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COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

Second Series | Volume II

1937

23rd JULY to 13th AUGUST

1937
PRINTED BY THE GOVERNMENT PRINTER
NAIROBI

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COLONY AND PROTECTORATE OF KENYA

List of Members of the Legislative Council

President:

HIS EXCELLENCY THE GOVERNOR, AIR CHIEF MARSHAL SIR ROBERT BROOKE-POPHAM, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.

Ex Officio Members:

COLONIAL SECRETARY, ACTING (HON. W. M. LOGAN, O.B.E.) (1)
ATTORNEY GENERAL, ACTING (HON. H. C. WILLAN, M.C.) (2)
TREASURER, ACTING (HON. G. B. STOOKE). (3)
CHIEF NATIVE COMMISSIONER, (HON. H. R. MONTGOMERY, C.M.G.)
COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT, ACTING (HON. E. B. HOSKING, O.B.E.). (4)
DIRECTOR OF MEDICAL SERVICES (DR. THE HON. A. R. PATERSON).
DIRECTOR OF AGRICULTURE, ACTING (HON. H. WOLFE, O.B.E.). (5)
DIRECTOR OF EDUCATION (HON. E. G. MORRIS, O.B.E.).
GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS (BRIG.-GEN. THE HON. SIR G. D. RHODES, C.B.E., D.S.O.).
DIRECTOR OF PUBLIC WORKS, ACTING (HON. C. H. WALMSLEY, M.C.) (6)
COMMISSIONER OF CUSTOMS (HON. E. G. BALE).

Nominated Official Members:

HON. G. H. C. BOULDERSON (Prov. Commissioner, Coast Province).
HON. H. M. GARDNER (Conservator of Forests).
HON. S. H. LA FONTAINE, D.S.O., O.B.E., M.C. (Prov. Commissioner, Central Province).
HON. S. H. FAZAN, C.B.E. (Prov. Commissioner, Nyanza Province).
HON. G. B. HEBDEN (Postmaster General).
HON. C. W. HAYES-SADLER (Deputy Colonial Secretary, Acting). (7)
HON. T. D. WALLACE (Solicitor General, Acting). (8)
HON. R. DAUBNEY, O.B.E. (Director of Veterinary Services). (9)
HON. S. O. V. HODGE (Acting Prov. Commissioner, Rift Valley) (10)

European Elected Members:

HON. F. A. BEMISTER, Mombasa.
MAJOR THE HON. F. W. CAVENDISH-BENTINCK, Nairobi North.
HON. CONWAY HARVEY, Nyanza.
HON. A. C. HOEY, Uasin Gishu.
LT.-COL. THE HON. J. G. KIRKWOOD, C.M.G., D.S.O., Trans Nzoia.
MAJOR THE HON. G. H. RIDDELL, M.V.O., Kiambu.
MAJOR THE HON. SIR R. DE V. SHAW, BT., M.C., Ukamba.
HON. E. H. WRIGHT, Aberdare.
MAJOR THE HON. E. S. GROGAN, D.S.O., Coast.
HON. E. CASWELL LONG, Rift Valley (Acting). (11)
HON. MARCUSWELL MAXWELL, Nairobi South (Acting). (12)

LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—(*Contd.*)

Indian Elected Members:

HON. N. S. MANGAT.

HON. SHAMSUD-DEEN.

DR. THE HON. A. C. L. DE SOUSA.

DR. THE HON. S. D. KARVE (Acting). (13)

HON. A. N. MAINI (Acting). (14)

Arab Elected Member:

HON. SHERIFF ABDULLA BIN SALIM.

Nominated Unofficial Members Representing the Interests of the African Community:

VEN. ARCHDEACON THE HON. G. BURNS, O.B.E.

COL. THE HON. T. O. FITZGERALD, O.B.E., M.C. (Acting). (15)

Nominated Unofficial Member Representing the Interests of the Arab Community:

HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

Clerk to the Legislative Council:

MR. R. W. BAKER-BEALL (Acting).

