complete secrecy. No such thing as secrecy is possible in this country, because it was always the proud boast of the bazaar that any document in any office is available for five bob! (Laughter.)

Let us turn to a very much more important consideration of equitability. Take the question of the amount of money that goes out of the country in payment of interest on public loans. That amounts to an enormous sum, something substantially in excess of a million. It represents something like a third of the total f.o.b. value of the exports of the country. That is all immaterial. You cannot levy income tax on that because it is without question a London sterling contract, and, in accordance with general practice not only in the Colonial Empire but in the Dominions as well, all such loans are free of local tax. Where is the equity of allowing a person to lend to the community free of local tax while a person who lends to the individual must pay the local tax?

I know the answer—that they all pay in England and they can get it back—but all the leaders do not live in England, and that argument fails completely. It is an argument of expediency, not of principle, because there is no obligation of expediency, not of principle, because there is no obligation on anybody holding Kenya land to live in England. Why and where can be the equity in allowing 67 per cent of Kenya where can be the equity in allowing 67 per cent of Kenya where can be the equity in allowing 67 per cent of Kenya where can be the equity in allowing 67 per cent of Kenya where can be the equity in allowing 67 per cent of Kenya when somebody has lent a similar sum of money at much greater risk to an individual to develop his estate and then they are soaked with income tax? There cannot be equity.

A great deal of this case for income tax has been reduced, I am sorry to say, to bare cases of individuals, and it has been told to me in higher places—the Colonial Office—by a Secretary of State, and names have been cited of companies, and there is one classic example always cited, and I will cite it here, it is the Electric Light Company.

When it began it was a desperate venture, only of a very daring fellow who dreamt of coming to this country, where there was virtually nothing, and by applying for a franchise, establishing the company. They had very great difficulties, and met with every conceivable sort of obstruction. You will remember the occasion of the most ridiculous case in history, when they were not allowed access to one particular bit of land because there were 50 Kikuyu huts on it, yet it was a scheme for the benefit of the whole community.

They have not had an easy passage, and I will not commit myself definitely to a figure, but I believe I am correct in saying that, after taking all their history of operating here, the actual return on the money contributed and expended—because some was issued at a premium—amounts to something in the vicinity of 4½ per cent. A tax on that is certainly not equitable.

The question of a company tax, which we are told is one thing that gives us great hope of getting large sums of money out of companies. I am still talking of whether it is equitable or not. The tax as put down, it may be modified, possibly, and as generally exercised elsewhere is a flat tax of 2/6, or whatever it may be, in the pound. It bears no relationship whatever to the capital invested, and therefore, quite obviously, 2/6 in the £, if a company is not subjected to some exemptions up to a reasonable rate of interest on the capital invested, on the same lines that exemptions are provided for individual citizens, might quite easily come to anything like Sh. 10 in the £ income tax.

One has only got to imagine a company with a subscribed capital of a million and another with a subscribed capital of £100,000, both making the same profit, and where does equity come in if you take 2/6 away? Quite obviously it could not possibly be equitable, and it ought to be. If it is going to be applied at all, that a company should have the right of exemption up to a certain amount of interest on the capital subscribed.

Coming to the question of pensions. Great stress has been laid on the question of pensions. Sir Alan Pim refers to it in his report as a proper means of source of revenue. I do not see why a man who has spent his life at work in this country and is pensioned—it matters not in the least that he was here during the time that they were paid mighty little compared to to-day and whose pensions relatively to the work done are quite trivial—I see no particular reason why we should grudge them the full amount of the pension they have got.

I asked the hon. the Attorney General a question the other day, and I also asked the hon. the Treasurer a question, and the purpose of the two questions was to lead to a conclusion. One was whether or no these pension obligations are London sterling commitments, and the answer from the Treasurer was that they are. I then asked the Attorney General whether, if that contention were correct, these pensions would be liable to Kenya income tax, and he referred me to the phantom Bill which, I understand, now ceases to have any meaning at all.

If his answer had any meaning or was intended to, which I trust it had or I interpreted it as meaning, these pensions would be liable to Kenya income tax under clause 50 and so in the Bill. I am going to inform my hon. friend the Attorney General that presumably he is wrong, that if these are in fact London sterling commitments they are London sterling commitments free of reduction, and any reduction, fiscal or otherwise, is a breach of contract. This general interpretation is completely supported by the practice of India, because I am informed by an Indian pensioner whom I met the day before yesterday that he draws a pension from the Indian Government for services in India and that he is paid that pension in full free of Indian income tax in London. Therefore I presume that if these pensions are London sterling contracts exactly the same result will follow, and therefore this £2,000 which we are supposed to get out of Kenya pensions is quite unjustifiable in principle and will never happen.

I have also been informed, on another question of equity, though I am open to correction because I have not had a chance of completely verifying it, that foreign shipping companies by some arrangement, will be exempt from the local income tax, and therefore will only fall on the English companies. I am not quite sure of that, and will accept the correction if I am wrong.

There is yet another question of equity, and that is the special case of the Arabs at the Coast. The hon. Arab members have paid me the great compliment of asking me to put their case for them, because although as you well know, Sir, they both are remarkable linguists, this matter is so technical and difficult that it is extremely difficult for anybody to put the case in anything except their own mother tongue. Therefore, knowing my views, and after a long discussion with me on the subject of how it affects them, they have asked me to put the case for them and have assured me that they are entirely opposed to income tax on principle.

There are two factors which really make their case quite special. That is, that the Arabs are a vanishing aristocracy. They have in their day played a very great part in the opening up of Africa and were comparable with the old landed aristocracy in the feudal times in England; they played a similar part. Rightly or wrongly, our policy has rendered their position utterly impossible with devastating effects on the Coast as a whole. However, that is another matter but, as a result, quite a number of the Arabs find themselves possessors of multiple houses. Many of them have in their day been picturesque residences. Of course, they have no economic utility to-day, but they would all be subject to assessment, and that would work out very unfairly.

There is one other point to which I would draw very special attention because it applies equally here and, to a great extent, in other municipalities, and that is the system of rating in this country. We have a fallacious system of rating on unimproved capital value. The result is that the rates payable by quite a large number, I unfortunately among them, of landowners in municipalities represent a sum substantially in excess of the whole of the gross receipts they get from the land.

Under no income tax imaginable, or a normal one, and certainly under the one laid before us, you cannot, for the purpose of assessing income tax deduct these rates; they come after the tax. You therefore get the ridiculous position of a person drawing a theoretical £1,000 revenue a year from property being assessed for income tax whereas in fact he is losing £500 a year—the difference between the rates and gross profits, which is an actual citation of a case.

For those two reasons there is a very special case for the Arab population of the Coast.

I have very nearly finished, Sir!

What is this great idea?

I want to give Government the opportunity of stating one. Is it a question of Imperial policy? We have heard remarks to that effect, and the answer is a simple one. We have heard rumours to that effect, and the answer is a simple one.

When I went home with Capt. Claud Anderson and others we had one or two sittings at the Colonial Office presided over by the Secretary of State for the Colonies. I put the question—it was not a private conversation or anything of the sort, so that I can repeat it, it was at a sitting which was minuted—I put the question to the Secretary of State: "Will you answer one question? Is this or is this not part and parcel of an Imperial policy to fix income tax as a principle of all component parts of the Empire, or not?" He looked quite startled, shocked, and surprised, and said quite clearly: "Definitely, no; it is no part of Imperial policy to force income tax on this country or any other part of the Empire."

As I have already pointed out, the tax is not in force in the Bermudas or Bahamas, certainly not in Palestine (in view of the fact that many of its citizens walk about with guns you will not find it applied there in a hurry!).

That leads me to the final conclusion. I think I have said enough to suggest that this is a complicated, abstruse, and a very big question, and it means a distortion of our fiscal system, and an enormous upheaval in the affairs of a large

portion of the citizens of this country. It means the organization of a detective force in Tanganyika, Uganda and Zanzibar to keep the pest isolated in Kenya, and it opens up new channels of bribery and corruption, everything of the nature undesirable and destructive to the community.

And what is it all for? To raise a pitiful £40,000!

We have it, on the best authority, a Somerset House expert, that it will cost at least £30,000 to apply it equitably here, and as far as we ourselves are concerned the sum of £40,000 less the costs represents roughly the sum of £36,000 or £37,000 which, by one stroke of the pen, we could wipe out of the Budget by the simple expedient of borrowing from our Railway's surplus balances the grotesque items of Railway pensions and branch line guarantees debited to the Colony and credited to the Colony's Railway, which has made a profit of £326,000 on the year!

Sr Alan Pim said this must not be allowed to become another fiasco. I suggest that it has become the most complete, gigantic, incredible fiasco in the history of this country.

Furthermore, several of you gentlemen, after long and worthy service, are not only plastered with the mud which every ordinary Civil Servant is subjected to but three of the senior officials of the country are absolutely dipped into a bath of mud. Every one of your recommendations has been turned down, you have been swept aside by the afterthought of a peripatetic investigator. And I sympathise with you, Sir, and your two colleagues in the humiliation imposed on you, and consequentially on us on this side of the House.

I regret that some of my colleagues have got faint-hearted. I can quite understand it. They say that logic and reasoned argument no longer prevail, and I quite understand that they are a bit downhearted and depressed because of the logic and reasoned argument which have not prevailed. But I am of Irish extraction and therefore by nature an optimist, and I do believe that, given time, logic and reasoned argument does prevail, and I believe still that when we go into closer investigation and when the dust of this little turmoil has blown away and we sit down like reasonable people to review these recent kaleidoscopic fiscal happenings in proper perspective, I believe reasoned argument will prevail and that we shall be saved the trouble of another long and laborious fight of kicking income tax out. (Applause.)

THE HON. E. H. WRIGHT seconded the motion.

BT. COL. THE HON. J. G. KIRKWOOD: Your Excellency, I welcome this opportunity given me under the motion before the House to endeavour to make my position clear regarding income tax.

Recently, in my own district, the local paper came out in large print with the question: "Are you in favour of the principle of income tax? Are you in favour of the principle of income tax?" I suggested in a letter that they should also have asked: "Have you discontinued beating your wife?" because whichever way you answered it was a trap. If you say you are in favour of the principle of income tax, I maintain that in this Colony of mixed races, a Crown colony administered by Downing Street, it cannot be answered without qualification, and I propose to quote from Hansard report a quotation that I made in 1933:—

"I am not opposed to income tax as a tax, but do not agree with Government forcing any measure on the country against its wishes; otherwise I am not against income tax, or any other tax found necessary to balance the budget, providing any measures introduced to raise further revenue shall be with the approval of the elected members and providing adequate control over revenue and expenditure is granted to the taxpayers' representatives."

I think that is put very concisely and precisely, and is my reason for not being in favour of income tax in Kenya.

From past experience in this Colony—I have been now some ten years on this Council—I have come to distrust our masters at home. I have taken part myself and others on this side have taken part before me in discussions with the Secretary of State for the Colonies, whoever he happened to be at the moment. They have given numerous assurances at different times, and the majority of the material ones have always been disowned.

I do not wish to go into the details of income tax this morning, but I do maintain that in agreeing to income tax in this Colony we are doing the greatest disservice that could be done to Kenya under our present conditions. We have had past experience of the income tax when brought in and within a short time of its existence on the statute book of the rate being raised. We have had the experience also of that tax being abolished.

It has been used certainly by you as a constitutional issue I maintain, and it is recorded in Volume IA of Hansard, 1933, that when I raised the question and stated that it was a constitutional issue the late Attorney General, Mr. MacGregor, said that it was one and that it was for the elected members of the Council to decide what they were going to do about it.

Apparently the elected members have decided what they are going to do about it. They are going to accept it under pressure from the Secretary of State, who has been insistent.

As I stated yesterday, it is wrong to say that the Standing Finance Committee suggested this measure or would even have approved of it if it had not been insisted on from home. There is no question about it.

I still say, that if I was satisfied—and I hope I shall be proved wrong—that if I was satisfied with the honesty of intention and deliberate will to carry out the promises made by the Secretary of State, I would have no objection whatever to income tax in Kenya. But I can only say that I do not share that view: past experiences have been very bitter.

We have had the experience of the Morris Carter Land Commission. He accepted the report of that Commission *in toto*, and every elected member on this side of the House reiterated the fact that they would accept the report *in toto* with the proviso that in that acceptance the Secretary of State would implement the recommendation regarding the demarcation of the white highlands. We are still waiting for that Order in Council. That promise has been disavowed, but it was stated by the Secretary of State that he accepted the Morris Carter Commission report as a whole.

We can take the case of the recent report of Sir Alan Pim. The Secretary of State has again stated that he accepts it generally. What that term means I do not know, but he has not definitely stated that he will give definite orders to implement the Pim report as a whole.

I am afraid that when he says "generally", it is political language. Consequently, I do not trust that undertaking, if an undertaking is supposed to be implied in that phrase.

We have had in the last two days several Bills as a result of the Pim report. In every case the recommendations of Sir Alan Pim have been diverted. It is another undertaking gone by the board. It is not accepted generally in the sense that I understand that phrase.

It was only yesterday that the schedule of the Poll Tax Ordinance was altered from Sh. 50 to Sh. 40 for Europeans and from Sh. 40 to Sh. 30 for Asiatics, and I regret there was no remark from the Government side, especially the hon. the Treasurer, that that could be done when it was not contemplated by the Standing Finance Committee and would interfere with the revenue contemplated for 1937. I rather gathered, I may be wrong, but I did conclude that there was no difficulty at all in remitting those items; that it would easily be made up under the Income Tax Ordinance if there was a shortfall and the bill became law.

Thinking on these lines, I welcome the motion before the Council this morning, and I must congratulate the hon. Member for the Coast on the very excellent and able speech

he has made. There is no question in the minds, I am sure, of every hon. member that that speech was a very valuable contribution to the discussions on income tax in general. (Hear, hear.)

Before I conclude, I would like to quote again from Volume IA of Hansard, of August 9th, 1933, from a speech I made at that time. It is a quotation from paragraph 33 of the report of the Hilton Young Commission. I have read it before and I am afraid I have to repeat it whenever opportunity arises. It is the conclusions of that commission to which I refer:—

"(a) The right to effective representation on matters affecting their taxation, sufficient to give them power to check extravagance in Government expenditure."

That is a recommendation by a very substantial committee which sat for a period of time in England some years ago. That has never been honoured, we are not given representation on matters affecting taxation.

"(b) Protection against legislation or administrative policy which would fundamentally change the economic conditions on the basis of which they settled in the country."

That has gone by the board and income tax, as demonstrated by the hon. Member for the Coast, is a definite proof that the economic conditions under which we settled in this country are going to be altered.

"(c) A right to have their representatives consulted on all questions affecting the government of the country (including native affairs and other matters reserved for control by a higher authority).

"(d) An opportunity for political self-expression, which will enable them to stimulate efficiency in the public services."

I maintain that these recommendations of that committee have never been fulfilled, and I have no hope myself that any recommendation that does not meet with the goodwill or the wishes of the Secretary of State, whoever he may be at the time, will ever be implemented. It is very difficult indeed to be content under the present system of Government. In other countries where they have this tax, I believe it is in every instance under the control of the Legislature. In this Colony, I take it that income tax would be under the control of the Governor in Council, and it can and probably will be arbitrarily altered when occasion requires to gain further revenue from those whom the powers that be think they can extract it from.

I will not detain the House any longer. In conclusion, I would say that I am not against income tax in principle, but I am against income tax in a Crown Colony among three mixed races such as we have in Kenya. I say that it is impossible to apply it with equity under these conditions.

THE HON. SHAMSUD-DEEN: Your Excellency, I wish to make it perfectly clear from the beginning that I am going to express my views as my own personal views, that I am not speaking on behalf of any commercial federation, or with the concurrence of my colleagues, the hon. Indian elected members, who may not be able to see eye to eye with me on most of the things that I shall say.

Nevertheless, I cannot help coming forward and verifying the statements made by the hon. member as to the ill-effects that have taken place in this Colony during the last thirty or forty years. It is rather surprising, but this country has undergone a great change in the last fourteen years; a change of mentality has also taken place. There seems to have been of late a special sort of hagen in the word income tax. At any rate, most of the community I represent seem to have taken a special liking to it and think that income tax is the solution of all of our difficulties of taxation in this country.

I do not differ with them on this point, and will not say that income tax is not a very fair and just and equitable form of taxation, but I think the motion before us is whether it is applicable to this Colony.

At the time the last income tax was repealed, I know as a matter of fact there were income tax forms brought in to the Indian Association and dumped there, and people said it was an inquisition that they could not possibly tolerate and asked that the forms be sent back to the office of the income tax collector. Although this time only about 4 per cent of the Indian community will be affected by this tax, I am quite aware of the fact that this is such a dangerous weapon that it can be wielded in a manner by which a very large portion of the Indian community and other communities will be roped in in due course of time.

I think that before we say that this tax is really applicable to a colony like this, I should be very interested to hear any supporters of the tax who could tell me the incidence in any other colony of a similar age as this colony, with a similar population and problems, where income tax has been introduced within, say, thirty years of the beginning of the development of the colony.

Then again, I say this tax is certainly contrary to the recommendations of Sir Alan Pim, who says in his report that

it is not intended to be a supertax but as a substitute for all the other unscientific forms of taxation. Ohly yesterday we passed the poll tax, which I still maintain is a very primitive tax and is not in force in countries where income tax is in force.

Again, if we are going to have all these unheard of taxes and income tax as well, I submit that it is a supertax, and we must not forget that when the last income tax was repealed, as the hon. mover said the money was found by increased Customs duties. That increase is still in existence, in addition to which we have in the last fourteen years introduced all sorts of taxes, some of which also remain. I maintain that this Traders Licensing Ordinance is a form of taxation, and we still have it, with increased Customs, so that if income tax is brought in it will be for the third time.

Before we can talk about income tax in this colony we have to see that it is quite in accordance with Sir Alan Pim's recommendations, and those taxes which were introduced as a substitute for income tax must be removed.

It has been said that the education tax was wrong. I do not take its removal as being any great concession to us. Those who were here when the education tax was introduced will know that a definite promise was given by Government that it was a temporary one. Whatever may be said as regards the emergency alternative taxes, if Government say they were a substitute for income tax Government has no excuse whatever to say that this education tax was not a temporary tax. It has lasted for more than twenty years, and should have gone off long ago, income tax or no income tax.

Again, I think that what we ought to see is, even if we agree income tax is an equitable form of taxation, whether we cannot do without it. If the tax in principle is just, must we necessarily have it put forward if we can do without it? I submit that if Government were to cut its coat according to its cloth there would be no necessity for income tax, no necessity for poll tax, or for any unscientific taxes at all.

For this reason I am going to support the motion.

THE HON. ISHER DASS : Your Excellency, before I deal with what the hon. mover of the motion has suggested in the course of his eloquent and excellent speech, I think it my duty to briefly answer my colleague, the hon. member Mr. Shamsud-Deen.

It is very, very unfortunate that within these two days it should fall to my lot not to remind him that there is any charm in income tax but to remind him that he is suffering from a

short memory. He told us just now that income tax was a fair, just and reasonable form of taxation, and yet he told us that the thing which is just, reasonable and fair would not be practicable when applied to the people.

THE HON. SHAMSUD-DEEN : On a point of explanation, I said nothing of the kind.

THE HON. ISHER DASS : That is another proof that he has a short-lived memory. (Laughter.)

Not long ago, in the year 1933, at Mombasa, in the open session of the Indian National Congress, my hon. colleague voted unreservedly in favour of income tax.

THE HON. SHAMSUD-DEEN : On a point of explanation, the hon. gentleman is making an absolutely inaccurate statement, and my silence should not be taken as acquiescence.

THE HON. ISHER DASS : All these years my Community whom I have the honour to represent has expressed their views and opinions unreservedly in favour of income tax, so much so that, silence or no silence, the hon. member fought the election on the principle of income tax in this country. (The Hon. Shamsud-Deen : Certainly not.) Only a matter of a fortnight ago I and the other hon. Indian members, my colleagues, had a discussion on the principle of income tax, and the hon. member Mr. Shamsud-Deen agreed to support the principle of that tax unreservedly. Therefore

THE HON. SHAMSUD-DEEN : On a point of order, should not the hon. member keep himself to the speeches which have taken place in this House and not state what took place outside?

HIS EXCELLENCY : I do not think there is anything in Standing Orders which prevents the hon. member from repeating what has happened elsewhere. It is a matter which must be left to his own good taste. (Hear, hear.)

DR. THE HON. A. C. L. DE SOUSA : On a point of order, Sir, I submit it is not a question of good taste. The hon. member Mr. Shamsud-Deen has made certain statements concerning the views of the community, and it is only fair that somebody should explain that he is wrong on the facts in connection with those views.

THE HON. ISHER DASS : Why I was actually explaining the position was because the hon. member at a later stage said he represented my community and to-day, in this House,

having been so elected, said he speaks for himself alone. I had to explain the position, that when one is elected as a representative one has to speak exactly what that community thinks and not what one personally thinks. The hon. member should have made that position clear outside this House, along with all the other points on which he differs.

Dealing with the hon. Member for the Coast and his arguments, I must confess that I expected more criticism and more surprises from him. I expected, at least, that he would have told us something new, which he has not. In the last three or four months he has been carrying on his agitation, speaking at various places from Mombasa upwards, but I was disappointed to hear exactly the same things repeated to-day which he said during that period.

He did, however, add two facts. The first fact was that when he and Capt. Claud Anderson went to England to visit the Secretary of State and submitted a memorandum against the application of income tax in this Colony, the Colonial Office deliberately omitted to publish that memorandum. Of course they have probably deprived the citizens of this Colony of something which would have been a very useful addition to their knowledge. May I, in all sincerity, ask the hon. Member for the Coast what stopped him from publishing the same memorandum?

MAJOR THE HON. E. S. GHOQAN: On a point of explanation, I think I pointed out at the time that as the issue had died there was no possible reason for publication.

THE HON. ISHER DASS: The hon. Member for the Coast, a couple of years ago, on the question of devaluation policy, published a book. There was nothing to stop him from publishing the memorandum, and giving us the benefit or advantage of his knowledge. If he has seen fit not to publish it, I submit that probably that memorandum did not contain anything which has not been said by the hon. member in this Colony. There was nothing new in it.