Reporter:

MR. A. H. EDWARDS.

(1) *Vice* Sir Armigel de V. Wade, C.M.G., O.B.E., Colonial Secretary, on leave.

(2) *Vice* Mr. W. Harragin, K.C., Attorney General, on leave.

(3) *Vice* Mr. G. Walsh, O.B.E., Treasurer, on leave.

(4) *Vice* Mr. Logan, Acting Colonial Secretary.

(5) *Vice* Mr. H. B. Waters, Director of Agriculture, on leave.

(6) *Vice* Mr. J. C. Stronach, Director of Public Works, on leave.

(7) *Vice* Mr. H. G. Pilling, C.M.G., on leave.

(8) *Vice* Mr. Willan, Acting Attorney General.

(9) *Vice* Major H. H. Brassey-Edwards, O.B.E., Deputy Director (Animal Industry), retired.

(10) *Vice* Mr. Hosking, Acting Commissioner for Local Government.

(11) *Vice* Lt.-Col. Lord Francis Scott, K.C.M.G., D.S.O., absent from the Colony.

(12) *Vice* Captain H. E. Schwartze, absent from the Colony.

(13) *Vice* Mr. J. B. Pandya, absent from the Colony.

(14) *Vice* Mr. Isher Dass, absent from the Colony.

(15) *Vice* Dr. C. J. Wilson, M.C., absent from the Colony.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

23rd July, 1937:
- Hon. G. H. C. Boulderson.
- Dr. the Hon. S. D. Karve.
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.

26th July, 1937:
- Hon. S. H. Fazan, C.B.E.
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.

27th July, 1937:
- Hon. S. H. Fazan, C.B.E.
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.

28th July, 1937:
- Hon. S. H. Fazan, C.B.E.
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.

29th July, 1937:
- Hon. S. H. Fazan, C.B.E.
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.

30th July, 1937:
- Hon. S. H. Fazan, C.B.E.
- Dr. the Hon. S. D. Karve.
- Hon. Arab Elected Member.
- Hon. Arab Nominated Member.

10th August, 1937:
- Hon. Elected Member for Uasin Gishu.
- Hon. Acting Elected Member for Rift Valley.
- Hon. Arab Nominated Member.

11th August, 1937:
- Hon. Elected Member for Uasin Gishu.
- Hon. Acting Elected Member for Rift Valley.
- Hon. Arab Nominated Member.

12th August, 1937:
- Hon. G. B. Hebden.
- Hon. Arab Nominated Member.

13th August, 1937:
- Hon. G. B. Hebden.
- Dr. the Hon. S. D. Karve.
- Hon. Arab Nominated Member.

COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

SECOND SESSION, 1937

Friday, 23rd July, 1937

Council assembled at the Memorial Hall, Nairobi, at 11 a.m. on Friday, 23rd July, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

The Proclamation summoning Council was read.

ADMINISTRATION OF OATH

The Oath was administered to:—

Nominated Official Member:

R. Daubney, Esq., O.B.E., Director of Veterinary Services.

Member representing the interests of the African Community:

Col. T. O. FitzGerald, O.B.E., M.C.

COMMUNICATION FROM THE CHAIR

His Excellency delivered the following Communication from the Chair:—

Honourable Members of Council,

When we adjourned at the end of last session the thought that was uppermost in all our minds was the approaching Coronation of Their Majesties King George VI and Queen Elizabeth. The address of loyalty and humble duty which was passed by this Council on that occasion was presented to His Majesty and, although it has already been reproduced in the local Press, I feel that honourable members would wish me to read out to them the gracious message which has been received in reply:—

"Your telegram and Addresses have been laid before the King, who has commanded that an expression of warm appreciation of the good wishes offered on the occasion of his Coronation by the Government and people of Kenya may be conveyed to them on behalf of himself and Her Majesty the Queen. — Secretary of State."

In taking part in the Coronation celebrations, not only in Nairobi but also in the up-country districts and at Mombasa, I was deeply impressed by the care and trouble which had been taken to decorate even the smallest township and by the spontaneous demonstrations of loyalty and affection which were shown for the Crown by members of every community. I recognize that the past few years have meant a constant struggle to make ends meet for most people in this country, and I feel that all communities will be able to look back with real pride on an occasion which they themselves so generously helped to make a landmark in the lives of their children. Steps were taken to acquaint His Majesty the King with the enthusiasm displayed throughout Kenya on the occasion of the Coronation, and I have received information to the effect that His Majesty was deeply touched by these manifestations of loyalty.

As honourable members will remember, Kenya provided a military detachment to take part in the Coronation celebrations in England. The following are extracts

[H.E. the Governor]
from a letter received by me from the Secretary of State for the Colonies:—

"It gives me great pleasure to record the excellent impression which was made by all ranks of the Colonial Military Contingent on the day of His Majesty's Coronation. As you are aware, the Contingent led the Procession on the journey from Westminster Abbey to Buckingham Palace, and its fine and soldierly bearing won the admiration of all spectators and was the subject of most favourable comment in the Press. The Contingent had the honour of providing the King's Colonial Escort which, in company with Escorts from the Dominion Contingents and the Indian Army, were in attendance upon His Majesty during the journeys to and from the Abbey.

"On the 14th May the officers and other ranks of the Contingent were presented by His Majesty with the Coronation Medal at Buckingham Palace, and the Contingent subsequently proceeded to the Cenotaph to assist in the ceremony of laying wreaths.

"I am glad to feel that the military forces of the Colonial Empire have been represented at the Coronation by so fine a body of men."

It is with real pleasure that I offer my congratulations, in which I know you will all join me, to Sir Armigel Wade on the honour which His Majesty has been pleased to confer upon him. (applause.) It is particularly happy that he should have received this distinction as Colonial Secretary of the Colony in which he began his career and to which he has devoted the whole of his official service.

I am sorry that the other member of this assembly who has been honoured by His Majesty—Lord Francis Scott—is not here to receive our congratulations and good wishes on the reward of a distinguished career, during which he has so ably and so constantly advocated the interests of Kenya both here and at home. (Applause.)

The year 1936 closed with a surplus of revenue over expenditure of £146,008 for the year, and at the 31st December, 1936, the Colony's excess of assets over liabilities stood at the figure of £404,889. This figure does not represent the available surplus since, as honourable members are aware, a large proportion of the assets is immobilized. After making adequate allowance for a working cash balance of £250,000 to cover both local and overseas current requirements, the Colony had at the date mentioned a free cash surplus of £39,915. For the first four months of 1937 revenue has exceeded expenditure by £130,748, the revenue for this period exceeding the revenue for the corresponding period of 1936 by £117,456. This improvement does not represent a true increase in annual revenue but it is due almost entirely to earlier collection of native hut and poll tax. At the end of March the amount collected from this source, including the sale of kodi stamps, was £173,000, as compared with £73,000 at the end of March last year. These accelerated collections are, however, very satisfactory, as they indicate that more favourable conditions prevail and that many of the difficulties which have been experienced in recent years in the collection of this revenue have been removed.

The estimate of Customs revenue for the whole year is £779,500. Approximately £387,000 had accrued at the 30th June, which is very little below one half of the estimate for the full year.

Exports continue to be maintained at a satisfactory level. For the first five months of the year the value of Kenya's domestic exports was £1,952,187, representing an increase of £320,402 over the corresponding period of 1936, which was itself a record year. This increase reflects higher prices rather than any increase in volume of exports; cotton, hides and gold being the only export commodities to show any considerable rise in quantity during this period. Exports of coffee declined by 21 per cent in volume and maize and butter exports by 30 per cent and 35 per cent respectively as compared with the corresponding five months of 1936. Generally speaking, the higher commodity price levels which were a feature of the economic recovery of 1936 are being satisfactorily maintained. This is particularly true of cereals, butter, pyrethrum, tea and sisal, but unfortunately coffee prices still remain at a comparatively low level.