Those gentlemen who have visited our country at the request of the Secretary of State or the elected members themselves saw the local Government, and points have been raised for and against income tax. If they expressed themselves in favour of income tax, their disqualification was only one: that they were not competent enough after so short a stay as to give a detailed survey of our fiscal policy or had enough time to judge exactly what was good or bad. If, unfortunately, some of them spoke against income tax, whether they stayed for a lesser period than the others, it was said they had the

qualification of possessing sufficient intelligence and intellectual power to say something which suits the hon. mover of this motion.

I submit that this sort of comparison as to qualifications or disqualifications does not entirely rest on those individuals' capacity, but it is in fact due to how far their opinion suits one, and suits one alone.

The hon. mover, in the course of his eloquent speech, said this question of income tax is based more or less on ability to pay; but since 1933, the first time an income tax bill was introduced, until now, I have always understood there was only one principle: that is, that income tax is based on capacity to pay and not ability to pay. If you had an income you would pay; if you had no income you would pay the basic tax of Sh. 30, which most members have probably been paying all these years! (Laughter.)

The hon. mover said that when he went home he had the pleasure of meeting three very prominent gentlemen who expressed their opinions about income tax. Two of them were against it, and the third, who belonged to the Colonial Office, was also against it. May I ask, in all earnestness, if all hon. members on this side of the House do not believe at this moment that the same gentleman in the Colonial Office is not aware of the fact that instructions have been issued to the local Government for implementing this income tax in this country? What has he done? He had his own views. He has received Sir Alan Pim's report; he has received all sorts of information from officials and unofficials, and yet the Colonial Office has given its decision that this is the proper time in the interests of the country and in the interests of those residing here that income tax should be introduced.

There is only one thing, and that is that if this income tax is as bad as some hon. members on this side of the House think, and if this is a very unscientific, unfair, unreasonable and unjust tax, why accept it with only one provision? That provision my hon. friend the Member for the Coast has unintentionally mentioned, that if we are going to have income tax in this country we must have constitutional advance.

MAJOR THE HON. E. S. GHOQAN: On a point of explanation, I said nothing of the kind.

HIS EXCELLENCY: Does the hon. member intend to speak at any great length?

THE HON. ISHER DASS: No, Sir, only for a few more minutes.

The hon. Member for the Coast has not said it here, but has made this statement day after day during the last four or five months that he and some colleagues have carried out an agitation against the scientific tax. One of the very strong reasons advanced against the imposition of this tax at this stage is that it is not applicable or practical, for one very strong reason, that this country has got different communities with different standards of living.

May I ask him, as he knows these communities residing in Kenya have different standards of living, is it not strange the people in England, Germany, and other places are divided into different classes, and each class has its own standard of living different to the others? I beg to submit for his information and that of this Council that in every part of the world society is distributed into classes, and each class has its own standard of living, and these is nothing so very strange that what obtains in England obtains here.

His reason, therefore, does not hold water at all and is not an argument which should be taken seriously.

If these communities have accepted the principle and have said that the best form of scientific taxation for this country is income tax, there is no reason why the argument should be continued in this House and outside.

The hon. member also spoke of the Arabs as a vanishing aristocracy. It is not for me to inform him that he knows very well that aristocracy or no aristocracy they would vanish if they simply sat idle and did nothing. Those people who believe in something for nothing and expect others to work for them will have to vanish, and the sooner the better.

The debate was adjourned.

SEASONAL GREETINGS.

HIS EXCELLENCY: Before Council adjourns, I should like to wish all members of the Council a happy and prosperous new year.

*Council adjourned till 10 a.m. on Monday,
the 4th January, 1937.*

MONDAY, 4th JANUARY, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, the 4th January, 1937. HIS EXCELLENCY THE ACTING GOVERNOR (A. DE V. WADE, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 31st December, 1936, were confirmed.

MOTIONS.

Income Tax.

MAJOR THE HON. E. S. GREGG having moved:

"That income tax as a method of taxation is not equitably applicable to the present conditions and circumstances of Kenya."

THE HON. E. H. WRIGHT having seconded.

The debate having been adjourned.

The debate was resumed.

THE HON. J. B. PANDYA: Your Excellency, the hon. mover of this motion in his eloquent speech advanced arguments against the application of income tax to this country. The utility of this debate is evident when we are asked to vote on a principle without having before us the details of the proposal. It would have been far better if this debate had taken place on the second reading of the Bill, when we would have had before us the concrete proposals.

Surely the success or otherwise of a measure depends upon the degree and form in which it is applied. Anything in excess is harmful. As an instance, even opium is considered to be a desirable drug, but if taken in excess it will result in death.

The hon. mover wanted to know the real reasons behind the insistence on income tax, and later on he quoted you, Sir, as having said it was a budgetary necessity. In my view that is the real reason, but it is for Government to explain if there are any secret or hidden reasons for this insistence. If there are, what a hope to get these secret reasons out in this Council.

If really and honestly income tax was considered very undesirable, then the best way to get rid of the tax is to reduce Government expenditure, and at the same time to

come out with proposals of reduction in the services for natives voluntarily. This was, unfortunately, found impracticable by experts such as Sir Alan Pim, and therefore the only practical way to face the difficulty and to solve it is to see that the tax is applied in a form in which it is least harmful to the country.

If the hon. mover takes this practical view of the situation, I am sure he will have the fullest sympathy of this House.

The hon. member quoted the authority of the Bowring Committee against the suitability of income tax in this country, and he mentioned at the same time that they imposed customs duties as an alternative. I think the customs duties have failed in their purpose; in reply to the equity of the incidence of taxation, for in each case the poorer community pays more. But the fact to-day which we must face is: have we any alternative to fall back on? If we have not, would it not be the best thing to let what is called a tyrant tax now be imposed and finish with it?

At the same time, I think that would perhaps be a check on the extravagance of Government, because those who will have to pay will naturally see that Government expenditure is kept under control. (Laughter.)

The point is, that I entirely agree with the hon. mover when he says that in this tax the turn of the handle could be multiplied to infinity. I do not think to infinity, but it can be multiplied. That would be so, no doubt, but what is the safeguard? The greatest is, as I see it, that those people who happen to be influential and powerful in this country will not meekly succumb to any unfair and unreasonable schedule, and I suppose we have already acquired a reputation for vocal strength which is strong enough for that purpose.

The hon. member said we should tax a man according to the uses to which he puts his money. I think that is a very sound principle, but he forgets that a Government could hardly run on indirect taxation alone, and therefore those people who do not spend money on enjoyments or who do not invest in productive enterprises, and those who take dividends abroad without contributing anything to the revenue of the country—would it be equitable not to tax them? I think it would be most desirable to tax those people, and surely that is the principle involved in an income tax. Incidentally, it is a tax which progressively taxes the margin of diminishing value to an individual.

The hon. member opposes income tax because it is a direct tax and would reduce the capital resources of the country for production. At the same time, he opposes relief being given to the Asians and natives in direct taxation. May I ask,

would it not be fair to assume that if a native is being given that reduction in his tax, that he would use that money probably for buying better implements or seeds and so increasing his products?

Another point he made was, that because this income tax was such an intolerable burden in England many people moved out and settled in other lands. I feel this can hardly be true to-day because if so, we should have had in this country during the last thirty years when there was no income tax an enormous increase in our European population.

With regard to the support which my hon. friend Mr. Shamsud-Deen has given to this motion, he has recently been having complete somersaults in this House! He denied having agreed to income tax in the meeting of the Indian elected members. He was present when that was discussed, and we did not.

THE HON. SHAMSUD-DEEN: I never denied having a meeting of the Indian elected members. I contradicted the hon. Mr. Isher Dass who said I spoke of that open congress at Mombasa. I never said I disagreed with any elected member.

THE HON. J. B. PANDYA: I am glad the hon. member has accepted the truth of the statement the hon. member Mr. Isher Dass made in regard to the meeting of the Indian elected members.

I was going to say that in that meeting we were discussing the application of this principle not in Timbuctoo but in Kenya and, at the same time, during the budget debate in this House.

LT. COL. THE HON. J. G. KIRKWOOD: On a point of order, Sir, do I understand the hon. member is speaking to the motion and not to a personal dispute between he and his colleague? (Hear, hear.)

HIS EXCELLENCY: I do not think the hon. member has been out of order yet.

THE HON. J. B. PANDYA: It is only fair that I should have an opportunity on this motion to reply to the attitude which my hon. friend has taken up.

The hon. member Mr. Shamsud-Deen, as the hon. Member for the Coast mentioned, was a colleague of the latter's on the Bowring Committee when they decided fifteen years ago against the suitability of income tax. He did not remember that he had already supported it very recently. In this House he made the very astounding statement that he was speaking

on his own account. Now, Sir, in which capacity does any hon. member who is elected sit in this House? He sits as the representative of the community which has elected him. If that is so, he is bound to follow his own conscience, but he is also bound at the same time to express the view-point of the community he represents. The difficulty has been in this case that the hon. member has changed his policy almost every day for reasons best known to himself.

During the last few days the hon. member has objected to every tax which has been mentioned in this House; the poll tax, traders licences, and now income tax. I think he wishes to be in a happy land where there is no taxation!

Before I resume, I should like to say that the hon. member Dr. de Sousa the other day complained of the dirt and filth in this House, in this hall. It appears that, due to the failure of the hon. the Director of Medical Services to take preventive measures, germs of a new disease have attacked a member. The germs of this disease are irresponsibility and foolishness.

THE HON. SHAMSUD-DEEN: Your Excellency, on a point of order, that is a personal attack.

HIS EXCELLENCY: The hon. member is endeavouring to discount the arguments of the hon. member Mr. Shamsud-Deen.

THE HON. J. B. PANDYA: I was only going to say in my final sentence that if, in the next budget session, the hon. member Dr. de Sousa is in the mind and moves for a reduction in the scale of salary of the hon. the Director of Medical Services, I shall support him! (Laughter.)

THE HON. THE TREASURER: Your Excellency, I should like at the outset to express my sincere admiration of the picturesque manner in which the hon. mover has presented his motion. As an advocate of any cause he sponsors, he must always excite the envy of the less articulate, but it does not necessarily follow that these causes are good or the arguments unanswerable, though it must be admitted that ordinarily the answers will be given in terms far more prosaic than those usually employed by him.

The hon. member began his speech with a most interesting review of the history of income tax in Kenya, from the time when it was denounced by the Bowring Committee in 1921 or 1922. He then proceeded rather to discount the advice given successively by Lord Moyne and Sir Alan Pim, on the ground that they had only given a cursory examination

to the subject. As far as I remember, he made no reference to the opinions expressed from time to time by various Secretaries of State.

The hon. member will perhaps agree that conditions in Kenya in 1921 or 1922 are fundamentally different from those obtaining to-day. The companies and the salaried classes have increased very considerably since that time and those are, of course, the principle source from which income tax will be derived.

He will also, perhaps, agree that the opinions of Lord Moyne, Sir Alan Pim, and various Secretaries of State are at least those of eminent men who have a full sense of their responsibility in that regard.

MR. THE HON. E. S. GHOSSA: On a point of explanation, my hon. friend the Treasurer has completely misrepresented my references to Sir Alan Pim. I quoted him as one of my stoutest supporters, for he produces a long string of unanswerable arguments against income tax!

THE HON. THE TREASURER: I suggest that if the hon. mover is to carry his motion he must satisfy us that the circumstances of Kenya are so fundamentally different to those in other parts of the world that, although generally accepted, income tax is not appropriate for application to this Colony.

It is perfectly true that at the present time Uganda and Tanganyika would appear to prefer graduated poll tax based on income to income tax, and that in Zanzibar the clove export duty complicates matters. It is equally true that Sir Alan Pim, despite his experience and investigation in Zanzibar, has arrived at the conclusion that income tax is appropriate for application to this Colony.

The hon. member has informed us that a certain Secretary of State told him that the imposition of income tax in the colonies was not a matter of Imperial policy, yet he was only able to cite the cases of four small parts in the Empire which had not adopted income tax as an integral part of their fiscal system. It is difficult to believe that conditions in Kenya differ so materially from those in the West Indies, Nyasaland or Rhodesia that income tax should not be appropriate for application here, or that we are in fact more closely comparable to the Isle of Man, the Bahamas, the Bermudas, or the Channel Islands.

Here I find myself up against a difficulty, as I am not quite certain what is in the mind of the hon. member. He knows very well that the bona fide farming community will pay a very small proportion of the yield from income tax.

Does he seriously consider that the salaried class and those in enjoyment of a large income, should pay a mere £2 a year in direct taxation and that non-residents should continue to pay absolutely nothing towards the cost of the administration of this Colony? If so, I do not think he can expect much support. (Speaking personally, I should be ashamed to pay so small a sum in direct taxation, and I should also be ashamed to be a party to making the resident pay for the non-resident.)

If that is not so, what is in the back of his mind? what is the alternative? The only means I know which would exact a fair contribution from both residents and non-residents is income tax.

In this connection I would quote the remarks of the then Attorney General when introducing income tax in 1933, and this in support of the point made by the hon. member Mr. Pandya a few moments ago:—

"Income tax by itself means little or nothing. No one can possibly say that an income tax is a good or a bad tax until one has seen exactly what the implications of the particular form of income tax are."

It seems quite useless at this stage to discuss the many details raised by the hon. member, as this will be much more appropriate if a Bill to impose the tax comes before Council.

No tax is perfect and, so far as I know, every tax is unpopular, but the matter of incidence is even more important than the matter of yield, as the matter of incidence applies to the individual who has to pay, and the total yield is a matter in which the individual is only mildly concerned, that being a matter more particularly for Government. It cannot be denied that, in this important matter of incidence, income tax provides means of tackling it in the best possible way which has been discovered up to the present.

There are, however, one or two points outside the scope of any Bill raised by the hon. member to which I should like to refer.

The hon. member alluded to the enormous upheaval which would follow the imposition of income tax. I would remind him that a poll tax based on income, that is, eliminating all the refinements of income tax and allowing non-residents who should pay at least £20,000 a year to escape scot-free, has been in force for four years without any upheaval whatsoever. Also that in the matter of secrecy which he raised, to the best of my knowledge the office administering this tax has observed the strictest secrecy, and it is not a matter for Government if certain members make no secret of the amount they pay under this tax.

As regards the cost of administration of income tax I know the figure of £30,000 is fantastic, as not more than 1,000 to 1,500 people will pay the tax, and a very large proportion of them will be salaried people whose chargeable income can be very easily ascertained. I believe the figure of £3,000 which appears in the Estimates is a proper figure, particularly having regard to the fact that the Revenue Office is already in existence.

If my recollection serves me right, the Somerset House official who gave that estimate to the hon. member was named Walsh. (Laughter.) I submit that has no more to do with the motion than that Adam Smith and Geoffrey Chaucer were originally customs officers!

Finally, I should like to lay the bogey of what is usually known as turning on the tap. I can never understand why it should be considered to apply more to income tax than it does to any other tax. The procedure in every case is precisely the same. A Bill comes before Council and is passed through its successive stages in this Council before any change is made irrespective of being income, poll or any other tax. Therefore, it begins that the dangers of adding to income tax are precisely the same as applied to the basic poll tax or any other tax.

THE HON. F. A. BAMBIRA: Your Excellency, if there was ever a motion or resolution or proposal before this Council with which I was in agreement in the most heartiest manner possible, it is the one we are discussing at the present moment.

I should like to take the opportunity of congratulating most heartily my Coast colleague for his concise and clear manner of informing this House and, I hope, the public of Kenya, of the defects of a tax system so dearly beloved by people who do not take the trouble to consider the incidence of taxation but are quite willing to follow the old British custom of "What was good enough for my father's time is good enough for mine."

I do not know if I am in order, but if I am not I am sure you will correct me, but I want to congratulate you, Sir, and your official advisers for allowing this motion to be debated at this critical time when it is alleged that notwithstanding your personal opinions or the opinions of your advisers, which will never be known, income tax is to be imposed by the order of the real controlling Governor of this Colony, His Majesty's Secretary of State, who, Sir, holds his position not because of his particular interest or knowledge of our peculiar circumstances but because at some time or other he has been able to secure the votes of his influential electors thousands of

whom, I have no doubt, could not tell you whether Machakos or Mombasa was the port town of Kenya!

In order to obtain the views of my constituents, I have spent the last two days in making sundry inquiries, and it is interesting to record the reaction.

Because of the rumour that the proposed Income Tax Bill which is to be inflicted is of a much better nature than was originally suggested, and that the poorer people will be relieved and the substantially rich will be caught, I saw that the objection is lessened, or was lessening. But when I suggested to my friends that, if the principle is admitted, there is no guarantee in the future that they would not be brought into its scope, opinions varied, and three gentlemen told me that they considered it was a most unscientific method of taxation.

It appeared to me that now I have discovered the difference between scientific and unscientific taxation: scientific is obviously the amount the other fellow pays; unscientific is what one pays one's self! (Laughter.)

My objection to income tax or, for that matter, to most taxation, is that it is definitely inequitable. The hon. Member for the Coast has so ably proved this point that I hope it will not be considered impertinent if I endeavour to apply it to the circumstances of my own constituency.

As you all know, I represent a town where the majority of the Europeans are salaried men and women, and income tax will, as we were informed by the Treasurer, be collected from them to the extent of 100 per cent without difficulty, for the simple reason that, just as in England, employers will make returns to the tax officer, giving the items of wages and other emoluments, such as bonuses for particular work or for overtime done under circumstances of mental and physical disabilities that you in this temperate climate really do not realize. And it is on their behalf that I would like to appeal to you.

The expenses of living in a civilized town like Mombasa, with its magnificent water supply for which we pay Government £48,000 a year, and other amenities such as excellent roads, buses and cinemas, are enormous. And it is these various amenities, costly as they are, which keep us as well as we boast we are. But again I say, they are expensive. And, what was most exactly termed by the hon. mover conventional expenditure, coupled with the necessity of saving enough to take a holiday now and then—I myself have not had one for eleven years, which will count against me with the hon. member Mr. Isher Dass!—makes the imposition of any uncontrolled tax a distinct hardship.

You may remember that I opposed the tax on salaries on this and other similar grounds. To-day I ask you to compare the incidence of this direct tax on my constituents and the incidence of the same tax on a manager of a farm in the back blocks. These latter gentlemen, I understand from sundry papers I read, do not object to this system. I have nothing but the papers to prove it. I have no wonder that they do not object. They have no water to pay for, they can shoot most of their meat, they can grow vegetables, they do not have to worry about entertaining passing visitors; in fact, they are money rich. By that I mean they have the cash, which is what you are after, without the amenities; we have the amenities without the cash!

How can you, how can anyone, force himself to imagine that income tax can be most equitable in such a country and under such conditions as I have outlined?

Make no mistake! The upholders of this form of taxation have an idea that the rich man will be soaked, but the contrary is the fact: the rich man and the rich company have the means to hide the net incomes—I do not mean fraudulently, but there are means of doing it—which the salaried man has no opportunity of doing.

Men and women come to this country with the idea of living fuller lives than their circumstances at home allowed, and to that end are willing to circulate their earnings in trade, such as good food, clothes, increased amenities such as a good house, theatres, entertainments, etc., all of which give employment and make for a multitude of better conditions. They do not, and would not, feel a small tax on such expenditure, and to prove my point, I ask you and everyone who has ever had anything to do with raising funds for charitable or public purposes if it is not a fact that a dull subscription list to raise £100 is far more difficult to fill than to sell 1½ kets for a delightful function which, in the total, is going to cost the people five, six, or seven times as much?

I have studied, and do study, human nature. Deep down in every man and woman is a love of freedom—freedom to expend their money as they wish and in that lies the whole objection to this obnoxious and inequitable form of taxation. As my hon. colleague and how proud I am to be associated with him!—has put it to you, taxation is admitted to be necessary for the carrying on of the State and it should be the State's duty to collect this necessary taxation in as pleasant and convenient a manner as possible.

Let us join together and make a bold bid in this young colony and protectorate for advance against worn out shillbills and make our taxation system a free and joyous contribution to the State by collecting it on the true basis, the

capacity to pay, under which system a man or woman has complete control of his or her income, and, knowing that they are contributing freely to the State, will not begrudge a few cents on the articles they buy, and, also knowing that such a system will expand trade and consequently employment for our fellow countrymen at home.

The Hon. E. H. WRIGHT: Your Excellency, the object of this motion, which I am proud to second, is to elicit from Government the case for income tax and to adduce reasoned argument whereby we should suffer such a grave change in our fiscal system.

The hon. the Treasurer, I hope, has not stated that case, because he has contented himself by stating that this infliction obtains in other countries and, for the rest, has tried to find chinks in the unassailable armour of the hon. mover. I do hope Government through some spokesman will present its case in a fairer light than it has yet been put, after hearing the authorities quoted by the hon. mover and the evidence taken in 1933 and the results disclosed by the Bowring Committee (on which the hon. mover sat as an authority himself), and none shall gainsay his right to speak authoritatively.

I want to go back over the history of the country, for even in Kenya history repeats itself. Last week I spent a pleasant half-hour in the Secretariat in the files of the famous Bowring Committee and I would now briefly read the findings of that body. From the first interim report of October, 1922, I take the following:

"The committee deduced (from evidence taken) that the tax was unfair in its incidence, that it left untouched a large proportion of the non-native population and, inasmuch as the income assessed was almost identical with the total annual productive wealth of the Colony (which was given by the Acting Director of Agriculture as £2,958,863), that a very large portion of it was actually paid out of capital imported into Kenya which should properly be used in development.

They maintained that the tax was not suited to farmers whose farms are in a state of development and that the method of assessment was open to serious danger of abuse which could not be checked without a considerable increase in staff and in the expense of collection.

"The effect of the income tax was to tax only a small proportion of the community, to place a much-resented burden on employed persons whose income was easily assessed, to penalize the employer who had to contribute to the general revenue when he was working at a loss, and to restrict the importation of capital which is abundantly necessary in Kenya.

On this last point the committee took the expert opinion of the bank managers, who stated that there was no doubt that the income tax had contributed to the decrease in the flow of capital into the country which had taken place during the last two years.

In a subsequent report of the same committee during that year, 1922, they said:

"The abolition of the income tax, which appeared to the committee an essential step in the re-establishment of the Colony's economic position, has already received full comment in paragraphs . . . of the interim report. The committee believe that the removal of that tax had an immediate effect on commercial prosperity by giving hope for the future. The tax was indubitably hampering expansion and development and discouraging progress and tenacity; the committee believe that its abolition has been attended by excellent results.

That was 1922, and that historic committee of Kenya, whose findings were of unimpaired thoroughness, and they had remarkably wide terms of reference, consisted of two Government nominees under the distinguished chairmanship of Sir Charles Bowring, two nominees of the Associated Chambers of Commerce, three elected members of Legislative Council (the late Lord Delamere, the hon. member Major Grogan, and Capt. Concy), one nominated Indian member (the hon. Member Mr. Shamsud-Deen), with Mr. Sandford as Secretary.

Their terms of reference were very wide, and their conclusions were definite throughly.

A matter of ten years passed, and I will read an extract from the *East African Standard* of July, 1932. It gives an account of a meeting held at Njoro, actually a very big and well attended meeting, and the following are extracts from the motion then passed:

"The principle of income tax, which may be practicable in developed countries with diverse and stabilized industries supported by accumulated reserves, is totally inapplicable to new territories dependent exclusively upon agrarian industry still largely experimental, entirely without reserves and heavily burdened with debt as the result of ten years of falling prices.

The previous application of income tax was a complete fiasco and its reintroduction to-day under identical circumstances could only change the channels without increasing the volume of revenue but would, when the tide of price level turns, absorb any margin of profit and thus

prevent the present generation of farmers and planters who have carried the burden of decline from recovering any portion of their losses or even redeeming their debts.

This meeting is therefore definitely of the opinion that every constitutional means should be used to oppose any attempt to force upon the Colony a system of taxation which has already been proved to be inapplicable and which under any foreseeable circumstances could only end in disaster to the foundation industry of the Colony."

I hope my hon. friend the Noble Lord, the Member for Rift Valley, will not disagree with me when I say that it was largely owing to his own advocacy, eloquence, and persuasiveness that that resolution was passed at Njoro four years ago by one of the biggest audiences in his own constituency. The resolution was passed *nem. con.*

I doubt very much if many people in the interval have changed their minds. One of the remarkable things about Kenya is perhaps the chameleon-like facility with which people change their minds or political colour as it fits them to do but at all events, all authorities on taxation and economics have definitely said that any form of taxation which affects development is an inequitable form of tax.

There has been a book published—I hate to quote so much, but these are all very relevant—by one George Armistage Smith, who many of you know, and it gives in very terse words the principles and methods of taxation:

"The canon of economy points to net productiveness as the fundamental aim of taxation; the purpose is revenue and in its acquisition the productive powers of the community are not to be reduced; repercussion injurious to the efficiency of land, labour or capital should be avoided. Any system that wastes the tax in collection by employing a needlessly large staff of officials, or by causing unnecessary expense in production, loss of time or annoyance to the payers, that is restrictive in its methods or that leads to smuggling and evasion, offends against economy."

The whole of the book is so very good that it is difficult to choose from, but with your permission I will read the last quotation:

"Taxation is a practical problem, and not an inquiry into an ideally best system. As has been shown, every existing system of taxation is an historic growth: it is relative to the conditions of its evolution, the circumstances of the country, its physical resources of environment, the stage of industrial development, the character of the people, and their history and form of Government.

Thus a system suited to one country may be quite inapplicable to the circumstances of another; modifications cannot be determined purely by the dictates of abstract theory: what is economically and politically expedient must be considered, and the history and sentiments of the people are factors in the decision. This does not mean that principles differ, but that the circumstances of their application are different. A young Colony with scattered population may find import duties the most convenient mode of raising revenue; an income tax at that early stage of development would be difficult of assessment and perhaps impossible in application. As the Colony develops, other methods of taxation become more appropriate, and with the higher organization of the community, new forms of wealth arise which provide fresh sources of revenue.

I apologize, but this is the last extract I wish to read and if it should not be deemed impertinent, I would commend the book to the consideration of hon. members of the Council.

One point that sticks my mind is this:

"The history and sentiments of the people are factors in the decision."

I put it that Government has never considered for a moment the history of the people and that their sentiments have been utterly ignored in this matter.

It is difficult to cite history in Kenya, because it is so very new. Having spent the last quarter of a century here myself as a constant resident, I begin to feel that I am one of the oldest of the settlers.

To get a parallel case suitable for comparison on the subject of income tax, I should like to refer to America, which, in 1812, as long ago as that, imposed income tax; that was thirty-six years after America declared her independence, and she was roughly the same age then as we are now. Income tax was abandoned after one year's trial and for fifty years thereafter, until in 1862 it was reimposed and remained operative until 1872. It had ten years' run, and the American people were so convinced of its inequity apparently in that they found their rate of development retarded by being unduly taxed that for a further period of twenty-three years it was dropped.

When reintroduced then, it was ruled out as being unconstitutional. The battle went on, as in this Colony, and again the matter came up in 1900. Another 15 years had gone by battling, but income tax was not imposed, and the constitution had to be altered to permit it in America. It was ratified as recently as 1913, since which date income tax has operated.

We are thus enabled to review the basis of development over a century. In the first century of America's existence, it was abundantly clear that there were efforts to impose the tax, but the people were young colonists and for 90 years they resisted it wisely, and experimented with it for 10 years. I suggest that Kenya has not reached the stage of agricultural and industrial development such as presumably America only reached in 1913 which would warrant the imposition of what is virtually acknowledged to be a tax on capital, that is income tax.

One marvels more and more how these taxes are ever accepted; for as to their admissibility there is never a case put forward, and one wonders how long we are going to suffer this dictatorship from overseas. It becomes more and more amazing to me to find my comrades, good colleagues, prepared to accept the Secretary of State at his own face value not only as an authority on the proper methods of taxation but as virtual dictator of what we should have in this country without previously asking us, when his predecessor had assured us we would be first consulted and that we should have the fullest say in how we had to pay before it was thrust on us.

Going back to the same American precedent and a little further than 1842, I should have thought that the Colonial Office—or rather Downing Street—would have long ago learnt the lesson of the supreme unwisdom of being so dreadfully stupid and provocative as to thrust things down people's throats when they do not want them. At the time of which I speak, the people, while they were as loyal to the King as we are to-day, had good cause to mistrust his ministers, and resisted them accordingly when driven to it. I am not preaching resistance—God forbid!—but I am asking that a wiser and more sane outlook should be taken of the settlers of Kenya, among whom I am proud to have lived for 25 years, who are a virile people and have more guts in them than to suffer this eternal kicking from people overseas with apparently no redress at this end.

We are told definitely that income tax is coming, it is threatened, our dictator has said so. I want to say, Sir, that I believe it will come off the statute book as in other places, but I want to plead as sincerely as I can to Government that, before it drafts the Bill, it will recognize at least three essentials. I am speaking for the farming community.

One, that after five or six successive years unremunerative farming a similar period at least will be given the farming community to restore their losses and rehabilitate the farms and put the land back into good heart; secondly, similarly that the increase or the value of the increase in cattle and other livestock about which I have spoken previously should be set off

against the very considerable decreases which have happened in times of locusts, drought and other depredations; finally I always wonder why insurance premia payable to overseas companies shall be reasonable deductions from income tax; and if that be logical, I do not say it is and am not satisfied it is, surely a far better case could be made out for the farmer, that his profits from the land, which accrue seldom enough, shall be entitled to be recognized as an insurance in the land he loves against his old age and for his dependents and that those profits shall not be treated as income for purposes of taxation but be treated as money earned and put back into the land, which is worth more to the future of Kenya than allowances and deductions for insurance premia sent overseas to financial houses.

I am sorry if I have appeared contentious. I am worried about the subject, for I had hoped to hear a case made out for income tax, but I have never heard one. Referring to my plea, I have named three essentials, and there are more. If the Government of this country will bear such principles as these in mind, we shall thereby be able to lay the foundations of a structure to be worthy of Kenya, a structure perfect in its parts and honourable to the builders. (Hear, hear.)

VEN. ARCHDEACON THE HON. G. BUNNS: Your Excellency, it was not my intention to take any part in this debate, but one or two matters mentioned by the hon. member in the wonderful speech he made when introducing his motion have brought me to my feet.

He mentioned during his speech about the natives having large tracts of land that they can enter rent free, while the European has to pay rent for the land he occupies. Granted that that is true at the present time, I should like to remind the House that while my hon. and eloquent friend brought up that point, that he had travelled through the land and the land was as much his as theirs—I think they were the exact words he used.

MAJOR THE HON. E. S. GROGAN: On a point of explanation, they were not! (Laughter.)

VEN. ARCHDEACON THE HON. G. BUNNS: He meant them so. I think the natives who occupy the land have a prior right to any man who passes through with a rifle on his shoulder shooting any animal he comes in contact with and seeking for what he may have in his mind with regard to going through the country.

MAJOR THE HON. E. S. GROGAN: The ven. and hon. member has entirely misunderstood me owing to my incapacity to express myself no doubt, and he clearly knows nothing about this matter. I said that an individual native had no

specific title to land, and at the time when I first came through there were large areas of land not occupied by natives. Therefore, on the ordinary principle of first occupation I have as good a title to the land as they have, because I was there first.

HIS EXCELLENCY: I would ask the ven. and hon. member to keep to the point. I do not know that this really has much to do with the applicability of income tax. The hon. member mentioned it in passing, and the matter I suggest is not a major issue.

VEN. ARCHDEACON THE HON. G. BURNS: The motion is that income tax is not applicable to the present conditions and circumstances of Kenya. The point I want to make and which I want to emphasize very much is, what is the alternative? This Council has during the present session, with the advice of the Standing Finance Committee, repealed certain taxes which were introduced in 1937. Does the hon. mover of the motion think that the machine, using a word which was in common vogue at that time, can be efficiently carried on and Government do its work without any other form of taxation, or would he be prepared to see the taxes we have repealed reintroduced so that the machine might be equitably carried on?

I think this has to do very much with the natives whom I have the honour to represent in this Council, because if we have no other form of taxation there is no question about it at all the natives will not be able to get any reduction in their taxes and in the burden of taxation which rests on them at the present time.

I intend to vote against the motion because I think that income tax is the most equitable form of taxation for every section of the community in the Colony.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I, too, must join in the chorus of approbation which we have all given to the hon. mover for his delightful and entertaining debating society's speech on Thursday. When I say debating society I do not mean it in any offensive way, because I consider that some of the best speeches ever made are made in debating societies, but I use the words because when I first heard the question debated it was in a debating society twenty-five years ago.

My second reason is because, in view of the fact that we are well aware there is going to be an Income Tax Ordinance introduced into this Council some time in the comparatively near future, it is merely a debating point now, because we will have to go all over it again at another date.

I personally am extremely grateful to the hon. mover, because I now feel that when I introduce the Bill I shall not have to go into the principles of it; for they will have all been so thoroughly examined on this particular occasion.

We are all agreed that fine feathers do not make fine birds. I am sure the hon. mover will be the first to agree with me that personal opinions expressed as accepted facts and advocated with a series of sonorous superlatives do not necessarily make good arguments.

I was very interested in the hon. member's point of view in opposing this particular tax in view of the fact that he gave us the authorities on the one side and then on the other, and he also gave us the places on the one side that have income tax and places on the other that have not. Without pretending in any way to be an economist myself—I do not know how one becomes an economist—but assuming the ordinary man in the street had been listening to that speech and had taken the trouble to analyse it, he could only come to one conclusion, when he was considering the personnel who were in favour of income tax—and I will only refer to particular people mentioned by the hon. mover himself and introduced as new matter whatsoever—the persons in favour of income tax appeared to be gentlemen by the name of Lord Moyne, Sir Alan Pim.

MAJOR THE HON. E. S. GROGAN: On a point of explanation, I never said they were one or the other.

THE HON. THE ATTORNEY GENERAL: It is a matter of common knowledge in any circle that Lord Moyne was in favour of income tax and a fact that the hon. mover mentioned his name; and therefore I am correct in saying the hon. mover did mention the name of Lord Moyne, and I am correct in saying that Lord Moyne was in favour of income tax.

MAJOR THE HON. E. S. GROGAN: I referred to Lord Moyne as a gentleman who made a cursory investigation and suggested that at that time income tax was *pis aller*.

THE HON. THE ATTORNEY GENERAL: I am quite aware that the hon. member was extremely sarcastic in his reference to Lord Moyne (Major Grogan: Nothing of the sort.) I am sorry, but that is the impression left on the minds of listeners. Nevertheless, I am entitled to draw my own conclusions from what I have listened to from the hon. member, and he will forgive me if I pursue my own course in this speech.

I suggest that the hon. mover intended us in this House to understand that Lord Moyne, although he had not taken sufficient trouble to investigate this matter thoroughly, nevertheless was in favour of income tax.

It is also an admitted fact that Sir Alan Pim was also in favour of income tax. There again, for some reason, that part of his report is not going to be accepted by the hon. mover for similar reasons. We know that the past Secretary of State was in favour of the tax, and we know that the present one is, and we know that the Governor and the Government are in favour of the tax. These, I may say, are the personnel on the one side.

On the other side we have the hon. mover, most naturally, the Treasurer of Uganda and one other equally important person. So that if it comes to a question of counting heads, and their respective or what we expect to be the respective knowledge in the various heads, I think you will all agree that the balance lies on one side.

We then come to the places which have considered it necessary to introduce income tax. On the one side you have practically the whole of the civilized world, and on the other the hon. mover must have searched very carefully all through the map of the world to find such important places as Barbadoes—which I may tell you, having been there, it is possible to walk round in the course of a morning, if you are so inclined, and a place where the unfortunate people live almost entirely on bread fruit and flying fish!—Bermuda, another equally large island—I have also been there, and the unfortunate people, though they have not income tax, are so heavily taxed that officials are glad to leave there and go to places which have income tax at a reduced salary, because they cannot live on the salary which they get in Bermuda. With regard to Jersey and the Isle of Man, I feel that everybody knows as much as I do about those places.

I think I have summed up the whole of the places mentioned by the hon. member in supporting his case. But he must have forgotten one—Tristan da Cunha—which has not got income tax either! (Laughter.)

We are asked to compare the Provincial Commissioner of the Coast and the Provincial Commissioner of the Northern Frontier as showing how hardly the incidence of income tax would affect them. If I may say so, the only case the hon. mover made out was a case for an increase in the salary of the Provincial Commissioner at the Coast, because if two people are paid the same salary and one is called on by Government to use his salary in what is in effect a Government duty in entertaining people for Government, people in whom he has

no particular interest (I think that was the example given), it is only right and just he should have a vote called an entertainment allowance!

We have all been going into history regarding income tax, and I took the trouble to look it up in England. It is interesting to find that income tax was first introduced in 1380, not in the form it is to-day, but it was the beginning. Even in those days we had some economist opposed to it, a person called Wat Tyler, who raised the spirit of revolution against the tax, and that has continued through all the ages by some one or other.

Actually, in spite of all this opposition, income tax was finally introduced in 1842 by Peel, during a period in England not of war but of peace and it has stayed in spite of the fact that we all know in England in politics—that if it were such an inequitable tax one party or the other would have made it the chief plank in their political campaign and have been sent back with a resounding majority to have it repealed. But such, in fact, has not been the case.

Another reference made in the course of his speech by the hon. mover was to the time-honoured cry of devaluation. I am not going to be so stupid as to enter into any argument regarding that, but I merely mention it in connection with another fact which came out in the speech, that the country, which I suppose, devaluated its currency as much as any other is New Zealand, but in spite of that papers we are also told that the income tax is 13/4 in the £, from which you can draw your own conclusions.

The hon. member wished to know why Government was introducing this dreadful tax, and I know perfectly well, as the hon. Member for Aberdare has said, the mover will say in due course "No case has been made out." That is how in reply one always starts. That, of course, is a matter of opinion, but the answer is very simple and can be put in one sentence: because Government, backed up by the authorities I have mentioned, considers it the most equitable tax which could possibly be imposed on the country.

The test is ability to pay, and no matter how you juggle with the word, ability or capacity, ability is used in the sense that it is understood by the ordinary man in the street, and we mean it the same way here.

It has been suggested that it will fall hardly on the settler and the planting community, and I can only reiterate what has been told you by the hon. the Treasurer, namely, that if all we hear is correct, and of course we believe it to be correct, about the position of the farming community to-day, then

they will be the one class of persons who will pay less than anybody else, and therefore, so far as the case goes with regard to the farming community, they have nothing to grumble about.

The hon. mover dismissed very lightly the opinions of various people, so-called experts, who have been called upon to give opinions on this subject. The first and chief cause of complaint was that they had not been here long enough to know the peculiar conditions of Kenya. This is not some peculiar tax that no one has ever heard of that is going to be tried in Kenya for the first time, but a tax that has been in existence for hundreds of years, the incidence of which are well known to everyone, and what I am waiting for is someone to explain to me why Kenya is different to every other place that has income tax and where undoubtedly it has proved successful, in that in the self-governing dominions and colonies that have greater representation than we have we still find an income tax ordinance on the books. (Hon. Shamsud-Deen: Not within 30 years of the commencement of the development of this country.) We may be a younger country, but we are in the happy position of being able to take advantage of the mistakes of our predecessors, and I think that the argument that because we are only 30 years of age and that other places took a great deal longer time before they saw the wisdom of introducing the most equitable tax in the world is an extremely poor one, unless you are also going to suggest that we should wait 150 years because they were stupid enough to do the same thing.

I was asked a definite question by the hon. mover which I shall reply to. The question was asked some time ago with regard to pensions, and whether they would be taxed. I gave the reply which he, quite rightly, read out to you, namely, I referred him to a certain section that appeared in the Income Tax Bill. I can only repeat that it is perfectly true that pensions, according to the Bill, are going to be taxed. I do not know whether it is right or wrong, but it is going to be the law, and it is not a section I have invented myself or my predecessor in office, but is in the model Ordinance designed for all the Crown colonies. And take it from me, it will be good law if enacted!

It is a matter of complete indifference to me, from a legal point of view, whether the original agreement was made in rupees, sterling, or anything else. If Kenya pays out a pension to any person wherever he is living, according to the Ordinance it passed in the form drafted at the moment that pensioner will have to pay income tax. (Major Grogan: What about India?) India is not a Crown colony, as the hon. member knows, and if it has not that section then

pensioners will be exempt from Indian income tax, but it occurs in 90 per cent of the Crown colonies in the Empire.

So far as the question to me was concerned, that was and is the answer, and the only way we shall be able to alter it is if the hon. mover, when we get into committee stage, will move that this clause be deleted, when, if carried, pensioners will not have to pay anything at all.

The hon. the Treasurer has already made reference to a remark made by the hon. mover with regard to the enormous upheaval of the collection of £40,000 by way of income tax in this country. If you accept the figures, I know nothing about them, but we are all well aware that out of that £40,000, £25,000 is to be collected from companies, we may or may not get another £2,000 (dependent on the action taken by the hon. mover) from pensioners, so that you have the ridiculous sum of £11,000 to be collected, which is less than one quarter of what is at present being collected from non-native poll tax, to cause an enormous upheaval in the country.

If my hon. friend will forgive me, I think that is a typical example of the whole basis of his arguments, namely, the smallest thing is exaggerated to become the most enormous: a paltry collection of £11,000 from people who have been paying £44,000 is going to cause an enormous upheaval.

The next point was that the correct method of collecting tax was by way of indirect taxation. Well, I do not know exactly what is behind that suggestion. Of course, I understand the principle, but if more money is to be collected, is the hon. member suggesting there should be some increase in customs duties? because if that is so, I would remind him of this small fact: that there is a limit as he himself told us, and quite rightly, over which people will not go, namely, if you over-tax a commodity—whisky or whatever you like—to think of—all that happens is that the taxpayers will not buy it. So that as a means of raising money for Government I suggest it would be an extremely poor substitute, and he is asking us to take on something which he knows will never be realized, that if we increase above a certain limit customs duties the only effect is that you do not collect it, so that that is of little practical use.

Before sitting down I should like to mention one point only vaguely touched on by the hon. mover and that was the acceptance by the Standing Finance Committee of this income tax suggestion.

I am fortunate in not being on the committee, but merely an onlooker, as the hon. mover is. But we do know this: that the whole of the British Empire is, practically

without exception, run, speaking by and large, on compromise. When anyone takes exception to a certain line of action that has to be taken, he considers at once, what is the alternative? I can only imagine that the Standing Finance Committee were faced with that position. They had a great many subjects to consider, and it is well known, in fact it has been commented on in this Council, on several occasions, how two members of Government were sympathized with because they had to agree to something which they had not recommended in a report they had made. All I can say is this: whereas they on their side have had to give in on one or two respects, others on the other side have gone a little way to meet them, and I think it is the subject for the greatest congratulation that this spirit of co-operation exists among so-called political opponents. Government and unofficials, and that they are able to arrive at what they consider to be a solution of the very very serious difficulty with which they were faced at the end of this year.

If it has become popular to quote some book or reference and I am sure the hon. Member for Aberdare will forgive me when I say that when he was reading from the Bowring Committee report he might, in fact, have been quoting a speech of the hon. mover, and I was not surprised when he told us at the end that the hon. mover had been a member of that committee. He will also forgive me if I say it is not peculiar that the hon. mover is saying the same thing in 1937 as he did in 1921 or 1922.

MAJOR THE HON. E. S. GROGAN: On a point of explanation, I was not the secretary of the committee!

THE HON. THE ATTORNEY GENERAL: We are well aware of that, or it would have taken the hon. Member for Aberdare a good deal longer to read! (Laughter.)

Nevertheless, I have such a respect for the hon. mover that I know his influence would have been felt by the person called on to do the actual writing, but I think it is a poor argument, if I may say so, to quote, and I say it with respect, from Grogan in 1921 in support of Grogan in 1936. I might go on *ad infinitum*, and quote.