[H.E. the Governor]

In the coffee industry, important negotiations have been carried on, and are now being brought to a successful conclusion, for the establishment of Coffee Exchanges in East Africa. This new development in one of the Colony's most valuable industries has been worked out by the Coffee Board and representatives of the trade in a spirit of co-operation for the benefit of the coffee industry of East Africa as a whole.

Nobody who visited the Show held at Nairobi in June by the Royal Agricultural and Horticultural Society of Kenya could fail to be impressed by the standard of the exhibits there presented. This Show provided very remarkable evidence of the potentialities of agriculture in this Colony. The interest taken by both Europeans and natives in the Native Development Exhibit deserves special mention. The rapid growth of native agricultural developments continues, and will demand our special attention and care. It is not very long ago that the Government was charged with failing adequately to increase production from the native areas. To-day, the need is not for any stimulus but rather for control to prevent the exploitation of capital resources.

The subject of soil conservation is of the utmost importance to this country, and it is hoped that in conjunction with the Standing Board of Economic Development a comprehensive policy will be formulated. As honourable members are aware, the question of soil erosion—which may be regarded as part of the whole problem—has already been before the Board. The action being taken by the Government at present is as follows:—

A survey of the Machakos and Kamasia Reserves has been undertaken by an officer specially seconded for the purpose, who is now working on the Kitui district. These surveys are designed not solely as negative plans for controlling and combating soil erosion, but also as economic surveys embracing proposals for the future development of these areas and relating these proposals to the imperative need for soil conservation. It seems probable, particularly in the Machakos district, that what may be termed engineering works will have to be carried out in terracing and reconditioning, and it is clear that these cannot be done without expert technical advice on the one hand and a large expenditure of funds on the other. It would be wrong to embark on any large scale campaign like this without very thorough investigation and consultation, and in this connexion the Government is awaiting a report from an engineer, Mr. Barnes, who has been studying the problem in Machakos for two months. Provisional arrangements have also been made with a local firm to operate a terracing unit on farms where this treatment is desired at a fairly nominal charge to the farmers concerned, the balance being guaranteed by the Government, with a view to ascertaining the cost at which such a unit could operate commercially in Kenya and the extent of the demand for it. Much experience of this work has recently been gained in the Rhodesias, the Union of South Africa, and the High Commission Territories, and this Government is considering sending an officer specially to study what is being done there. In the meantime, new propaganda measures are being taken in the native areas, and palliatives are being tried and encouraged. During the last few months nearly every Local Native Council in the Colony has discussed and agreed on certain simple and practical lines of action and is now fully aware of the importance of the subject.

Since the last session, further grants from the Colonial Development Fund have been obtained. These include a grant of £5,400 for work on tsetse fly in the South Kavirondo district, and a grant of £6,580 for research on pleuro-pneumonia at the Kabete Laboratory.

Since that time also the Cattle Cleansing Ordinance, 1929, has been brought into operation. Prospects for the live stock industry generally are opened up by the meat extract factory which is expected to be in operation before the end of the year and by proposals which have been put forward by companies interested in the frozen and chilled meat trade and which are now receiving consideration.

I should like here briefly to pay a tribute to the work done by Major H. H. Brassey-Edwards, late Deputy Director

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(Animal Industry) and Chief Veterinary Officer, who retired on the 6th July, over a long period of association with the stock farmers of this country. (Applause.)

I received, by the first seaplane operating the new Empire air mail-scheme, the following letter from the Secretary of State:—

"Dear Brooke-Popham,

"On the occasion of the inauguration of the Empire Air Mail Scheme under which all first class air mail exchanged between the countries participating in the scheme will be carried by air without surcharge, I take the opportunity to send you this message of greeting and good wishes for the future welfare of Kenya.