THE HON. H. E. WRIGHT: I must protest against the suggestion that I was quoting from the hon. mover. I cited an authority. The hon. the Attorney General knows perfectly well those extracts are a faithful copy of the findings of the whole committee, the personnel of which I detailed.

THE HON. THE ATTORNEY GENERAL: I am not suggesting for a moment that the hon. member was reading incorrectly.

But what I inferred was that the over-powering influence of the hon. Member for the Coast had so influenced the secretary that it might have been the hon. mover himself writing it.

MAJOR THE HON. E. S. GROGAN: Perhaps he was an honest man who listened to opinions!

THE HON. THE ATTORNEY GENERAL: If I may finish with one quotation from a gentleman called William Ewart Gladstone, and you should not turn it down on account of his Christian name! He said:

"Whatever you do in regard to income tax you must be bold; you must be intelligible, you must be decisive, you must not putter with it."

I think that is the position we should take today.

Council adjourned for the usual interval.

On resuming—

MAJOR THE HON. E. S. GROGAN: Sir, you are in the fortunate position of a very small amount of (time being involved in my reply to the remarks made in debate.)

It is rather difficult to reply, because many of the remarks made were difficult to follow.

The first, the hon. member Mr. Isher Dass: I really did not quite understand what his argument was, and if I misrepresent him I am very sorry. But I understood him to suggest that the purpose of taxation was equalization of income, in which case an easy remedy, in his case, lies in dividing his income among his dependents!

The next speaker, the hon. member Mr. Pandya, referred to opium. I really do not see what that had to do with the matter, unless the term "income tax" is regarded as an opiate. He said that as a result of the Customs system—that is, indirect taxation, as an alternative to direct—the poorer class would pay more. Of course, in this country nothing of the kind applies, because Customs do not in effect have any influence, or only a small effect, on the internal prices of any essential things which we consume, but they are stepped up in accordance with the inessentiality of the articles to which they apply, and therefore, under the indirect system of taxation, the whole of the Customs duties do in fact keep the burden of taxation equitably distributed, because they surreptitiously apply a system of extracting from the pockets of the citizen his proper contributions to the State as and when he misuses his money.

The hon. member also, as I understood him, and I hope I am not misinterpreting him, said this was a valuable form of tax because it provided the community with a check on Government expenditure. A more remarkable statement I imagine was never made in this House, because the only possible check on Government expenditure by the citizens of a country under the present system is for them to refrain from buying the things taxed.

We have had quite a long experience, now exceeding a generation, of the absolute hopelessness of coming into this Council and producing an irresistible array of argument against which there could be no answer, and in response to which there has in fact been no answer. If anybody can possibly believe that efficient check on Government expenditure can possibly be applied through the elected or nominated members in this Council, the whole history of the Council must be completely unknown to him.

The hon. member's speech mainly took the form of an attack upon one of his Indian colleagues, who was a colleague of mine on the Bowring Committee, and if his attack has any meaning at all it surely is the laying down of the principle that the function of a member coming to this Council is not to listen to argument and vote in accordance with the honest impression this argument has created in his mind, but to come along as another series of gramophones and reiterate the little songs dictated to them in another sphere. If that really is the function of members—we know it is the function of hon. members on the other side, because they have no option—but if in fact that principle is supposed to apply to members on this side of the House, too, I make the suggestion again that a large amount of expenditure of public money would be saved and gross inconvenience to citizens avoided by the simple expedient of having two little sets of microphones, one that side of the House and another this side, and yourself, Sir, presiding with two buttons so that you can press the "Aye" or "No" according to the occasion.

THE HON. J. B. PANDYA : I thought I made it clear that a member was supposed to form his own conscience.

MAJOR THE HON. E. S. GOGAN : I understand that is what my colleague was doing.

We now come to a very important reply, that of the hon. the Treasurer. I will not reiterate my sympathy with him in his very unfortunate position on this particular occasion, but I would again remind him that he did obtrude upon this Council a number of extracts from an economist in whom he placed great reliance, the late lamented Adam Smith, and I

did point out that these principles laid down by my hon. friend were completely negatived by the form of taxation he has just lately been trying to explain. I sympathize with his position, but I can understand it.

He also pointed out, or rather suggested, that the circumstances of to-day differed very widely from the circumstances that prevailed at the time of the sittings of the Bowring Committee, in the sense that there has been a large increase of salaried parties and of companies. There is no question about it, there has been a very material increase in the number of salaried persons in the country, mainly connected with Government, and therefore a charge on the community. In so far as companies are concerned there may have been a considerable increase in the actual number of registered companies, but I would remind him that during the period which has elapsed since the Bowring Committee nearly every one of those companies has lost very heavily indeed in this country. It is a well-known fact that this country as a sphere of investment stinks in the nostrils of the city of London because of the lamentable experience of the more notorious and well-known companies that have operated in this country.

To give one example, the tragic history of the Magadi Soda Company, when substantially over a million of good British money has been lost beyond hope of recovery. This is a curious occasion to suggest that just after that period of colossal losses when there is a little gleam of pink in the eastern sky, with some possibility of the recovery of some of these vast sums of money, we should prejudice the whole position by the imposition of this form of taxation.

The hon. member also, as I understood him, asked me to state what is the fundamental difference, the special conditions that differentiate Kenya from other parts of the world. All these things are a matter of degree, but it is quite obvious that Kenya is very sharply differentiated from other countries of the world by quite a considerable number of factors.

The essential factor is this: that this is the first time in the history of the world when a definite attempt has been made by the northern folk of Europe, as distinct from the Mediterranean races, to colonize and develop a tropical section of the world. And arising out of that, there have been a large number of extremely complicated problems to solve, not only political but physical problems connected with the land, and where you have got a very complex community fundamentally different from one another, and a large range of problems ahead of you, very few of which have been really seriously solved, quite obviously you get different conditions to the conditions that prevail in other countries functioning on more simple lines.

Let me take as an example a comparison with the West Coast, which I do not pretend to know intimately, but the conditions of the West Coast differ profoundly from the conditions of Kenya. It is perfectly true that they have an income tax on the West Coast. One of my hon. colleagues on the other side, with an intimate acquaintance with the West Coast, told me two or three days ago that the system there is that a 1 per cent flat rate is applicable to all parties. The only means by which it is rendered effective against a number of extremely rich native merchants is the point which I have tried to raise in moving this motion; that in a country of this kind the application of the tax must necessarily be by an arbitrary method. It is utterly impossible that it can be equitable because it has got to be arbitrary, otherwise it is an impractical and uneconomical proposition.

I was told that the method applied to these gentlemen who may be making £20,000 a year as middlemen, native of the country, is that they are hauled before the "beak", the collector, the blood-sucker, and asked, "How much are you worth?" The native says, "Nothing." "All right," says the collector, "make it £15,000." And the thing is finished. That is income tax in being in that class of country where there are simple conditions compared to this country, because there are native producers only, and a large number of native merchants comparable with the Indians here. Apart from them, you get nothing but salaried Civil Servants and salaried employees of banks and mercantile houses.

Quite clearly the application of the income tax to a salaried person is a simple one, because you compel the person employing to state how much, and arbitrarily extract a portion of his salary, and that is the end of the proposition. The native peasantry is probably never assessed at all, and the native middleman is assessed by the iniquitous method explained to me the other day.

I therefore suggest that there is a profound difference. I believe a similar system prevails in the Seychelles, where income tax was brought in by the gentleman who has just left us.

The next note I have got is that it was wrong that non-residents and salaried classes should not contribute.

I tried to make the point clear, but apparently failed, of the extreme difficulty of deciding on or introducing any form of Income Tax Bill which will specifically and equitably define who is resident and who is non-resident, and the only possible effect of any such Bill will be to convert a large number of people, who in the ordinary civic sense are residents, and con-

tribute large sums of money through existing channels of taxation to the revenues of the country, into skilfully organized non-residents, with corresponding less revenue.

The next point, as I understand it, is that it does not matter to farmers because in any case they will have to pay very little. That is rather a peculiar argument, because if the conditions are going to prevail for ever when farmers and planters, who provide the economic foundation of the whole country, are never going to have any income, nothing is more certain in the world than that a large proportion of this salaried class will automatically have to disappear, because you cannot have a permanent state of society where people who have invested large sums of money in the country may or may not be able to send their wives and children home third class German at very lengthy intervals, while a very large number of Railway guards and other gentlemen of terrific importance but not of absolutely vital service to the country go home periodically first class British.

You cannot have a society permanently established on that basis; and there is always a compensating factor at work in life, and sooner or later you must get the balance redressed. No doubt the time will come, is coming very near, when there will be a spectacular reversion of the position, when there is going to be an enormous rise in the sterling price level of primary commodities. That will mean that these farmers and planters who have carried the baby all through this time of stress will see opening in front of them, to their astonishment, a widening margin of advantage in their favour.

My point is that it is entirely iniquitous in this country, after the tragic time these people have been through, and the shameless way in which this burden has been allocated as between different sections of the community; that it is unfair, wrong, and improper that they should be cut adrift from any possibility, when times do improve, of putting back some proportion to the large sums of which they have been robbed in carrying this burden.

The hon. the Treasurer also referred in scathing terms to my suggestion that this represented an upheaval, and my hon. and learned friend the Attorney General suggested that this was a characteristic example of my method of exaggerating. It was nicely put, but in this particular case it was very inapposite. To both of them, who have been salaried persons all their lives, income tax means no upheaval whatever in their general affairs. But in the very complicated operations of persons operating, especially on the land, and also in commerce, the preparation of accounts, the provision and setting aside of funds, the liquidation of illiquid assets, for the purpose of pay-

ing-income tax, and the enormous cost of third parties, of getting the technical assistance necessary to produce these accounts, does in fact represent a colossal upheaval.

I can only give you my experience on the last occasion when we were inflicted with this pestiferous form of tax: that the interests I controlled at that time lost £77,000 during that year, and it cost my concern £600 to employ another set of experts to produce accounts to prove that fact.

To a gentleman as affluent as my hon. and learned friend a mere £600 is nothing at all. But I suggest it does not cost him anything, because it would be done by the gentleman (the Treasurer) next to him! (Laughter.) It merely means that at the end of the month he has a little less to spend on drinks and tobacco, and the State loses the revenue from the indirect taxes and gets it in a convenient form of direct tax. There is no upheaval, merely a lingering sense of irritation. But in most businesses, especially land, the term upheaval is no exaggerated term whatsoever, but a very mild suggestion to the mitigation of what actually happens in the sphere of business.

The hon. the Treasurer also jeered at my suggestion—I withdraw the word; he smiled, not grinned!—that this would cost a very large sum of money. I am perfectly prepared to admit here and now that the application of an Income Tax Bill, drafted on any sort of lines comparable with that now defunct phantom that was laid on the table of the Council, would not cost a large sum of money to Government, but would cost a colossal sum of money to the people to whom it would be applied, for the simple reason that the whole principle is, as I suggested in my opening speech, based entirely upon arbitrary assessment.

First of all, a man has got to send in a return. He probably does not even know he has got to do it, in which case he will get a document to say he is assessed at so much. If he is not prepared to accept that assessment, he cannot appeal to a local assessor, because of his cheap and inadequate staff, and therefore has to hang about Nairobi for a fortnight waiting for a gentleman to listen to his tale of woe. Even then he probably has to hang about the courts for six months probably before the case can be heard by a judge.

I say that you cannot have it both ways. Either it is going to cost the State an enormous and disproportionate sum of money to apply the tax equitably, or else it will cost the community individually an infinitely greater sum of money to protect themselves individually against its improper application. You can have it whichever way you like.

The hon. member also referred to the fact that this tax was in no way different from other taxes, in that taxpayers had the same security. He also spoke of the immense influence that this side of the Council exercised on the ultimate judgment of Government! I have dealt with that point, and will not go any further.

There is, however, one point which I beg him to remember; that is, that there is a vast amount of difference between a tax arbitrarily assessed, because that is implemented by Government, whereas an indirect tax, which a man knows exactly what it means, is implemented by the taxpayers. That is a very different thing.

My hon. colleague the Member for Mombasa supported me, and I now come very briefly to the ven. and hon. member Archdeacon Burns.

He, as sometimes happens, has entirely misunderstood, probably owing to the way in which I expressed myself, my reference to the natives. The very word "native" apparently roused him to his feet because that is part of his duty. What I did say, and I am sure he will raise no reasonable objection to it, was that there is no validity in the claim raised on behalf of the native to the effect that it is an additional burden to be imposed upon one section of the community and the resultant cake distributed, the native is entitled to his slice.

That sounds all right as a prima facie argument, but what has been forgotten in this argument, and this is my only point, is that the native is in an entirely different category to all other sections of the community when it comes to a question of contributions to general revenue, by virtue of the fact that he has access to vast portions of the land, and nearly all the good land, free of any payment whatever to the general community.

In the first instance, it was always held all through British systems of administration that the absolute ownership of land was vested in the State, and that was originally the position out here; the whole of our titles are derived from it. There was an allocation of areas of land to the native in proportion to his then land requirements and to other people. There was a large amount of land completely unoccupied to which the natives had no right, no claim, and no pretensions—in many cases they had never even seen it—and the State quite properly allocated it to other parties on payment.

I wanted to drive home the point that we must always remember that the native, in this particular case, has a vast advantage over everybody else in the sense that for the occupation and enjoyment of that land he pays no contribution what-

soever to the general fund. Therefore, hut tax, poll tax, whatever you like to call it, must first of all be compared with rent before you get an equitable basis of comparison.

I think it is rather a pity that the gentleman who sits here specifically appointed to represent the native interests always finds it incumbent upon him to jump to his feet at the mention of the word "native", based on the assumption that the other party has some hostile feeling to the native. I say here and now that I have paid more money to natives than anybody in this House and I am just as much entitled to be admitted to be interested, and properly interested, in the proper rights of the native as any other gentleman who spends his time collecting money from natives, which makes a lot of difference! (Laughter.)

We now come to the hon. the Attorney General. I really find it difficult to understand why he participated in this debate. The only conclusion I can come to after listening to him is that he was practising! (Laughter.) It has been his unfortunate lot to have had one or two very bad cases to put up lately, and, as is perfectly clear from the line of policy that is now gradually beginning to emerge from his master's voice, he will have to put up a lot of bad cases again, so that I can only assume he is taking every possible advantage of practising.

All I can say is that he has not achieved great proficiency yet, because he began by giving his case away by referring to my speech as a debating society speech. It was a debating society speech for the simple reason that this Council has now ceased to be a deliberative council, the government of this country, and has by the act of a dictatorial Secretary of State become a mere debating society—(hear, hear)—but a debating society of such trivial quality that it has become a sheer pantomime, for the simple reason that the intelligent, able, experienced body of gentlemen on the other side are never allowed to participate in the debate in the sense that they believe in. Therefore its value, even as a debating society, is virtually negligible.

The hon. and learned member made some reference to fine feathers which I find it difficult to follow. The only picture which was raised in my mind was the picture of an ostrich which, as you know, carries fine feathers on its tail, and has the habit of burying its head in the sand, according to tradition. I have never seen it do that myself! (Laughter.) An ostrich, having all its fine feathers on the most delicate part of its anatomy, and having the habit of burying its head in a very comparable position to Government at the present time: it is asking for a kick which it has quite recently got! (Laughter.)

He went on to suggest—after all, lawyers are skilled in the art of suggesting—that the other fellow has said something he did not mean to say. It is very easy to do that. In his reference to Sir Alan Pim—but I will not go over that again, because I challenged it at the time. I claimed him as one of my stoutest supporters in this case. If you read the Pim Report carefully, you will see, as I reiterate—because I am afraid the hon. the Attorney General did not listen to me, which was quite excusable—he simply elaborated a long tissue of factors involved in the application of income tax to this Colony, and recommended it only as a *pis aller*, as a proper alternative to the admittedly ludicrous graduated poll tax which provided no remissions, which nobody worried about much, because everybody, on both sides of the House recognized it as a temporary emergency form of taxation to go by the board as soon as the emergency had passed. Therefore the reference to it is not quite apposite.

If anybody will read his report carefully and dispassionately, they will see the most able and unanswerable case against the equitable application of income tax in this Colony that you can possibly get.

The hon. member went on to say that all countries were in favour of income tax except a few trivial places from which he himself had run away in company with other Civil Servants, and all were small places that one could walk round.

His arguments cut two ways. If income tax as a principle is so marvellous and has the essential quality of equity in it, surely the simplest place in the world to apply it would be an island that you can walk round in a day, because everybody's affairs must be known and the supervision of application would be a simple matter. But if you get a vast area like this, with fundamentally different people and extremely different problems and antagonistic neighbours, quite obviously the difficulties are multiplied to infinity.

The hon. the Attorney General went back to history and quoted 1842 as a time when England introduced income tax, and said it was a time of peace. My historical memories, I am afraid, are a little sketchy, but one thing does come back to my mind, the expression "the hungry forties". They were a time of terrible distress, not brought about by war but by exactly the same factors which led to our distress, by the profound error of monetary policy after the Napoleonic Wars, by the monetary authorities of England forcing her back on to the gold standard, leading to the destruction of feudalism, to the destruction of the people on the land, to the poverty of the multitude, so that there was a necessity to hunt in every

direction for revenue. Therefore it was impossible for my friend to have picked out a more unsatisfactory example in history in opposing the general argument I tried to put up.

He also, not cleverly I thought, tried to tie up the question of devaluation and income tax in New Zealand. That was a far thin, even for the hon. member! The point is, income tax, as everybody knows, has been in existence for a long time in New Zealand, and whether good for or bad depends entirely on whether they are payees or payors. The general impression of people I know in New Zealand, able to form an opinion, is that the excessive rate of income tax has a disastrous effect on New Zealand as a whole, and the two issues, I submit, have nothing to do with each other.

The fact that New Zealand did devalue saved her from complete collapse, but there is no connection in this argument between the two facts. The only reason I raised the point of devaluation was to show how the landed people of this country are subjected to quite an unusual form of extortion compared with other countries, and that therefore there is less ground for introducing income tax, which was bound to damage their chances of recuperation.

I then came to the only so-called argument preferred, by that side of the House—the mere reiteration of the term—This is an equitable tax.

I exhausted your patience the other day for something over an hour to give you innumerable strong examples to show it could not conceivably be an equitable tax, and I regret that no attempt had been made on the part of Government to refute one single one of the examples I quoted. It was stated that the tax was perfectly equitable as far as the farming community was concerned, for the simple reason that they had no income and would pay no tax, or their contribution would be very small. I have dealt with that already, except to suggest it is not very apposite to the argument.

I took up the challenge on the question of pensions. I say that you cannot have it both ways. If the answer given me by the hon. the Treasurer that these pension commitments are in fact London sterling commitments is correct, I say, without any hesitation whatsoever, that you cannot possibly deduct Kenya income tax from them. But I profoundly disagree with the answer given by the Treasurer, because I submit they are not London sterling commitments, but that they are Kenya shilling or pound commitments, and therefore are quite properly subject to income tax. I entirely agree with the hon. the Attorney General that they will be subject to the income tax of this country, but the effect of that will be his complete refutation of the answer given by the Treasurer.

I will not deal again with the question of upheaval, which he described as my characteristic exaggeration, because I have already dealt with it.

But the hon. the Attorney General did say that this was a matter in which compromise was wise, and that this was a conspicuous example of statesmanlike conduct, and he quoted the attitude taken by my hon. friends the Chief Native Commissioner and the Treasurer and yourself, Sir, in agreeing to a policy which was the exact opposite to what you yourselves had recommended.

I do not agree that this is a compliment. I say that this is submission, and there is all the difference in the world between submission and compromise. This submission was so complete that it amounts to a gross indignity to Government and to us on this side of the House and to this Council and the community as a whole.

He then proceeded to twit me with my consistency. He said I had steadily and consistently held this view ever since 1921, and apparently looked upon it as something objectionable or undignified on the part of the Bowring Committee that they reported in accordance with it. Views I then expressed and have since. I cannot see anything remarkable in it. It is quite possible to have in this country a committee composed of Civil Servants and officials presided over by a distinguished Civil Servant who are impressed by the arguments adduced, and when it agreed with their point of view have the guts to endorse that point of view by putting their names to it. If he really thinks he has scored a point off me by twitting me with consistency, all I can say is that I do not expect in the near future to be in a position to return the compliment.

He concluded—and I propose to, to your great relief!—with a quotation from the late lamented William Ewart Gladstone. Unfortunately, the Press have pinched the exact quotation, and therefore I am not in a position to quote it off-hand, but I remember the gist, because I listened attentively.

Personally I was interested because, to my dying shame be it said, I was named after Mr. Gladstone, my father being an intimate business friend of his. I have always been nervous about it since, because I regard him as one of the most detestable and malevolent figures in English history. That does not mean that I will not from time to time agree with some of his statements, and that quotation which my learned friend in a moment of mental aberration selected to close his speech with is, I submit, an almost perfect representation of the attitude of this Government.

I do remember the finality of it, and that was that you must patter. I suggest that is all the substance of my learned friend's speech with which I have to deal—the patter of it!

Never in my life have I heard a more pitiful attempt on the part of any Government to justify a line of action.

I said in moving the motion that my purpose was only one, and I have attempted to maintain the argument as far as I could to the pure economics and social implications. I said my only purpose was to provide Government with an opportunity of putting on permanent record their reason for this happening. Of course, a budgetary justification for it has gone by the board. If we are to stand pat on Pim and have 100 per cent of Pim, there is the easy line to take, because he said that in order to give effect to his proposals it may be necessary for us to borrow £100,000. I thought that the most absurd of his suggestions—and I know that hon. members opposite agree. Of course, in time the Pim suggestions will die away, as most of the suggestions of his innumerable predecessors have died away.

But if you are going to have 100 per cent Pim you have to make it as far as possible a logical 100 per cent Pim, and the only reference of Pim to income tax was as a substitute for existing taxation. If it is a question of altering the whole allocation of taxation as between communities by imposing a supertax on one section of the community to give effect to a policy repudiated by Government, it can only be logically done by introducing some other fantastic expedient such as the one suggested of borrowing money.

I say that this motion, although it has taken up a lot of the time of the House, has served its purpose, because it has shown quite clearly that Government has got no case at all, that they are simply being driven by the winds and kicks of an authority overseas; that, in fine, they are submitting themselves, their more important members of this Council, us on this side of the Council, the whole Council, and this community as a whole to an intolerable humiliation. (Applause.)

The motion was put and negatived.

STANDING FINANCE COMMITTEE REPORT, PART II, 1937 ESTIMATES.

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

"That the Report of the Standing Finance Committee on the Draft Estimates of Revenue and Expenditure for the year 1937, Part II, be adopted."

At the outset, I should explain, Sir, that, though I am moving the adoption of this Report, I took no part in the deliberations of the Committee, and, in fact, the only share I had in the preparation of the Report was to assist in the revision of the final draft.

I am therefore in the happy position that I run no risk of being charged with self praise or glorification if I tender, as I most sincerely wish to do, my congratulations to the members of that committee on the spirit of reasonableness and compromise which characterized their deliberations and which resulted in a unanimous report. That, if I may say so, is an outstanding achievement which calls for the approbation of the whole community, and is, I feel sure, an augury—and a happy augury—of more harmonious relations in the Council in future.

To turn to the Report. You, Sir, in presenting the Report of the Committee on the Draft Estimates of Expenditure for 1937, disclosed that the Committee after examination had arrived at the conclusion that, on the basis of collection laid down in the printed Draft Estimates, there would be an excess of revenue over expenditure of approximately £100,000. Actually, in the Schedule to this Report, the increase in estimated revenue amounts only to £5,989, bringing the total estimates of revenue up to £9,432,911. It will be observed, however, from the last two columns of the schedule that there have been marked changes in the estimates of the items under the various heads of revenue, and it is in these changes that the interest of the Report really lies.

As hon. members are aware, Government has announced its intention to accept as far as possible the recommendations of Sir Alan Pim. It was in the light of his report that Government prepared the Draft Estimates for presentation to this Council, and it has been with the desire to comply as far as possible with Sir Alan Pim's recommendations that the Standing Finance Committee has reached unanimity in the recommendations now embodied in the Report before Council.

When it was appreciated that there would be a substantial surplus of revenue over expenditure on the basis of collection envisaged in the printed Draft Estimates, the Committee considered how far this surplus might be used for remission of taxation generally in conformity, as far as possible, with the fiscal structure recommended by Sir Alan Pim. The results of these deliberations may be seen in the fourth paragraph of the Report. Reductions of taxation amounting to £94,500 under various heads have been recommended. The ratio of remissions in these proposals was accepted unanimously by the Committee as an equitable one, and has also received the approval of the Secretary of State.

I will now turn to the various heads of revenue, and deal very briefly with the alterations shown.

The increase of £70,000 in anticipated Customs revenue for 1937 is a very marked one, and the prophecy made by Elected Members during the debate on the Estimates that this estimate was capable of inflation has been realized. The Elected Members are entitled to full credit for that prophecy. The change of circumstances since the estimate was originally framed is fully explained in the Report.

The advance in Customs receipts during the past six months has been phenomenal, and, what is of even greater importance, has been sustained. An estimate which a few months ago would have been dangerous and inflated can now be accepted as a reasonably conservative one. Subject to influences outside our control, such as climatic conditions, invasions by locusts, and international upheavals which might affect this country, the Committee were satisfied that this estimate should be realized.

It will be noted from the Report that, in view of the surplus anticipated by the Committee, it was found possible to effect one of the two recommendations made by Sir Alan Din in regard to native taxation. This is reflected in the reduction of the estimated yield under Item 11, Hut and Poll Tax (Native) by £25,000. This recommendation has been debated recently in this Council, and there would be no object in my going over the matter again in this connection, but I should like to refer for one moment to paragraph 6 of the Report in which the official members of the Committee asked for an assurance that it was not Government's policy progressively to increase native services in such a way as to necessitate the imposition of increased direct taxation on the non-native communities.

As I have already stated, I was not one of the official members referred to in the Report as recognizing the equity of the attitude of Elected Members in this matter, but I should like to take this opportunity of associating myself with them, and I am authorized by Your Excellency to say that representations have already been made to the Secretary of State thereon.

While on the subject of native taxation, may I say it is hoped that the action of Government in raising the age of taxation from 16 to 18 will be met by a more helpful spirit on the part of the native in meeting his obligations than has been obvious during the last two or three years.

The grounds for the reduction of £12,000 under Head II, Item 12, Non-Native Poll Tax, have been explained in the preamble to the Report, and formed the subject of a recent

debate in this Council; so that hon. members are by now fully conversant with the details, and I feel that further comment at this stage would be superfluous.

As regards the reduction of £40,000 under Item 13 of the same head, Income Tax, I also feel, in view of the debate which has just been concluded, that there is little that I could usefully add on the subject, and that I should be flogging a dead horse if I attempted to do so. I should, however, state that Your Excellency proposes to appoint a small committee to assist the Attorney General in framing a new Income Tax Bill to give effect to the Committee's recommendation that the yield from the tax should be reduced by £40,000 to £43,500.

The reduction of £2,500 under Item 16 of the same head, Traders and Professional Licences, has also formed the subject of a recent debate in this Council, and calls for no further reference by me.

Similarly, in regard to the reduction of 8 cents in the Petrol Consumption Tax, there is only one small matter to which I wish to refer.

In my speech on Wednesday last I explained that, owing to the difficulty of providing for a reduction of a half cent, it was not possible to amend the Ordinance to arrive at an exact reduction of £15,000, and that the reduction in rate of 8 cents was estimated to reduce the return from the tax by £16,500. In view, however, of the probability that the reduced price will stimulate consumption, the estimate of £53,000 appearing under Head II, Item 17, has been allowed to stand.

The next item to which I feel further attention should be drawn is under Head IV, Item 1, Sale of Stamps. The apparent reduction at this item is only £1,000. The actual loss in revenue, however, resulting from the revised internal postal charges is in excess of £6,000. The estimate contained in the printed Draft Estimates of Revenue was based on figures available to the Postmaster General during the middle part of 1936. Owing to a marked improvement in the sale of stamps over the latter half of the year, when the Postmaster General appeared before the Standing Finance Committee he stated that he would be able to increase his estimate by £5,000. The reduction of £6,000 on the revised estimates actually resulted therefore in a reduction of only £1,000 on the printed Estimates. At the same time, I would stress the fact that the public has gained to the extent of over £6,000.

Under Head V, Item 4, Mombasa Water Supply, hon. members will note that consideration will be given to a reduction in rates in that town. The Committee accepted the

view that a reduction of this amount would be equitable, but, at the same time, they did not feel that it was within their province to allocate the incidence to the various classes of water users concerned.

The remainder of the alterations in these Estimates are of a petty nature, and do not appear to call for any further comment than that already made in the Report itself.

THE HON. THE TREASURER seconded.

The debate was adjourned.

Council adjourned till 9 a.m. on Tuesday,
the 5th January, 1937.

TUESDAY, 5th JANUARY, 1937

Council assembled at the Memorial Hall, Nairobi, at 9 a.m. on Tuesday, the 5th January, 1937, His Excellency THE ACTING GOVERNOR (A. DE V. WADE, C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 4th January, 1937, were confirmed.

MOTIONS.

REPORT OF STANDING FINANCE COMMITTEE, PART II, 1937 ESTIMATES.

THE HON. THE ACTING COLONIAL SECRETARY having moved:

"That the Report of the Standing Finance Committee on the Draft Estimates of Expenditure and Revenue for the year 1937, Part II, be adopted."

THE HON. THE TREASURER having seconded.

The debate having been adjourned.

The debate was resumed.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, I rise to support the motion before the House, and I do it because I believe the proposals contained in the Report are in the best interests of the country under the circumstances under which we framed that Report.

If I may just go briefly back over recent history, you will remember, Sir, that some few months ago we on this side of the House said we considered Government were under-estimating the recovery on the revenue side of the country. We said that in view of the revised estimates for 1936, which were before us, Government had not taken into consideration sufficiently the swing of the pendulum in the right direction, which was bound to make a vast improvement in the revenue for 1937.

You have been generous enough to admit that on this occasion, at any rate, we were right and Government was wrong. I do not want to say any more about that except to ask one question which, perhaps, the hon. the Treasurer might be able to give us some information about in the course of this debate: can he, now the year has closed, give us the

most recent revised estimates of the surplus for 1936? I know that Government cannot get their final figures until the end of February or beginning of March, but it is quite possible he may be able to give us an approximate figure which, in fact, is very important from the point of view of the surplus balance of the Colony.

Everybody knows that when we went into the Standing Finance Committee we went, with the greatest care and thoroughness, into every single item on the revenue side to see whether the estimate was correct or not, and we heard the evidence of those best qualified to speak, and we unanimously came to the conclusion that those estimates could be increased by £100,000 on the original estimates.

I should, if I may take this opportunity, pay a tribute, if it is not impertinence, to you, Sir, as chairman of the committee and all other members of the committee for the very genuine spirit of goodwill and co-operation which they displayed all through our deliberations. (Hear, hear.)

Having found the extra £100,000, everything seemed so simple: all we had to do was to put a pencil through that line "Income tax, £83,500" and the trick was done, and the surplus for the year would be larger and everybody would be happy. But there was one snag, and I think it only right that I should put it before Council.

If that pencil had been put through that line, the non-native community would have been better off, as far as taxation was concerned, in 1937, than what they were in 1936, by some £80,000 or £90,000, while the native community would have had no benefit whatsoever.

That is the point which I think must appeal to any fair-minded person. All communities have contributed towards the recovery of the country, and the native community has undoubtedly contributed in the way of increased development, resulting in increased imports and so on. So I think one must say that they deserve some consideration.

So far as we on this side of the House were concerned, some time before we had sent a memorandum through the Governor to the Secretary of State, urging that this question of income tax should be left over for a short time, and should be referred to a conference of all these territories which comprise the economic unit of East Africa. I think everybody must agree that if you take several territories forming one economic unit, the general basis of their fiscal policy should be on the same lines. I do not think anybody can dispute that that is a sound, commonsense point of view.

I do regret very much that the Secretary of State turned down that proposal and would not allow that procedure to take place. (Hear, hear.) If that had been done, I think we could have avoided any difficulties and controversy which are likely to take place.

The next thing that happened was that the Secretary of State gave instructions to Government that they were to implement the whole of the Pim Report so far as they possibly could. Government have also announced that it is their policy to implement that Report as far as possible. We on our side, in a document which we published in the Press over my signature on behalf of the European elected members, raised an objection to any piecemeal implementation of the Pim Report, so from all points of view it has been agreed that that report should be implemented as far as possible.

If the Secretary of State's views had been carried out wholly, it meant a decrease in native taxation of about £60,000 to £70,000, while in fact their services were being increased and the burden of that amount would fall on the shoulders of the other communities and we should necessitate a high rate of taxation.

If I may just make one little hit against Government, I submit that all this trouble would have been avoided if what we wanted done in the first place had been done and Sir Alan Pim had not been asked to make any report on the question of taxation. (Hear, hear.) That, Sir, has been at the bottom of all this trouble. I will not say any more about that, but I want to make that point clear: that even Government must recognise that their position would have been better if they had done as we wanted instead of what was done.

If the Secretary of State's proposals had been carried out in full, it meant that we would have had the full rate of income tax in this country, and we made it clear to you, Sir, as chairman of the committee that that was something to which we could not possibly agree.

It has been said that the Secretary of State has detailed to this Government and has not allowed them to have any say in the matter. There is a certain amount of truth in that, but it is not the whole truth. When we on this side of the House put up our objections to these proposals, Government immediately admitted that there was great justice on our side. They said our point was reasonable and equitable, and as a result you, Sir, suggested that perhaps we could find a *via media*. You put up certain proposals and we unofficially on this side of the House had to consider those proposals. We had to consider them very carefully, very deeply, and very earnestly.

The result of that was that we came to an agreement on the lines which now appear in this Report.

As far as we are concerned, we made two stipulations. One was, that the Secretary of State should instruct the new Governor to go thoroughly into the question of the reconstitution of Executive Council in such a way as to more closely associate the unofficial communities with the government of the country and with the responsibilities thereof. The other condition was that we should have some assurance that the policy of increasing native services, reducing native taxation, and putting the burden for these services on the shoulders of the non-native community, was not the policy of the Government and was not intended to be carried out in the future.

As a result of these negotiations and that agreement, the Government of Kenya sent a despatch back to the Secretary of State pointing out the lines on which an agreement could be come to and the point of view of the elected members with regard to it. The answer came back from the Secretary of State that he had already given instructions to the new Governor to go into the question of the constitutional reform. Actually, the day after we handed in our despatch, it appeared in the Press that the Secretary of State had made that statement publicly at a luncheon in London when the new Governor sat alongside of him, so that there is no question on that point.

On the other point his answer was a little bit indefinite, and some people may say it does not mean anything. But so as to get that question quite clear and knowing that the Kenya Government recognised the fairness and justice of our demands, I brought up the question with my colleagues in the meetings of the Standing Finance Committee, and I should just like to read once more on this point the relevant part of the Report. It is contained in paragraph 6 on page 2—

"The Elected Members asked that they should be given an assurance that it was not Government's policy progressively to increase native services in such a way as to necessitate the imposition of increased direct taxation on the non-native communities. The official members recognised the equity of this attitude and the Colonial Secretary undertook to recommend its acceptance to Government. At the same time he pointed out that though under the proposals in this Report the expenditure allocated to native services in 1937 would considerably exceed that available under the Moyne formula, at the same time these proposals had not resulted in any net increase in taxation on the non-native communities, but in fact a net decrease of approximately £37,000, not including postal reductions."

Following that up, we had a confirming statement from the hon. the Colonial Secretary yesterday saying that you, Sir, as Acting Governor had supported our views and had sent a further despatch home. So that I submit that on that point we have now got in black and white that the Government of Kenya agree with our view and, if the Secretary of State should next year try to over-rule that, I suggest we have anyhow a united opinion between official and unofficial sides in this country. (Hear, hear.)

In coming to our decision to accept this agreement, we had to consider whether, in doing so, we were contravening any principle which we, as representatives of the elected members, had stood for in the recent past. I have gone through very carefully the various memoranda which we have issued during recent times, and I find that there is nothing in those memoranda which we have gone against in any way whatsoever.

There is one point in which we have failed, and that is that income tax is going to be imposed in Kenya for 1937 and not in the neighbouring territories. We did not make that condition, but we did stress it very hard that it was not a fair and equitable thing to be done. That has not been done for this year, but I understand the Secretary of State will probably instruct those neighbouring Governments to take up the question with a view to the tax being brought in in 1938.

I do suggest that the fact that the income tax which will be imposed in Kenya during this year will be of such a slight nature, it will be very much easier for the neighbouring territories to adopt similar proposals.

To come to this question of income tax.

I should like to remind this House that in a document which was published in this country over my signature as representing the views of the elected members, the following sentence appears:—

"European elected members as a body are not opposed in principle to income tax."

That was published after full consideration by the whole body of elected members. I should like to say there were two or three who did not agree with that but, as a body, that is to say the big majority, that was their view, and so if anybody says we are selling the pass and going back on anything we have said before by agreeing to a light form of income tax, I say that is not true.

My own point of view on income tax is this. I have always thought that in a young, developing country, the longer

you can delay income tax the better. I believe that anything which is likely to encourage capital to come here to help on the development is an advantage to a young country. And I believe that we have not yet reached the stage when an income tax is really a necessary or best form of taxation for the country.

I listened very carefully to the debate during the last two days and, in my opinion, I do not think Government put up a case as to why it was necessary to have income tax and, on the other hand, the other side put up no case which convinced me that if income tax on a light basis were imposed it would do any real damage to the country.

You all know that one of my colleagues on the Standing Finance Committee has always been a bitter opponent of income tax, and felt much stronger on it than I have. In fact, I think one of the cases quoted as a reason for income tax, the Electric Light Co., and the rich lawyer Capt. Schwartz were the chief arguments people used for imposing the tax. (Laughter.) I do say that if a man holding the strong views he always has on this question has agreed to sign this Report, he must have been influenced by very strong reasons which convinced him that it was for the good of the country.

May I just go back a little bit over history?

In 1932 I was sitting on the Expenditure Advisory Committee. At that time we did all we could to reduce expenditure and to bring it back to an amount which country could stand. At the same time, it was evident to us that, even so, it would not make both ends meet, and that some increase of taxation would be necessary. Government's proposal then was income tax. I personally opposed that, and was sent home on behalf of the unofficial community to put the case to the Secretary of State against an income tax.

When I got home, on my first interview with the Secretary of State, I had to spend about two days smoothing his ruffled feathers, because my friend the hon. and gallant member for the Coast, had told him a few months previously that he knew nothing about economics at all. That did make my case a little bit more difficult! (Laughter.)

Having eventually got his feathers nicely smoothed, we got down to the question of this tax, and it was agreed, as has been quoted, he agreed, that if there were other methods of finding the necessary money the views of the people concerned should be respected. That, Sir, was the origin of the temporary taxes which were imposed in 1933.

I say here and now, we were absolutely right in the attitude we took up. If we had had income tax imposed in 1933 it would have been a tax of a very much more onerous nature than the one we are going to have in 1937.

In the meantime, these temporary taxes served their purpose and enabled Government to put their house in order until the tide turned and revenue is now flowing in better.

Under these proposals to-day, all these temporary taxes disappear, and further reduction in taxation over and above that is going to take place. I say that we were absolutely right in the attitude we took up.

If we are to follow Sir Alan Pim very closely, and he has been quoted to show that we must do things we do not particularly want to do, I should like to quote what he does say about income tax. He talks of the poll tax, and goes on:

"With this minimum it should be possible to frame a scale of taxation so moderate as compared with the corresponding taxes in other countries as would meet the fear which has been repeatedly expressed that the imposition of an income tax would discourage the import of the fresh capital which is so badly needed. A continuance of the present uncertainty would indeed be more likely to have that effect than the placing of the system of taxation on a logical and permanent basis by the imposition of an income tax."

It is quite clear that Sir Alan Pim intended an income tax here to be on a very light scale and not more onerous than in the neighbouring territories, and the nearest neighbouring territories which have income tax are the two Rhodesias; and it is proposed now that this income tax should be framed on similar lines.

In my opinion, Sir, when this income tax is framed, it is essential it must be as simple as possible, it must give as generous allowances as possible, it must not bear hardly on the farming community and it must be so arranged as not to penalise companies investing money here in that they should not be in danger of double taxation of anything of the sort.

I do not mean to go into the proposals in detail, but it is important that the framing of this Bill should be done on the simplest lines and in the least harmful way that is possible.

There is one point I want to make here.

If, as some of us believe, sooner or later income tax has got to be imposed on this country—and I do not think it is really any good arguing that we can keep quite unique in the

world and that everybody else is wrong, it is somehow or other inevitable that we shall have the tax, especially if such enterprises as mining and so on are to be developed—there is a tremendous difference if that income tax is imposed at a time when revenue is buoyant or one is in the midst of a depression. In the latter case, it is quite obvious our local Chancellor of the Exchequer, in other words the Treasurer, will press for an income tax which will extract as much money as possible for the Treasury without actually damaging the country. On the other hand, when revenue is buoyant, an income tax is imposed, not so much with the view of extracting as much money as possible, but on the fairest and most equitable basis which can possibly be devised and in such a way as to do the least damage to the country.

There is, however, a very big difference in these cases, and that is one reason why I was prepared to agree to these proposals we have to-day. If we are to have income tax on the basis suggested, the lines of the Rhodesias' income tax, I cannot see why it should be more harmful here than it has been in the Rhodesias. I have met many Rhodesian friends and I have never heard any of them put forward the view that their countries have been seriously damaged by the tax. Actually, of course, they get so much from the mines, railways, and so on.

I personally believe that if a really light income tax were in force in this country it would not do any damage either to the country at large or to individuals. I do not believe it will discourage people from coming here or that it will prevent money being invested. A heavy income tax, I suggest, would do great damage, and I think it is all important that an income tax should be kept on the very lightest basis. In support of that, I was reading a document the other day written for the purpose of encouraging people to go and settle in Southern Rhodesia and, in the foreword, Mr. Higgins, the Prime Minister, said:—

"The light rate of their tax is a definite inducement to people to come and settle there."

There is a danger of what has been described as the tap being turned on. There is the danger we have seen it in England, where income tax, which I think started originally at 2d in the £, went to 3d, came back to a penny, to-day is 4d and was once Sh. 6. There is no question that it is a danger. But there is a danger, of course, of other taxes being put up similarly.

What is the best way we can safeguard against that danger? I suggest, Sir, it is if the people of the country can be more closely associated with the responsibilities of Government. (Hear, hear.) That is a proposal which is going to be considered after the arrival of the new Governor. I suggest that is the way in which we shall be best able to protect the interests of the people of this country should Government at any time want to turn the tap on.

At the same time, there should be something in the Bill which retains the right of this Council to watch over the actual rates and incidences which may be proposed. On that subject again, I should like to quote Southern Rhodesia which went through a very bad economic period a few years ago and had to make drastic economies. They had to alter their income tax to this extent. Before that, a married couple were exempt for the first £1,000 of their income and that was reduced to £600; similarly, a bachelor was reduced from £700 to £500. But that was the only alteration, the actual rate was not put up, the exemptions were reduced.

As Northern Rhodesia is a Crown colony under the same system of government as ourselves, we have a precedent there where, at any rate, the tap was not turned on too severely. But it is a danger, and I recognise that, and I recognise it is a duty of those of us who represent the unofficial community in this Council to guard against it.

I have given reasons why I do not think a light form of income tax, though I wish it could have been postponed further, will be any serious detriment to the country, and so we may now consider the other proposals.

We on this side of the House have been urging for some years that all these emergency temporary taxes put on in 1933 should disappear. The special ones left were the graduated poll tax and the trades and professional licences. The graduated poll tax does, of course, disappear completely. We have in this House wiped it out, and the trades and professional licences are to go back to the basis on which they were before the extra taxes were imposed. In addition, the education tax disappears except that it is incorporated now in the poll tax, with the result that while Europeans previously paid Sh. 30 poll tax and Sh. 30 education tax, and Indians Sh. 30 and Sh. 20 respectively, the education tax disappears and the poll tax will be Sh. 40 for Europeans and Sh. 30 for Indians. In other words, everybody who is liable for that tax and no other tax will be better off by Sh. 20 a year and that, I submit, is a very great benefit to the poorer part of the community in this country, of both races.