"I am glad to think that the improvement in communications which will result from the inauguration of this scheme will be of real advantage to the Governments and peoples of the territories served by it and will help to link them more closely with this country and with other parts of the Empire.

Yours sincerely,
W. ORMSBY-GORE."

I feel sure that the people of this Colony will wholeheartedly endorse the view of the Secretary of State. The introduction of this scheme represents a very important advance in the case and rapidity of Kenya's communications with the rest of the world.

As regards internal communications, the Central Roads and Traffic Board has recently appointed a sub-committee to consider and formulate a road programme for the immediate future. The legislation which was considered at the Governors Conference in June for the licensing and co-ordination of transport services will not be introduced at the present session but will come before Council probably before the end of the year.

Public health calls for little comment. I have been greatly impressed by the manifest efforts of the natives of Nyeri district to combat plague, efforts which I understand have met with conspicuous success. These efforts have been directed towards the provision of improved grain stores and metal rat-stops and the cleansing of villages.

Honourable members may be aware that during the last few weeks the number of refugees from Ethiopia, who previously consisted of 464 deserters from the Italian forces, has been considerably increased by the surrender of a large number of Ethiopians. The total number now interned in the Colony is approximately 3,300. The expenditure involved is at present being met by His Majesty's Government in the United Kingdom, and the question of the ultimate disposal of these refugees is receiving close attention in consultation with His Majesty's Government.

Turning to the Railways and Harbours, the estimates of revenue and expenditure for the current year, as approved by the Legislative Council of both territories, provide, in the case of the Railways, for a surplus of £307,582, and in the case of the Harbours, for a surplus of £11,587, a total estimated surplus for this of £319,169. During the first part of this year tonnages, both of imports and exports, show substantial increases, it being borne in mind, of course, that the Railway carries Uganda traffic as well as that of Kenya. At the end of May, imports show an increase of a little more than 8 per cent over the corresponding tonnages for 1936, while exports reflect an increase of approximately 23 per cent. These increased tonnages have been reflected in the earnings of both the Railways and Harbours, Railway revenue showing an increase over the amount estimated for the first six months of £151,866, the Harbours increase over the estimate being £74,471, or, together, an excess over the estimated earnings for the period January to June of £226,337. There is little doubt that, for various reasons, the transport of the bulk of Kenya and Uganda has been effected earlier this year than in any previous year. This, naturally, has had a considerable influence on the revenue returns. For the first half of the year there has been an increase of earnings over the corresponding period of 1936 of £116,191, while the increase in the ordinary working expenditure has amounted to £63,245. The more repid evacuation of exports to the Coast in the first half of the

[H.E. the Governor]

year is bound to affect adversely the financial results for the second half of the year. Moreover, signs are not wanting in many directions that we shall be compelled to meet some increase in working costs, particularly in respect of materials and fuel. There is no reason, however, to believe that the anticipated gross surplus of £319,169 will not be realized at the close of this year.

I do not wish now to anticipate the next session at which the Estimates for 1938 will be considered, but certain facts are already obvious. The revenue is buoyant, but it will be impossible to avoid some degree of increased expenditure. In the matter of buildings alone there are very heavy liabilities ahead. I do not now refer to projects such as the new lines for the King's African Rifles, plans for which are now complete and estimates on these in preparation, or to the Nairobi grouped hospitals, but to the buildings lready erected and standing at a value of over £2,000,000. These buildings have to be properly maintained, and this cannot be done for the money which has been spent on them during the last few years. Inadequate maintenance leads to extensive repair; delay in repair may mean reconstruction. As adversity was faced with courage, so prosperity must be courted with prudence, and prudence demands that existing assets be maintained before new liabilities are incurred.