There was one little point about the education tax. It was stated that it was temporary. That is not strictly accurate. We agreed that both the non-native races, European and Asian, should contribute a certain amount over and above the ordinary taxation for the purpose of developing education. What was temporary was the method of doing so. We tried to find an equitable method and failed, and we therefore put on a form of poll tax. At the time it was done it was agreed that it should only be a temporary method and that a better method should be found. Actually, we have not found a better method, and I am very glad it disappears off the revenue items altogether.

Petrol will be 10 cents a gallon cheaper to all users, and I submit that is a real help to the people of the country. It may not be of such great advantage to people who live in Nairobi where it is only a matter of house to office and office to golf club and back to the house again, but it is a very real benefit to the people who live up-country and have to travel long distances on their business. So I welcome the proposal, and hope it may go even further as the revenue improves and that we may get further reductions.

Postal rates have been put back to where they were before the increase in 1931, and in that way a benefit is given to the people of £6,000.

I want to put before Council the actual figures of what reductions have been made, and I think I am correct in them:

Poll tax is reduced by £29,000; education tax by £24,000; petrol tax by £15,000; trades licences by £12,500; posts by £600; which makes a total of £86,500. On the other side of the picture income tax is estimated to bring in £43,500, so the result is that the non-native communities as the outcome of this budget will be £43,000 better off so far as taxation is concerned in 1937 than they were in 1936. But actually, if the Treasurer is correct in his estimates, £20,000 of that from non-residents who are not contributing anything at present. I think the hon. the Attorney General was incorrect in his figures yesterday, but I believe £20,000 is the correct figure. If you take that £20,000 off you will then find that the gain to the non-native communities as a whole will be £63,000 in 1937 as compared with 1936.

There is this question of the native age. I do not think it is any good burking the point that this Council, on the advice of the senior Government officials, agreed that there was no hardship in the native being taxed at the age of 16. At the same time, it was agreed that some relief should be given the natives, and it did seem that perhaps the best way

was to bring them into line with other territories, and, to get rid of these constant attacks made on the Government here by outside people on this age question, the best thing to do was to raise the age limit as a relief to the native people.

I said earlier in my speech that the Secretary of State had completely over-ruled this Government. That is not true. Government stood up against the Secretary of State when it demanded that the whole of the taxation should be reduced and put up what they thought was a fair and equitable plan, and the Secretary of State agreed with them that that should be accepted on condition that this further proposal of Sir Alan Pim should be considered during the coming year. It is not therefore entirely true to say that the local Government was altogether over-ruled.

If you take that £63,000 and the £25,000 to natives, and the £47,000 in the abolition of the levy on salaries, you find that there will be £135,000 less money extracted from the peoples of the country this year than last year. I suggest that is no mean achievement to have been brought about in this country. (Appl'ause.) I say further, it could not have been brought about except by co-operation between both sides of this Council. (Hear, hear.)

Let us consider what that means. That means £135,000 more money to circulate in this country this year than last year, which will have a very big effect on the revenues in every respect, and I do submit that, as has often been said before, this is the greatest benefit a country could have, as light taxation as is possible, and when you have decided to reduce taxation and at the same time provide proper services, I submit that Kenya has weathered the financial storm very well and can be proud to have come out with such satisfactory figures.

We on that committee, as I said before, had a very serious problem to face. We had to consider what line of action we were to take, and there were two alternatives before us. One was to do as we have done, accept this agreement; the other alternative was to say, "No, we will have nothing to do with it; we are going to the country, and we are going to fight on this subject of income tax."

Of course, we would not be quite so stupid as to say we would fight on the subject of income tax, but that we were going to fight on the constitutional question, that the Secretary of State had over-ruled everything we said and insisted upon putting himself in the teeth of the opposition of everybody in the country, and of the Government of the country as well.

What would have happened had we done that? I have no doubt we could have gone around the country and got

unanimous resolutions passed condemning the Secretary of State, to be hung, drawn and quartered, and then the farmers would have gone back to plough their land, milk their cows, and we would have gone on just as before, with this exception; that instead of getting a reasonably light unburdensome income tax which is now proposed, coupled with very considerable reductions in other directions, we should have had the full, onerous income tax imposed on us; we should have had the whole of the native taxation reduced as was suggested in the Pin Report, and the country would have been in a very much worse position.

Apart from that, we would have continued the controversy, bitter and fierce, between the two sections of the European community in this country, we should have antagonised the Secretary of State, and have had a new governor coming out to find us at each other's throats in a state of strife and ill-will.

What is the other side of the picture? By accepting these proposals, I hope and trust that we have come to the final chapter in this bitter controversy which has been going on over this economic and financial question during these recent years. I trust, Sir, that it will be the beginning of an era of real goodwill and co-operation between all sections of the community, and I trust that when this new Governor comes here he will find the country progressing favourably on the economic line, politically everybody working together with one main object in view: the economic development of the country and the best interests of all the communities occupying it, and all working with goodwill, confidence and agreement so as to prove that this great country of ours is what all believe it to be— one of the finest parts of the British Empire and well worth working for and serving. (Applause.)

THE HON. A. C. HOBY: Your Excellency, in supporting the motion before the House I feel I have not a great deal to say, because many of the things I wanted to say have just been said by the Noble Lord; the hon. member for Rift Valley. I wish to associate myself entirely with many of the most excellent points he has just made in his speech.

In supporting the motion before the House one has to consider the criticisms which have been levied against this so-called compromise. Of course, the compromise would have been criticised, and no one minds criticism, but I believe these criticisms which have been flushed out by the Press are nothing more or less than the opinions of a lot of die-hards who, no matter what bargain you have made with Government for dealing with different problems, would damn it to the hilt so long as it contained the principle of income tax.

I wish to take my share of responsibility in this, because this has been a matter of very deep and serious consideration to us all in endeavouring to get a final settlement. When I say I wish to take my share of the responsibility I do so with no sense of apology whatever. I do so because I am pleased and proud to think that one has been able to give some assistance towards finding a solution of what has been the most controversial question ever faced and which still faces this Colony, and I believe our action over this is right, because the time has come when it is quite impossible that we can go on fighting and fighting and merely make this a very unhappy country.

Over this compromise or bargain there were two vital points. First of all, the question of examining the constitution of the Executive Council in order to bring the unofficial community into closer relationship with the Government of the Colony. Secondly, an important point, the question of the native services in relation to the non-native taxation.

Those two points have been very carefully dealt with by the Noble Lord, and I would join with him when I say that it was a matter of the greatest satisfaction to see that the Secretary of State has made a definite announcement on the first important point in London. For anyone to tell me that that means nothing, it is complete nonsense to put forward such an opinion, because I believe the Secretary of State is genuine over this.

I am not one who imagines that the local Government and the Secretary of State are completely dishonest over this. Why should one? I believe that with the passage of time and with a new Governor early steps will be taken to deal with these two very big questions. I was delighted yesterday when I heard the hon. the Colonial Secretary reaffirm the opinion of Government on this vexed question of native services versus non-native taxation.

I believe that when the terms of this bargain are fully implemented they will be welcomed by the whole country, and I believe that if they are implemented to the fullest degree, which I am perfectly certain they will be, it will mean once and for all we are really going to get together and work for the benefit of the country and open the door to the consideration of many economic problems that face us to-day. What we want is economic advancement.

I know the unofficial members of the Standing Finance Committee will be severely criticised, and I think it is quite unfair that some of us should sit back and not come out and say we were behind them and that we back our unofficial

members of that committee. I do think that when one reads through this Report very carefully they will see that a great deal has been achieved, and I am quite certain that when the full effects of this are given to the public we shall have done something towards the real advancement of the country.

And that is what matters! (Applause.)

Lt.-COL. THE HON. J. G. KIRKWOOD: Your Excellency, I get up rather reluctantly this morning, because I feel some-thing like I did after the battle of Loos, when I was carried out rather badly damaged and bruised, and, naturally, I was not feeling 100 per cent.

Your Excellency will probably remember the different speeches I have made in this House, that while not objecting to income tax *per se* I have objected to it in this Colony as not being capable of being equitably applied in a Crown colony with mixed races.

I do not intend to go into detail, but that was the general line I have always taken as regards income tax, and I had hoped that when we were forced to accept it we would get *equit pro quo* for its acceptance in a measure of control which we do not possess in Kenya to-day.

I would ask the committee that will no doubt be appointed to go into this Bill before it is presented to Council, to consider relief being granted to agricultural interests: say for 5 years. There are a lot of unfortunate people who, although they have no income, will have to find an income somewhere to prove they have not got it. That is unquestionable, whether on the basic tax of Sh. 40 or 30, they have either got to borrow it or find it somewhere. That, again, is not an equitable tax if it is based on the principle of income tax and ability to pay.

I should also like to ask the committee to try and use their best endeavours with Government, and I would also ask the assistance of Government, that when this Bill finally passes through Council it will contain a clause so that the hon. gentlemen sitting opposite me will have a statutory free vote if it should be at any time proposed to alter the rate of the tax. I think that is a fair request, and I think it is a request which should be granted.

It seems so stupid to me to have heads of Departments in the Council—we differ at times with them but we one and all have the greatest respect for them, for if we differ in politics we do not differ as regards ability in an individual—on this Council without a free vote, and I do hope the Secretary of State, when that request is made, will seriously consider it and grant it.

I am not going into great detail, but I would like to refer to the items mentioned by the Noble Lord, that it would not have been fair not to reduce taxation on the native side seeing that some £80,000 or £90,000 in taxes were being saved on the non-native side. I would point out, criticising that statement, that I think he is inaccurate. It is faking the balance sheet, seeing that any remission of taxation to non-natives is remission of the temporary taxes in part which were put on in 1933 to help Government balance their budget and give them time to eventually balance it by reducing the administration costs.

I do not quite understand the meaning of paragraph 6 in this Part II Report, where it states:—

At the same time he pointed out that though under the proposals in this Report the expenditure allocated to native services in 1937 would considerably exceed that available under the Moyne formula, at the same time these proposals had not resulted in any net increase in taxation on the non-native communities, but in fact a net decrease of approximately £37,000, not including postal reductions.

No doubt the hon. mover may be able to throw some light on these two statements.

I feel, Your Excellency, that I have lost a long and sustained fight. I started off some years ago on the right ground, that is, while not opposing income tax as a tax I considered that we should have adequate control of the finances before that tax was put on the statute book. There were others on this side of the House who opposed it tooth and nail *per se*, and I felt rather flattered that quite recently I concluded we were winning out on my view and that they had given up opposition to the tax as a tax.

I have failed, and it is to be imposed, because notwithstanding the excellent speech of the Noble Lord, with everything of which I agree, if I could believe as he that this document—which contains the extract from the despatch of the Secretary of State issued by him in answer to the telegram, the last indication sent him on this subject—if I could believe that this document contained something substantial and that it will be implemented I could go home very happily to-day.

I would like to say, before sitting down, that notwithstanding whether it is good or bad legislation, I think it is a good thing on general lines that it is now out of the way. I think it would have been a catastrophe had this income tax question not been settled one way or the other—it has been a most controversial subject for a period of years in this Colony—before the arrival of the new Governor.

I hope that now it is out of the way, whether we agree with it or whether we do not, that provided the rate is a reasonable one and that no arbitrary powers are taken to alter the rate, we will all be able to co-operate and make the new Governor more happy, the country more prosperous, and get more co-operation in this Colony than we have had during the past few years.

THE HON. F. A. BEMISTER: Your Excellency, it must be very flattering and gratifying to everybody here to view the delightful atmosphere of congratulation and amity which is existing between all Your Excellency's councillors. In fact, it reminds me of the little compliment paid to the little lady of Higei, and I can certainly see to-day a smile on the face of the tiger!

It would appear to me that the whole of our difficulties related in this paragraph 4 and now accepted by the Secretary of State, arise from a misapprehension of the position of your councillors, a misapprehension of their functions, and the very design of these benches aggravates that misapprehension.

I take it that we are all here lawfully endeavouring to advise you, Sir, as to what the people of the country think would be best for their general economic welfare, but I see in this document a line which says:

exercised so damaging an influence on the economic conditions of the country.

In this I see an attempt to bring finality to political strife.

There is no political strife in this country. We have no political rights, therefore there cannot be political strife. Supposing a man had two sons, and the one he put in charge of the finances of his business and the other in charge of sales and manufacture, and the manufacturing man thought of every difficulty and tried to improve the business, and the financial man tried to waste the money, while the father at the top, like the Secretary of State, was always trying to get the two together. Would you say that there was strife?

Those two people are there working the whole machine. If you do not listen and attend and take into account our advice which is given to what we believe the best of our intelligence, that is your business. You are responsible in the end to the Secretary of State. If we give you advice we give it because we are in closer touch with the people of the country, and our intention is to tell you what they really believe.

In the past years we have had intense extravagance, and we have had a governor who, within the first three months of his arrival here, reduced that extravagance without any assis-

tance from anybody outside by £140,000. He recognised on his arrival that that extravagance was not a necessity, and the European population all the way through have been endeavouring to increase that endeavour for economies. They have been partially successful and, to a great measure, have brought Government expenditure down to reasonable limits.

But I do slightly disagree with the Noble Lord that it could even be suggested that the economic position of this country has been altered by the reduction of that expenditure, the economic position of this country has been altered by the rise in prices and the lack of disaster and the lack of pests in the last 12 months, and it is overtaking the expenditure to a large degree not to say that £135,000 is being brought back to the taxpayers by reasons of economies, etc.

It is nothing of the kind. The expenditure side of the balance sheet was increased by the Standing Finance Committee, the expenditure was increased, but the revenue is estimated on the basis of the exports and the prices of the exports. On the one side you have people working in the country raising money through exports which reflects back in the taxation on the imports, but the Standing Finance Committee increased the expenditure which I opposed some time ago.

I say that this suggestion of finality to what is called the vexed question was quite wrong. The principle cannot be compromised on. The Noble Lord said that Mr. Huggins advertised what a grand country one of the Rhodesias was because they had a small income tax. Does it not also follow that if it was his boast it was small, how much better it would have been if he said there was none? The thing follows from his own argument.

But I want to emphasise one point, that I think I am in disagreement with some of my colleagues. I do not believe that income tax or any tax stops capital coming into any country. When capital comes to a country the individuals using that capital find if they are getting a fair return on their investment, taking into consideration all the difficulties, and nothing will stop it.

There will never be any finality to what is called a vexed question, but it is only a vexed question simply because people have had an idea that they are politicians and were in permanent opposition to Government, which is nothing of the kind. The question remains and so long as the representatives of the people take their cue from the people I can assure you that this question of direct taxation of any kind will be pressed on you all day and every day until some form of control of the spending of the money is placed in the hands of the taxpayers.

Dr. The Hon. C. J. Wilson: Your Excellency, I only wish to speak on one question which arises from this Report. It is a question which has been arising for discussion ever since the budget was first introduced, and that question is the Moyno formula: whether or not it can be applied, and should be applied, in present circumstances.

The Moyno formula has been mentioned repeatedly throughout the course of the session, but there has never been a proper opportunity of discussing it until now. It was mentioned in the first part of the Report of the Standing Finance Committee which dealt with expenditure, but since the formula is in the form of an equation, with revenue on the one side and expenditure on the other, any previous discussion would have been cramped by being confined to one side of the equation and, strictly speaking, I shall only be in order if I confined myself to the references to the Moyno formula in the second part of the Standing Finance Committee's Report. But I submit it is quite impossible to give proper consideration to such a subject if one is confined to one part or the other of this very unaturally divided Report.

In any case, whether in order or not, I wish to refer to the references in the first part of the Report! (Laughter.)

The first reference is in paragraph 146 of Part I:

"146. With reference to the above item the Committee viewed with some apprehension the continued rise of Direct Expenditure on Native Services in excess of the Moyno Formula. Although the excess in 1937 would act as a set-off to deficiencies in previous years, it was appreciated that this excess would become an annual recurrent one. The Committee did not doubt the desirability of insisting on efficient native medical services, but recommended that early steps should be taken to investigate means of obtaining increased direct native contributions, either by means of individual hospital fees or lump-sum grants-in-aid from native funds."

It is perhaps fortunate for the sake of my argument that this statement happens to be made in connection with the preceding item which contained provision for the appointment of two medical officers in the place of two district surgeons. It can be shown, it is obvious from that, that the apprehension which the committee was said to have felt at this stage was due in some part at least to misapprehension over this particular item, because these two medical officers are being appointed to do the same work as the district surgeons whom they are replacing.

Provision for these medical officers is shown in the Medical Department estimates under the heading "Native Services", whereas provision for the district surgeons was shown under "General Services". It is worth remarking that these two medical officers now shown under Native Services are not to be employed at all in native reserves, but actually are to work in two of the principal towns of the white highlands. I submit that that particular alteration in the estimates or budget cannot be argued as a serious upsetting of the balance in favour of the natives.

That is not my point, because it always has been recognised that it is quite impossible to separate these two items and say "this is entirely for native services and the other is entirely non-native." That has been generally recognised, and no doubt this is not the only item which is shown under native or African services. There are probably others in the Agricultural Department and Education Department estimates which might be included elsewhere.

To my mind, the important point is, that so much emphasis has been laid on the Moyno formula and I notice that it has even been given the honour of capital letters in the first part of the Report, that the formula drops its capitals in the second part. That is the point which, to use the words of the Report, I view with some apprehension.

The references in the second part of the Report on revenue are in paragraph 6, which has been quoted twice already and so I will not repeat it, and paragraph 39, where it is stated:

"39. The Committee discussed the question at length and in reaching their conclusion bore in mind the following considerations:

- (i) That expenditure on native services was on the increase and on the existing basis of taxation had already, in the Expenditure Estimates for 1937, exceeded the Moyno formula by a considerable sum, and that although it was undesirable that this expansion should be unduly retarded, it was necessary that the native should contribute a fair share towards the expenditure on his own betterment."

I submit that those two paragraphs, 6 and 39, if they are allowed to pass without comment are likely to convey an entirely erroneous idea of Government's financial policy.

How can it be suggested that the revenue and expenditure of the Colony can be divided into watertight compartments, this one to be labelled "natives" and the other "non-natives"?

Of course it cannot be done, and we all know perfectly well that it cannot be done. The Colony consists of various races who are mutually inter-dependent and their interests are so— I was going to say hopelessly interwoven, but that is not the right word, hopeful would be better, or inextricably (laughter) interwoven that they cannot be disentangled or separated financially. So one may well argue why such separation and such differentiation was ever suggested by Lord Moyne and how this famous formula ever originated.

It was devised at a time when there were serious doubts as to whether the native was getting a fair return for the money he was paying in taxes. If I may quote from the Moyne Report, in paragraph 69 on page 37 it is stated:—

"The problem is to find some form of guarantee that the vital services of native development which are the main justification for the heavy contribution made by the native to public taxation from his slender means shall not be subject to recurrent cuts."

The Moyne formula was the beginning of an attempt to secure for the native a fair share of the money that he paid in taxes. Every year one half of the total sum paid in direct taxation was to be paid into a native betterment fund. Actually, of course, owing to the necessity of avoiding irregularities from year to year, the amount to be paid every year was to be one half of the average amount collected during the previous six years.

The native betterment fund has never materialized, and the hon. members of this Council know better than I of the difficulties which stood in the way, and presumably still stand. When I say hon. members know better than I, I refer to members who sat on the select committee of the Council to advise how the Moyne proposals should be carried into effect, and apparently they failed to reach an agreement.

I do not want to argue the merits or demerits of the native betterment fund. What I do want to argue is this. Since the Moyne formula was expressly designed as a basis for the establishment of a native betterment fund, and since that native betterment fund has in fact never been established, the formula in itself and by itself is meaningless, is no longer valid. The scheme for which Lord Moyne proposed his formula has never been carried into effect, and never looks like being carried into effect.

If the scheme has been discarded or miscarried, it is not right that the formula should be appealed to year after year in circumstances quite different from those which its author was in fact postulating. The essential part of Lord Moyne's

proposal was the establishment of a native betterment fund, and from that all sorts of consequences were expected to result, in connection with the Local Native Councils and so on.

It is obvious that the fund was to be the basis of what he regarded as a reorganisation of services in native reserves. The fund was the essential feature, and not the exact figure, the proportion of the taxation figure, which was to form the basis of the fund. It was obviously intended to provide the minimum native services, and there was never the slightest intention that there should be a fixed maximum of limit to those services. It is perfectly obvious throughout this Report; and if I may I would quote page 43:—

"The expedient of a native betterment fund is admittedly inconsistent in theory with the unitary system of Colonial government, but I am convinced of the urgent need of a temporary guarantee that the more backward community shall get a fair share from central funds during the present period of unequal racial needs and political representation."

Besides, this figure of 50 per cent was never proposed as a hard and fast percentage for all time, and my last quotation will be from paragraph:—

"The 50 per cent average figure of £279,598 for next year would give a margin of £5,541 over the annual 1931 expenditure. Having regard to the present serious financial difficulties of the Colony, this may be accepted as a reasonable settlement under existing conditions, and such arrangement will give some scope for expansion of services under the control of the native betterment fund."

The very fact that this proposed figure for 1932, admittedly on the moderate side because of the serious financial difficulties, is within £5,000 of the amount to be expended this year is, according to the statement in the Memorandum on Draft Estimates—a calculation which I have been unable to check but which I accept on trust—supposed to "give some scope for the expansion of the services," the very fact that it is so near to the present figure shows how inapplicable the Moyne formula is in existing circumstances.

The fact of the matter is that, in the absence of the native betterment fund, the Moyne formula had better be forgotten. Now-a-days it is the fashion to accept the Report of a financial commissioner in whole or not at all, and what has been called piecemeal implementation I thought was considered not quite the thing, so that if Lord Moyne's Report is not to be accepted as a whole I suggest the formula had better be dropped. As a matter of fact, it is about the only relic which has been preserved.

What has brought the Moyne formula into such prominence just lately is that it happens native taxation is being reduced at a time when non-native direct taxation is being reorganized, and that has led to the suggestion that taxation is being unfairly imposed on the Europeans in order that they may bear some share of the expenditure on native services which it is argued, should properly be borne by the natives themselves.

To my mind, that sort of statement is dreadfully misleading. What are the facts? The need for expenditure on native services is admitted by everyone. The natives, in proportion to their wealth and resources, have been heavily taxed. With all due respect to hon. members who have suggested lately that they are not overtaxed; I say that this statement that the native is heavily taxed has been made again and again by all sorts of people, official and unofficial, by residents in the country, as well as by every visiting commissioner, and the statement has been made again and again in the speeches of hon. members of this Council.

At the same time, impartial observers, of whom Lord Moyne and Sir Alan Phillips are two, have recognised and asserted that the Europeans of Kenya are lightly taxed. In other words, the natives have been paying more than their fair share of the necessary expenses of running this Colony.

Now, at last, we hope that a beginning is going to be made to adjust this burden a little more equitably. The natives are to be relieved of a very small fraction, estimated to be 5 per cent of their direct taxation, while the non-native communities are to be required to pay a total amount in direct taxation of approximately 10 per cent of the total direct native taxation.

In view of the comparative wealth of the two communities, these proposals appear rather grotesquely out of proportion. Yet because Lord Moyne, some years ago, devised a formula with the object of securing to the native a fair and minimum return in services for the taxes which he was paying, because of that bit of past history, it is now being said that income tax—I do not say in this Council but I merely repeat what is said in the country—is being unfairly imposed on Europeans in order to make good the deficit in the balance from letting the native off from paying his share of his own services.

I think that is such a distortion of the true picture that it is rather difficult to know how to set about trying to put things in their proper perspective, and as one must feel rather strongly on the point it would be better for me not to pursue the

subject any more. I will just put forward one suggestion in the hope that it may lead to what I consider a truer picture of the position.

Take the past revenue and the past expenditure of Kenya, and analyse the figures and set them out under two headings—native and European. Of course, it is an impossible task because the country with its revenue and expenditure is one and indivisible, and that is the whole point. But still, carry out the analysis as far as possible:

Take the revenue first, and set down all the money that has been collected in direct and indirect taxes and divide the amounts as fairly as possible, crediting them to native or European. And, incidentally, write down on the native side those colossal sums contributed in customs duties on such necessities and not luxuries as blankets and American, and may I for a moment call attention to the schedule to this Report on revenue? Item 7, cotton yarn and manufactures, and you will see the amended estimate for this year is £151,000 in customs duties. When Lord Moyne made an analysis, or had it made for him, of the proportion paid by natives, Europeans and so on of different sections of customs duties, the percentage paid by natives for blankets and cotton goods and so on, was reckoned at 75 per cent or three-quarters of the total figure of just over £100,000. I suggest that the fact that it has now increased is a great deal due to native purchases, so that considerably over £100,000 will be paid next year in duty on blankets and American.

But, analysing these figures, set out first revenue and then expenditure, set out the whole expenditure, including interest on loans, and allocate as fairly as possible to that section for whom the expenditure was incurred. Then study these figures in the light of the comparative wealth of the two communities, and I suggest there will not be so very much more heard of the white man's burden.

The fundamental mistake is in attempting any such analysis under a racial heading. The only sound principle is to spend money where it is most needed, regardless of race. The natives are the poorest and most backward section of the community, and naturally their appeal is usually the most insistent. It would be a shortsighted policy to ignore that appeal, and I am glad to hear that not one single one of us here has any intention of ignoring that appeal.

It is in the interests of every industry and activity of the Colony that the native should be as healthy and efficient as possible, and I say that there can be no better investment for the revenue of the Colony, drawn from all sections of the

population, and no more profitable investment than in the so-called direct services for the physical and mental development of the native, so that I trust these passages of the Report we are considering to-day are not to be taken as any indication that Government intends these native services shall be starved in compliance with an obsolete or obsolescent formula.

MAJOR THE HON. E. S. GROGAN: Your Excellency, I regret that I was not hear to listen to the speeches of my colleagues, but unfortunately I did not hear the time of adjournment yesterday mentioned from the chair and relied on the *E. A. Standard*, which said that to-day's meeting was at 10 a.m.—(Lord Francis Scott: They are always wrong!)—the second time it has occurred.

I do not want to take up a long time, because I have already, on these correlated matters, but it is rather hard to follow this position, for I suppose that never in the history of any country have the affairs of the country drifted into more complete confusion than the position in which we have recently been placed.

In fact, it has been quite increasingly obvious that day after day, in any ordinary normal sense, there is no government in this country at all. Last year we had to deal with a provisional budget, and it remained so to the end of the year and was never authorized as the final budget. This year we started with a phantom budget, and now we have a contortionist budget, because it comes in upside down!

We are asked to deal with a budgetary position of our expenditure and revenue at different times, and before even deciding whether or no, whether to accept the items of revenue, statutory measures are taken to implement them before they are agreed by this Council. I therefore find it difficult to know whether I am standing on my head or my heels, or to follow these discussions with any degree of coherence at all.

I do not propose to go over the whole matter again. I am opposed to this agreement, and propose to stay so to the end. I am perfectly convinced that it will break down, because it is based on neither logic, reason, equity, commonsense, or anything else, and there is no normal procedure for it. In other words, we are simply the victims of the last addition to the dictators of the world.

I was sorry I was not here to hear the apologia put up, to see the mudbath in which you gentlemen were immersed. Only recently I said that logic and reasoned argument no longer prevail, and the proceedings of the House during the last two months have proved that quite conclusively. But in order to

crystallise this feeling and conclude this *reductio ad absurdum*, I desire to move:—

"That under Head II of the Schedule to the Report Item 13 be excised and a new item be inserted entitled 'Loan from the Colony's Railway balances, £37,000, being the amount contributed by the Colony to its Railway balances in respect of guarantees on Branch Lines and Railway pensions.'"

I know that it is too late for any sensible proposition to get any serious attention here, but in this particular matter I do submit that, in spite of all this dreadful controversy, all this enormous waste of time to which we have been subjected, this is an easy way out.

It is much too sensible a proposition to be likely to attract any attention whatsoever in this discussion, but I do wish to put it forward because it crystallises the immensity of the absurdity to which we have been reduced, for here are two items which are not expenditure at all; they are merely contributions, book entries, from the State to its own possession, to wit, the Railway, and two items are cross entries and, by means of a line through them, the whole potter disappears, and the absurdity of the present position becomes obvious to all men.

I do not suppose that I shall get a seconder or that the slightest bit of attention will be paid to it, but I wish to put it on record as a final and complete crystallisation of the *reductio ad absurdum* to which we are reduced.

THE HON. THE ATTORNEY GENERAL: Your Excellency, on a point of order, I should like to refer you to Standing Rule and Order No. 52 (vi), which deals with the particular matter which we have before us, namely the Report of the Standing Finance Committee. It reads as follows:

"52. (vi) Any member of the Council shall have the right to submit written notice of any amendments to the Report which he proposes to move. Provided that any such notice shall be submitted to the Clerk at least one clear day before the day which, under sub-Rule (v) of this Rule, has been appointed as the day on which the adoption of the Report will be moved."

I therefore submit that the amendment is out of order.

MAJOR THE HON. E. S. GROGAN: In connection with that, it is perfectly immaterial to me whether the amendment is in or out of order. I only want to get it on the records of Hansard to show clearly the ludicrous position to which this community is reduced!

HIS EXCELLENCY: I am afraid I have no option but to rule the proposed amendment out of order.

MR. THE HON. G. H. RIDDELL: Your Excellency, I rise to support the motion before the House.

The hon. Member for the Coast, being unfortunately too close a follower of the *East African Standard*, was not here to hear the statement made by the Chairman of the Elected Members Organization on our behalf, but, if he had been, he would not have described it as an apology. It was not! There was no apology; there was a statement of fact, and I, at any rate, support what was said by the Noble Lord, and I am also in complete support of the action of those Elected Members who sat on the Standing Finance Committee.

I, of course, like every other Elected Member, have had to come to a decision as to what line I must take, as to whether we should accept this agreement, compromise, or whatever you call it, or not. Of course, I had difficulty in accepting it, which was not the difficulty of my hon. friend the Member for Uasin Gishu, for I have never accepted the principle of income tax, and I believe we are, at the present stage of development in this country, doing harm to the country by the acceptance of an Income Tax Bill.

But, in coming to the decision I came to, it simply crystallizes into one thing: the greater contains the less, and the greater is the settlement we made, and the less is the evil of income tax. Therefore I support the motion, and I am ready at any time I may be attacked for my action through my constituency and the country at large to defend it and the action of those who made the agreement with Government.

Council adjourned for the usual interval.

On resuming.

MR. ANCHRAKON THE HON. G. BURNS: Your Excellency, I rise to support the motion, and to associate myself with what my hon. colleague has said in his speech. I should at the same time, if it is not looked upon as an impertinence on my part, like to congratulate the Noble Lord for the clear, concise and reasoned speech which he gave this morning. I should also like to say that I do not look upon what the Standing Finance Committee has done as a compromise; I look upon it as a just agreement on the questions that were brought before them.

There is one thought in my mind, that, whether we be Europeans, Asians or Africans, we have to live our lives collectively in Kenya Colony, and it is impossible to do injustice

or to neglect one section of the community without doing harm to the other sections. Europeans, may I say, cannot get on and prosper in this Colony without the Africans, and certainly the same applies with regard to the Africans and the Europeans: Africans cannot develop and cannot do as we want to see them do apart from the Europeans.

Therefore, to think that one section of the community should be penalized for another should be unthinkable to any hon. member in this House, so that when the time comes, as my colleague has said, that the Moyne formula, or whatever the formula, is used—I always understood that in allocating the revenue for the year if was done along the lines of the Moyne formula—we want to see that every community, whether European, African, or Asian, gets the very best the country can give them, and, if they are useful to the community, I say that the Africans cannot be neglected, either physically, intellectually, or in any other respect.

I am sure that no single member of the House thinks of leaving the African where he is to-day. The African has to progress as the Colon progresses and has to prosper as we do.

In this Report it is stated:

"The Elected Members asked for an assurance that it was not Government's policy progressively to increase native services in such a way as to necessitate the imposition of increased direct taxation on the non-native communities."

I am sure that the hon. the Acting Colonial Secretary gave that assurance yesterday, and I am sure we who represent in a special way the native interests in this Colony would not expect that the European community should be deliberately taxed so that the native services should be expanded.

But my point is that the natives, Asian and Europeans must progress together, or the Colony will not progress as it should.

I do hope that the help the native has been given—it is little compared with other, relief to the extent of £25,000, while the other communities have been given relief to the extent of £69,500. Yet I hope that the natives, when they recognize that that has been done for them, and that relief has been given them, they will come up to scratch and pay their taxes to the Government.

There are a few natives as there are Europeans who try to avoid paying taxes if they can. On the other hand, the native is a man who, I think, is always anxious to meet his just demands when made by Government, and I hope when

they see the little relief that has been given them that the 1937 revenue from native sources will show that the native appreciates what has been done for him in this House. (Hear, hear.)

THE HON. CONWAY HARVEY: Your Excellency, as a member of the Standing Finance Committee, no one will be surprised to hear that I give this Report my wholehearted support.

I should like, just briefly, to echo the sentiments expressed by my venerable and hon. friend in regard to the most excellent speech of the Noble Lord. I have heard his Lordship make many admirable speeches in this House over a long period of years, but I think I can safely say that on this occasion he surpassed even himself.

The Report speaks for itself, and the Noble Lord has covered the ground so adequately that there is very little left for one who represents a large section of the public of the Colony to say in this particular connection.

Although I am not an anti-income tax fanatic, I should like to express my very profound disappointment that income tax should have been thrust on Kenya in the very, very brutal manner in which it has been thrust recently by the Secretary of State for the Colonies. And it is a very great regret to me, and to those whom I represent, that the subject was not first subjected to a detailed inquiry by Kenya and adjacent territories.

The closest collaboration between Kenya and other East African territories has for some years now been regarded as being in the very best interests of all, and I think that point of some importance.

The fact that it has been found possible to increase revenue to no less than £100,000 without being guilty of any undue optimism, very clearly illustrates two points. One is the resiliency of Kenya, and, secondly, it very clearly illustrates the extremely important part played by agriculture in the economic life of the country. A few showers of rain at night, and up go our revenue estimates by £100,000!

I should like in this connection to pay a tribute to the most admirable work performed by the Land and Agricultural Bank of Kenya, which has played a far more prominent part than is generally realized in the rehabilitation of the agricultural industry as a whole, more especially in keeping deserving farmers on the land.

I sincerely trust that the spirit of goodwill which animated the Standing Finance Committee will go far to create a very much better atmosphere than that which has existed

during the last two or three years, especially on the eve of the arrival of our new Governor, glowing with the prestige of past achievements, and that we are now starting a new era of close co-operation with the various elements which constitute the body politic, without which progress must inevitably be retarded. (Applause.)

CART. THE HON. H. E. SCHWARTZ: Sir, I wish to apologize both to you and to the Noble Lord for not being in my place at the continuation of the debate at 9 o'clock this morning, but unfortunately I was not here at the adjournment yesterday and was unaware the time had been altered.

I am more particularly sorry for, if the latter part of the speech of the Noble Lord was any criterion, the encomiums poured on it by the hon. Member for Nyanza were not undeserved.

Before dealing with what is really the main point which arises on this motion, as to whether the compromise was or was not the right thing to do, I do wish for one moment to refer to the remarks made by the two hon. gentlemen representing native interests.

In the first place, I would like to say how very gratified I was, and I feel all members on this side of the House were, to hear the venerable and hon. member support that very important principle stressed by us in connection with the increase of direct taxation on the non-native community for the specific purpose of increasing native services, and when we have that accepted by every part of the House it is something, I think, we can rely upon as being kept in the future (Hear, hear.) because it is very seldom that every part of the House, whether European-unofficial, Indian unofficial or native interests are all at one.

I would like to just remind the venerable member of one small point when he referred to the reduction in native taxation of £25,000 as against relief to non-natives at £69,000. I have taken these figures from him, whether they are actually accurate figures, I do not know, but it does not really matter for the purpose of what I am going to say.

We will remember that in 1933, when it was necessary to opt on increased emergency taxation, it was practically entirely the non-native population who bore the increased burden, so that these figures are not quite so disproportionate as may at first sight appear.

With regard to the remarks made by the hon. member Dr. Wilson, I feel I must correct one statement that he made when dealing with the Moyne formula. If you read the Moyne

Report carefully, it will become abundantly obvious that he did not lay down the formula as a minimum. There can be no question of that, and I hope the mover of the motion will associate himself with the views I am now expressing, that it is clear that the formula laid down, whether good or bad, was not a minimum but was a formula which stated that a fair basis should be that 50 per cent of the amount contributed by natives should be expended in direct services to them.

There is one other point on which I feel I must say something, and in no controversial spirit at all, but he rather gave me the impression that he believed the natives of this Colony he did not say were overtaxed, but were heavily taxed in proportion to the services that were rendered to them. I have no hesitation in saying that, proportionately, there are no natives in any part of the British Empire who, for the taxation they pay, get such magnificent services all round as in Kenya.

In speaking to what I said was the main point, one must naturally be guilty of some repetition of what was said by the Noble Lord. I will not detain the House any length of time, but I feel I should have been lucking in my duty if I had not spoken on this motion, for two reasons.

First of all, I was a member of the Standing Finance Committee and appended my signature to the Report, and secondly, because I am well known as having expressed views as to income tax as applied to a Colony like this. In that respect I differ to a large extent from the Noble Lord and the hon. Member for Nyanza, my colleagues on the committee.

I have always believed that income tax is unsuitable for a Colony like this, and that its imposition would act detrimentally to the Colony. But, as the hon. Member for Kiambu said, when you are faced with a problem you have to take the line of what you believe; if not for the greatest good of the greatest number, the least harm to the greatest number, and this is the somewhat anomalous position in which I find myself when I remember that so little time ago as one month I was being accused, as I have been accused whenever this subject has cropped up, of being an unrepentant diard who is actuated purely by selfish motives, because of the enormous wealth I am supposed to possess. (Laughter.) Some of those people who were accusing me of being an unrepentant diard, some of whom actually resigned from my election committee because of my views on income tax, accused me of being a traitor, "selling the pass," and a lily-livered skunk!

I have had too long a public life in this Colony to care anything about abuse of that sort, but I think you, Sir, know and the other members of the Standing Finance Committee,

my colleagues, know, and I hope everyone in this House will realize, that the decision to agree to this compromise was not easy for one whose views, whether right or wrong, have always been so strong on income tax.

I took the line I did after most careful thought and consideration, because I believed first of all that of the two alternatives described by the Noble Lord there could be no question which was better, and I also took it because I believed that a vast majority of the European electorate in this Colony would have wished us to have taken the line we did.

The Noble Lord set out in some detail the two alternatives with which we were faced, and I do not propose to go over that ground again or to elaborate them to any extent, but I do want this House and this country to know exactly what would have happened and what must have happened if we had refused any compromise. There can be no question that, however much we may have protested, the amendment to the Native Taxation Bill, or whatever the exact nomenclature is, would to-day have been law as it is now, except that the relief given, instead of being £25,000, would have been £60,000.

There can be no doubt whatever that, instead of having a redrafted Income Tax Bill which I believe Government has been good enough to agree shall be undertaken by a small ad-hoc committee appointed by Your Excellency—we should have had the Bill which was published for information brought in, and though it might have been materially altered in some respects in select committee, in effect it would have been an onerous Bill instead of the light form now proposed. Nothing could have stopped the constitution of the Colony as it is, that Income Tax Bill in due course passing all its stages and becoming law.

Then what would the position have been? The country could have been roused, not on the question of income tax, but on the constitutional question, but what further could have been done? Only one thing. That would have been if every European in this Colony was prepared to stand shoulder to shoulder, as in 1922, and refuse to send any returns, to have assessments made, to refuse to pay, to be summoned before the courts to fight their case either on the constitutional or any other issue they could raise, and then to go to the still further extent that when any of their goods were attached as the result of a judgment against them, to take the line that was recently taken in England with regard to lighthouses.

Of course, if everyone in this Colony was prepared to do that, to stand shoulder to shoulder, the position of Government could have been made quite intolerable, but, realizing as I do

that the majority at all events of this Colony are not opposed to the principle of income tax, and realizing still further that a large majority of the Colony are so tired of the never-ending disputes, the never-ending fights, and are seeking only for peace and time to readjust their houses and their economic position, I do not think for one moment that there would have been such a terrific opposition to this tax as to make it unworkable. We should then have had the position, as the Noble Lord has said, of an onerous income tax and all the complications of that complicated Bill instead of a light income tax which I believe with the goodwill of those drafting it can be made, and in so simplified a form that it will avoid a great deal of dissatisfaction and expenditure to which the hon. Member for the Coast referred.

There is another party in this Colony who say: "We would not have objected to a compromise, but in fact, it is not a compromise at all, because you have got nothing." That has been dealt with very ably by the hon. Member for Uasin Gishu, and I do hope the hon. Member for Trans-Nzoia, on thinking it over, will agree that we have got a great deal more than he believes.

First of all, with regard to the reconstitution of the Executive Council. One of the conditions laid down in our cable, and was made clear, was that the Governor-designate should be instructed to inquire into the reconstitution of the Executive Council for certain specific purposes named. It so happened that the announcement that he had been given those instructions had already been made in London before that cable went off. But that did not alter the position. We have in fact got that promise that there shall be an inquiry into the reconstitution for the definite purpose of more closely associating the unofficial community with Government. I do not possibly believe we could have expected more as the first step. It would have been impossible to have suggested to the Secretary of State that he must give us complete control of the finances of the Colony.

You have to face facts in politics as in any other business of life, and to suggest that we could jump in one moment from the present position to having complete control of the finances would be asking for the impossible.

With regard to the second point, already dealt with, we not only have the three Government members of the Standing Finance Committee accepting our views as only just and equitable, but we have the hon. mover stating that Government is of the same view as their three members on the committee, and we have this morning the venerable and hon. member saying he, too, is in agreement.

I genuinely believe that by accepting this compromise we have not only gained a great deal, we have prevented a complete upheaval in the country; we have saved a large number of people a good deal of money—because people who would have had to pay under the Income Tax Bill as drafted will not have to pay under the new and simplified form—and I genuinely believe that what we have done is a compromise and not a surrender.

I would like, if I may, to associate myself with the remarks made by the Noble Lord with regard to the part you, Sir, especially, and your two colleagues on the Standing Finance Committee, have taken. (Hear, hear.) I have no hesitation in saying this compromise is due to an enormous extent to the initiative of yourself, which I personally appreciate, and I am sure all members on this side who believe in the compromise do, too.

There may be storms—it would be strange in politics, and in Kenya politics, if there were not, if there were not people perfectly entitled to their views who feel that the pass has been sold by the acceptance of the principle of income tax. But I am egotistical enough to believe that the attitude adopted by one of the biggest diehards of income tax may perhaps have some little effect on those who, perhaps, are not quite so diehard.

Finally, I wish merely to say that I entered the compromise with my eyes open. I entered into it after serious consideration. I accepted the principle which I hate because I believed it would be for the good of the Colony. And I am absolutely certain in my own mind that the vast majority of the people of the Colony will approve of the compromise and will support the action taken by their members on that committee.

DR. THE HON. A. C. L. DE SOUSA: Your Excellency, I first want to congratulate the Noble Lord on the very good speech that I have heard for the first time from him. (Laughter.) I am a comparatively new member of this Council, so that I have not had the opportunities of listening to his lordship in the past. I do hope that this will bring about a new era in the racial relations among the unofficial members of the House.

My second duty is not quite so pleasant, as it is to express my fear at what the Noble Lord has said about the basis of the compromise which has been arrived at between Government and the representatives of the unofficial community; that is, the reconstitution of the Executive Council. I do not think it was necessary to insert in the Report before us that condition

and I certainly do not think it was necessary for the hon. member to stress that point in the course of his debate, because he knows as we all know that a reconstitution of the Executive Council without the representatives of the non-European communities having knowledge of the terms would not allow us to agree to this compromise.

For instance, I personally do not know what there is in that compromise for the Noble Lord and the other European members of the Standing Finance Committee to agree to the principle of income tax.

I mention this because I want to join the hon. member Mr. Pandya in his remarks, that the acceptance of the Report by the Indian elected members does not in any way imply that we are committed, firstly, to any reconstitution of the Executive Council, and, secondly, that if there is to be a reconstitution that we are committed to no deviation from the representation on that Council or the present status of the various communities on it, and especially of the Government's predominance in all matters affecting the affairs of the community, at any rate not at the sacrifice of the very high principles we have held in the past.

I do hope that that is made clear, and I again support the motion and congratulate the Noble Lord.

THE HON. SHAMSHU-DEEN: Your Excellency, since interminable repetition seems a feature of this session, perhaps I may be excused for also repeating one or two things which I have already said.

I have also been accused of a changed front as regards income tax. I have tried to make it clear that I have done nothing of the sort. I have been told by very well informed people that income tax means an equitable and just form of taxation. I have never changed my opinion on that, but I cannot possibly reconcile myself to the idea of two or three different forms of taxation being concurrently in force in the Colony.

The moment I am told there is any other colony in the world where income tax and such primitive taxes as poll taxes and traders' licences are in force, I shall vote for any measure or report in favour of income tax. Until that is done, I shall certainly always oppose income tax.

I am not going to be carried away by any desire to vote with the Government or to oppose the Europeans; I am not going to be carried away by any such sentiments. I maintain that Government has no business to introduce income tax before repealing the poll tax and other kind of taxes.

As far as my colleagues are concerned, they are worrying their heads about nothing, for their position counts for nothing. The whole thing is merely a sort of bargain between the European elected members and the Government. Sir Alan Pim was invited to the Colony without the hon. Indian members being consulted, and whether they oppose income tax or not Government will introduce it, and if they support it it would make no difference.

THE HON. THE TREASURER: Your Excellency, the Noble Lord asked me if I could give such information as is in my possession in regard to the financial position of the Colony up to the end of 1936.

The latest firm figures which I have cover the period from the 1st January to the 31st October, 1936. During that period the revenue exceeded expenditure by £172,732. The revenue exceeded the revenue in the corresponding period of 1935 by £187,940. The expenditure exceeded the expenditure in the corresponding period of 1935 by £91,605. The revenue over expenditure as compared with the corresponding period of 1935 was £96,335. The excess of assets over liabilities at the end of October, 1936, amounted to £41,018, as compared with an excess of assets over liabilities, surplus balance, at the end of October, 1935, of £251,036.

The principal figure is excess of revenue over expenditure for the first ten months of 1936, which was £172,000.

So far as the last two months of the year are concerned, hon. members must understand that final figures cannot possibly be obtained for another two months or so, and innumerable adjustments have to be made, but, on that showing, I should say that on a purely tentative estimate there should be a surplus of at least £175,000 in 1936. (Applause.)

THE HON. THE ACTING COLONIAL SECRETARY: Your Excellency, at the outset, I should like to congratulate the Noble Lord on his very able and reasoned speech.

I have no doubt whatever that those quarters who are now criticizing the unchosen members of the Standing Finance Committee will, in a very short time, realize that the compromise was reached in a spirit of real statesmanship and in the best interests of the Colony. I sincerely hope that the spirit of co-operation which was shown in the deliberations of that committee may be an indication of more happy relations in the future, which, I may say, will also tend to increase the efficiency of Government as a whole.

I do not think there are any points in the speech of the Noble Lord calling for a reply from me. The hon. Treasurer has replied to the one specific question asked.

The hon. Member for Trans Nzoia asked one specific question; namely how the figure of £37,000 in paragraph 6 of this Report was explained. It is rather difficult to explain to him without quoting a schedule of figures. The position is this: The reductions in the taxation payable by the non-native communities are as follows: Poll tax, £29,000; education tax, £24,000; patrol tax, £15,000; licences, £12,500; total, £80,500. Against this there is additional taxation of £43,000 in the shape of income tax, making the net reduction £37,000.

The hon. Member for Mombasa stated that there has been no political strife. Well, Sir, a rose by any other name smells just as sweet! All I can say is, that whatever kind of strife it was it has been unfortunate and very distressing to the Service as a whole, and particularly to one who like myself has done most of his service in an atmosphere of happier relations between officials and unofficials. Any signs of improvement in these relations in the future are very welcome indeed.

The hon. member for native interests, Dr. Wilson, raised the question of the Moyne formula. It is quite true that native and non-native services are interwoven, and cannot be separated, but until Lord Moyne came there was this everlasting argument as to whether or not the natives were getting an adequate return for their taxes. I understand that argument was raised year after year, and that Lord Moyne did a very great service indeed by saying that, in his opinion, half the average receipts of native tax would be a reasonable proportion to allocate for direct native services.

Although the betterment fund has not been established as a separate account, yet the principle has been accepted and rigorously observed by Government, and Government have always taken great care to see the natives have received roughly their quota under that formula. It is, I think, quite clear from Lord Moyne's recommendations that his intention was that native direct services should be financed by half the average tax collected from natives.

I think the hon. member for native interests is under some misapprehension. Elected members have not asked that native services should be curtailed or progress stopped in any way, but that the cost of the augmented services should not be met from direct taxation on the non-natives. That attitude appears to me and to Government a reasonable one.

The hon. Member for Nyanza criticized the action of the Secretary of State. I regret that he should have considered

that the Secretary of State has acted in a dictatorial manner. As the Noble Lord explained in his speech, the Secretary of State has met Government and the unofficial members half way, and has earned the gratitude of the Colony for his ready acceptance of the compromise. Moreover, it is true that this Government has, in and out of season, considered that income tax is the most equitable form of direct taxation, and that the Colony is not in a position to do without direct taxation at the present time. The responsibility for the introduction of income tax must therefore be shared by this Government with the Secretary of State.

No other points raised by hon. members who have spoken call for any reply until I come to the speech of the hon. Indian member Dr. de Sousa.

I should like to assure him and other hon. Indian members that no hole-and-corner policy is contemplated. The facts are that the Secretary of State has directed the Governor-designate on his arrival in the Colony to inquire into the position and to report to him what constitutional changes he considers desirable. There are no grounds for believing that the Governor-designate will not consider the position of the Indian community, and will not make such representations as he considers will safeguard Indian interests in any constitutional change. There is no reason whatever to assume that their interests will be in any way prejudiced by any change that may be made.

The question was put and carried.

BILLS.

THE DISTRESS FOR RENT BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to move that the Report of the Select Committee on the Distress for Rent Bill be adopted.

This Report is a short document, and perhaps the most important point dealt with in it is the reference to clauses 11, 12 and 17 of the Bill.

Members of the Committee felt some misgivings as to the provisions of the Bill as drafted so far as they related to the people who would be appointed by the lessors or landlords to exercise distraint. We have therefore limited those persons to the lessor or landlord himself or his authorized agent, and by bailiff is meant, of course, a person certificated under the provisions of clause 18 of the Bill.

I should perhaps say that, although in the Report the word "receiver" is to be deleted from clauses 11 and 17, a receiver will of course maintain the position he has under the bankruptcy legislation.

The second point dealt with is the amendment to clause 3, wherein we propose provision should be inserted that "No distress shall be levied between sunset and sunrise or on any Sunday." That calls for no comment.

In paragraphs 1 and 4 we have dealt with the definition of the word "chattels". In clause 2 of the Bill that definition included stock and crops. Actually, although the word "chattels" is not, I believe, defined in any English legislation, it has been the subject of a good many interpretations by judges, and it was not thought it was necessary to include the particular definition here. In order to include stock another amendment has been made in clause 7, and having made that, the latter part of the provisions of clause 13 of the Bill are not necessary any longer.

With the exception of a verbal amendment to bring the word "appraisement" more into line with legal phraseology, that constitutes the gist of the Report.

I should like to take the opportunity of thanking, on behalf of the members of the committee, Mr. Hamilton, of the firm of Messrs. Hamilton, Harrison and Mathews, who kindly assisted us in our deliberations.

THE HON. THE CHIEF NATIVE COMMISSIONER seconded.

The question was put and carried.

THIRD READING.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT moved that the Distress for Rent Bill be read a third time and passed.

CAPT. THE HON. H. E. SCHWARTZ seconded.

The question was put and carried.

The Bill was read a third time and passed.

FIRST READINGS.

On the motion of the hon. the Attorney General, seconded by the hon. the Treasurer, the following Bills were read a first time:—

The Native Authority Bill.

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

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

COLONIAL DEVELOPMENT FUND: FREE GRANT.

HIS EXCELLENCY: Hon. members will remember that Sir Joseph Byrne, in his speech which was delivered at the opening of the present session of Legislative Council, mentioned that an application had been made for assistance from the Colonial Development Fund for the provision, improvement and investigation of water supplies in native areas.

I am pleased to inform hon. members that notification has been received from the Secretary of State that a free grant of £42,000 has been sanctioned for this purpose.

ADJOURNMENT.

HIS EXCELLENCY: As it is uncertain when the next business for Council will be ready, Council will adjourn sine die.

Council adjourned sine die.

WRITTEN ANSWERS TO QUESTIONS.

EAST AFRICAN CURRENCY BOARD: LOSSES.

No. 20.—MAJOR THE HON. E. S. GREGG asked

What was the total loss incurred by the East African Currency Board as the result of the Colonial Office's failure to maintain the original East African money unit as a token denoting one-fiftieth of a pound sterling and its subsequent fixation as a token denoting one-tenth of a pound?

Reply.

The original East African money unit was the Indian silver rupee, which the Government of India maintained for many years prior to the war on a parity with one-fiftieth of £1 sterling but which was never a token denoting that amount. During and after the war, owing to the appreciation of the sterling value of silver, the Government of India found itself unable to maintain the parity of 1s. 4d., and the exchange value of the rupee rose rapidly until at one time it reached 2s. 9d. or thereabouts. It was clearly impossible for the East African currency authority to exercise any degree of control over the sterling value of the Indian rupee.

Following the demand in East Africa for a more stable medium of exchange than that provided by the Indian rupee, the Secretary of State for the Colonies decided that the best course was to abandon the original unit and replace it with a new standard linked to sterling, thereby avoiding exchange questions as between East Africa and the United Kingdom. Action was precipitated by the announcement issued on the 2nd February, 1920, by the Secretary of State for India that the future value of the Indian rupee would, after a transitional period, be established at Sh. 2 gold, or one-tenth of a gold sovereign (then representing 2s. 8½d. sterling), and the decision to replace the rupee by an East African florin established at Sh. 2 sterling was announced by the Colonial Office on the 13th February, 1920. Subsequently, but before the stock of rupees in East Africa could be collected and cleared, the rupee fell rapidly in sterling value, and it was ultimately 'pegged' by the Government of India at 1s. 6d. This course was not and could not have been foreseen at the time when the decision to introduce the florin currency was taken.

Under the decision taken in 1920, the East African Currency Board was obliged to issue a new currency of florins valued at Sh. 2 in exchange for the old currency of rupees for which, in view of the sudden fall in the rupee's sterling value, they could only obtain a lower value than Sh. 2 on repatriation to India. The amount of the loss so occasioned is recorded in paragraph 5 of the Board's report for the year ended the 30th June, 1923, as £916,810.

This figure does not include the further losses of £610,024-6-8, due to the redemption of German rupees in Tanganyika, which is recorded in paragraph 3 of the Board's report for the year 1923, and of £57,920-0-1 due to the redemption of German subsidiary (heller) coinage recorded in paragraph 3 of the report for the year ended the 30th June, 1927.

BAMBOO CONCESSION.

No. 38.—CAPT. THE HON. H. E. SCHWARTZ asked:

"Can Government give any indication as to the present position of the proposed pulp scheme, and if and when something definite is likely to eventuate?"

Reply.

The Memorandum of Agreement of the 1st October, 1934, made with Mr. C. Udall and Mr. S. Macaskie for the purpose of the acquisition and working of the bamboo concession held by Mr. Udall has recently been extended for a period of two years from the 1st January, 1936. It is understood that ne-

gotiations for the development of the concession are still proceeding, but the Government has no information as to the stage which these negotiations have now reached.

MOMBASA WATER SUPPLY.

No. 51.—THE HON. E. A. BEMISTER asked:

"In view of the actual receipts from Mombasa water supply for 1935 being £3,485 above his estimate (see page 11, P.W.D. Annual Report, 1935), is the profit of £8,281 given in Appendix O of Provisional Estimates, 1936, increased by £3,485?"

Will the Director of Public Works lay on the table the actual results from 1st January, 1917, to 31st December, 1935?"

Reply.

The excess of revenue over expenditure in respect of this undertaking for the year 1935 amounted to £13,082.

A copy is appended of a statement of revenue derived from and expenditure incurred on the water supply during the period 1917-1935 inclusive, capital expenditure being shown in the form of annual charges. Should you so desire, a copy of this statement will be laid on the table in the Legislative Council.

In order to ascertain the true net profit or loss on the working of the water supply, it is necessary to take account of the depreciation of the plant. It will be seen from the statement of revenue and expenditure that in the years 1926 to 1931 inclusive, £10,000 per annum was charged to expenditure and credited to the Renewals Fund. This figure was, however, entirely arbitrary and was not directly related to the rate of depreciation of the assets. In subsequent years budgetary difficulties caused the temporary cessation of these contributions.

On the basis of the estimated life of the plant, and allowing 3 per cent compound interest on balances in the Renewals Fund, it has been calculated that, up to the end of 1935, the total contributions to the Renewals Fund required to cover depreciation would have been £95,985.

This reduces the profit for the period to £18,683, or £1,938 per annum.

No account has been taken of sinking fund charges on the loan capital.

MOMBASA WATER SUPPLY, 1st JANUARY, 1917 to 31st DECEMBER, 1935.

	REVENUE		EXPENDITURE						Total	Profit	Loss	
	Total Earnings	(Total £)	Personal Emolu- ments	Other Charges	General Main- tenance	Adminis- trative Charges	Interest on Capital	Renovals Fund				
1-1-17 to 31-3-18	4,047	711	407	1,407	831	8,068	—	—	11,473	—	—	£ 0,715
1-4-18 to 31-3-19	6,683	630	630	534	813	5,050	—	—	6,933	—	—	250
1-4-19 to 31-3-20	7,114	662	662	666	666	6,660	—	—	7,667	—	—	423
1-4-20 to 31-3-21	15,502	1,029	1,029	1,323	1,018	8,050	—	—	10,420	—	—	—
1-4-21 to 31-12-21	10,248	1,113	1,113	1,338	1,038	7,114	—	—	7,833	—	—	—
1922	14,657	1,722	1,722	1,693	1,693	8,810	—	—	12,245	—	—	—
1923	16,473	1,190	1,190	3,235	1,619	7,439	—	—	13,310	—	—	—
1924	18,868	1,333	1,333	3,235	1,370	7,372	—	—	13,709	—	—	—
1925	21,766	1,625	1,625	3,408	1,250	7,740	—	—	14,224	—	—	—
1926	23,950	3,305	3,305	3,143	1,298	7,012	—	—	24,870	—	—	—
1927	27,676	3,950	3,950	2,932	1,400	7,050	—	—	29,160	—	—	—
1928	29,134	3,797	3,797	6,031	2,444	5,174	—	—	29,830	—	—	—
1929	32,053	4,153	4,153	5,640	2,606	5,629	—	—	32,475	—	—	—
1930	35,788	3,800	3,800	4,810	2,600	13,086	—	—	36,314	—	—	—
1931	33,731	3,624	3,624	3,730	2,867	14,044	—	—	34,571	—	—	—
1932	31,421	3,203	3,203	3,484	2,40	16,448	—	—	23,716	—	—	—
1933	33,008	3,112	3,112	3,869	1,374	16,950	—	—	26,469	—	—	—
1934	36,053	3,440	3,440	3,947	1,381	17,015	—	—	26,010	—	—	—
1935	38,386	3,341	3,341	3,308	1,307	17,038	—	—	25,403	—	—	—
Total	437,274	46,370	3,410	56,652	31,406	186,750	—	90,000	382,000	65,635	—	10,867

MEDICAL RESEARCH LABORATORY.

No. 62.—DR. THE HON. C. J. WILSON asked:

"Will Government state what truth there is in the following statements contained in a letter which appeared in the *British Medical Journal* of 31st October and was quoted in the *East African Standard* of 11th November, viz:—

(1) That the Medical Research Laboratory at Nairobi is finding its staff depleted to such an extent as seriously to handicap performance of its routine work.

(2) That the Laboratory is being run by a very junior man, who has no medically qualified staff to help him.

(3) That medical men in Kenya, faced with this state of affairs, are sending their material for laboratory investigations by air mail to Uganda or Tanganyika, in preference to relying upon the overworked local department."

Reply.

There is no truth whatsoever in either of the first two statements quoted, and so far as Government has been able to ascertain as a result of inquiries made of the Medical Departments of Uganda and Tanganyika, there is no truth whatsoever in the third statement quoted.

In extension of the above reply, Government desires that it should be known that the fundamental importance of maintaining essential services, such as those which are entailed in the performance of the routine medical laboratory work referred to in statement No. (1), is a matter which has been kept constantly in mind throughout the past five years of financial depression, and that it was for this reason that when, during the depression, it became necessary to reduce the staff of the Medical Department as a whole from 72 medical officers to 48, the medical staff of the Medical Research Laboratory was reduced by one medical officer only; that is, from five medical officers to four. Government also desires that it be known that during the said period—that is, from 1930 to the present time—the Laboratory, far from having been seriously handicapped in the performance of routine work, has throughout the period been able to keep pace with the steadily increasing demands which have been made upon it, to the extent that in the present year over 31,000 specimens have been dealt with as against 14,505 in 1930, while the production of calf lymph and other vaccines has been more than doubled in every case. Furthermore, as a result of the steady increase of general and local experience, and of improved organization and training, the standard of routine work has steadily risen, and such work is now, as should be the case, more efficiently carried out than at any previous period in the history of the Laboratory.

Furthermore, research has not, and is, not now, being neglected.

With regard to statement No. (2), Government desires that it should be known that the Laboratory, far from being run, as stated, by a "very junior man", is under the charge of an officer who has no less than nine years' general medical laboratory experience, and that this officer, far from having "no medically qualified staff to help him", has the full-time help of—

(a) a medical officer who has had—

- (1) over nine years' laboratory experience in Kenya, and
- (2) two years' laboratory experience as Pathological Assistant in a teaching hospital in Ireland.

(b) a medical officer who has had—

- (1) five years of general medical service in Kenya,
- (2) one year's laboratory experience in Nairobi.

(3) about a year's special laboratory experience in the pathological department of a teaching hospital in London;

(c) a medical officer who, in addition to a year's general medical experience in Kenya, has had one and a half years' special experience as Assistant Pathologist in a teaching hospital in London;

(d) a biochemist who has had nine years' laboratory experience in Kenya;

(e) six very experienced European laboratory assistants;

(f) two very experienced Asian laboratory assistants;

(g) a large staff of African laboratory assistants, many of whom have now reached a high standard of efficiency in many branches of routine work.

In addition, there are, on the entomological side of the Laboratory, two entomologists, one of whom has had no less than 13 years' tropical experience, and there are also five European laboratory or field assistants.

With regard to statement No. (3), it may be noted that this Government has been officially informed that no material has been received by the Government Laboratories in Uganda or Tanganyika from private practitioners in Kenya during the current year. On the other hand, it may be noted that the Nairobi Laboratory has, during the current year, supplied over one and a quarter million doses of calf lymph vaccine, in addition to plague vaccine and anti-rabies vaccine, to the Medical Department of Uganda, and anti-rabies vaccine to the Medical Department of Tanganyika.

ESCAPED CONVICTS.

No. 63.—CAPT. THE HON. H. E. SCHWARTZ asked:

1. How many escaped convicts are at present at large in the Colony?

2. From what prisons have these convicts escaped?

3. Does Government consider that the escape of any or all of these convicts is due to unsatisfactory prison conditions?

Reply.

1. 80 escaped convicts are at present at large in the Colony, as far as is known. Some of these may have found their way into neighbouring territories; some may have died.

2. These convicts escaped from the following prisons:—

Year.	Prison.	Number.
1930	Meru	2
	Kisii	1
	Voi	1
	Thika	1
	Kapenguria	1
	Total	6

1931	Eldama Ravine	1
	Meru	1
	Kiambu	1
	Nipini	1
	Total	4

1932	Meru	2
	Kisii	1
	Kwale	1
	Kilifi	1
	Kapenguria	1
	Kitui	1
	Kakamega	1
	Total	8

1933	Kitale	5
	Kakamega	2
	Marsabit	2
	Lamu	1
	Kericho	1
	Kapsabet	1
	Kwale	1
	Fort Hall	1
	Total	14

1934	Kisii	2
	Kwale	2
	Malindi	2
	Mombasa	1
	Maragua Camp	1
	Kericho	1
	Nyeri	1
	Fort Hall	1
	Kakamega	1
	Voi	1
	Kitui	1
	Total	14
1935	Kilifi	1
	Kapenguria	1
	Narok	1
	Kitui	1
	Voi	1
	Thika	1
	Railway Quarry Camp	1
	Marsabit	2
	Malindi	2
	Kakamega	3
	Rumuruti	2
	Total	16
1936	Embu	1
	Kapsabet	1
	Malindi	1
	Kakamega	1
	Kisumu	1
	Meru	1
	Kitale	1
	Mombasa	2
	Rumuruti	1
	Railway Quarry Camp	2
	Kericho	2
	Kilifi	2
	Kitui	2
	Total (up to 17-12-36)	18

3. The escape of the majority of these convicts has been due to unsatisfactory prison conditions, which were largely the result of the necessity for rigid economy during these years.

4. Of the above 50 escapes, only four occurred from first and second class prisons staffed by European prison officers, and 56 were short-term prisoners, i.e. serving sentences of six months or less.

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