There is, however, one liability which in the near future will call for new money, though not on an alarming scale. I refer to defence. The country has already shown its willingness to meet this new demand on its resources and energies. The enthusiastic response to the call for recruits to the Kenya Regiment both in Nairobi and in the districts must be a source of real pride to all of us, and it is a happy augury for the future of all our local forces. The total number of men enrolled since the 1st June, when recruiting opened, is 509. These numbers will allow of the formation of three companies instead of two as originally contemplated, and steps are being taken to put this into effect. But a fine spirit and a high sense of duty cannot in themselves guarantee success in war. We must provide adequate facilities for training, build up reserves of ammunition, and carry out some degree of re-armament. We have got to face world conditions as they exist to-day and, however reluctantly, must allocate to the defence of the Colony money which everyone would sooner have seen added to the total spent on constructive development.

The committee appointed earlier in the year to investigate the subject of mining royalties has made its report, which is now being considered.

The business of the present session is almost entirely devoted to legislation. Twenty-two Bills is a somewhat formidable programme, but many are in the nature of minor amendments and call for little comment. There are, however, others of some importance.

The Resident Labourers Bill, the Employment of Servants Bill, and the Native Registration (Amendment) Bill fall into the latter category. The Resident Labourers Bill represents the conclusions of the committee appointed to review the existing Ordinance.

There are two Bills dealing with shop hours. These are designed to improve conditions under which shop assistants work at Mombasa and in other towns to which the Shop Hours Ordinance is applied.

The Registration of Trade Unions Bill is another measure relating to labour conditions, and follows an ordinance already enacted in Tanganyika.

Honourable members, in opening this session of Council, I most earnestly trust that, with the help of Almighty God, its deliberations may lead to further peace, prosperity and welfare in Kenya. (Applause.)

MINUTES

The minutes of the meeting of the 20th April, 1937, were confirmed.

PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

BY THE COLONIAL SECRETARY (SIR ARMIGEL WADE):

Schedule of Additional Provision No. 5 of 1936.

Schedule of Additional Provision No. 1 of 1937.

Report of the Standing Board of Economic Development on the Dairy Control Bill.

Civil Procedure (Amendment) Rules, 1937.

H.M. Eastern African Dependencies' Trade and Information Office, London, Annual Report, 1936.

Judicial Department Annual Report, 1936.

Kenya Police Annual Report, 1936.

Printing and Stationery Department Annual Report, 1936.

Prisons Department Annual Report, 1936.

Registrar General's Annual Report, 1936.

BY THE ACTING TREASURER (MR. STOOKE):

Financial Report and Statement for the year 1936.

Colonial Loans Statement No. XXVI, July, 1937.

BY THE CHIEF NATIVE COMMISSIONER (MR. MONTGOMERY):

Summaries of Local Native Fund Accounts, 1936.

BY THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. LOGAN):

Return of Land Grants under the Crown Lands Ordinance, January–March, 1937.

BY THE DIRECTOR OF EDUCATION (MR. MORRIS):

Education Department Annual Report, 1936.

BY THE GENERAL MANAGER, K.U.R. & H. (BRIG.-GEN. SIR GODFREY RHODES):

Report on the Administration of the Kenya and Uganda Railways and Harbours for 1936.

2nd Supplementary Estimates, K.U.R. & H., 1936.

BY THE ACTING DIRECTOR OF PUBLIC WORKS (MR. WALMSLEY):

Public Works Department Annual Report, 1936.

BY THE COMMISSIONER OF CUSTOMS (MR. BALE):

Annual Trade Report of Kenya and Uganda, 1936.

BY THE COMMISSIONER OF MINES (MR. HOSKING):

Mining and Geological Department Annual Report, 1936.

BILLS

FIRST READINGS

On the motion of the Acting Attorney General (Mr. Willan), seconded by Mr. Wallace (Acting Solicitor General), the following Bills were read a first time:—

The Trustee (Amendment) Bill.

The Public Trustee (Amendment) Bill.

The Girl Guides (Amendment) Bill.

The Evidence (Bankers Books) Bill.

The Tribal Police (Amendment) Bill.

The Traffic (Amendment No. 2) Bill.

The Stamp (Amendment No. 2) Bill.

The Traders Licensing (Amendment) Bill.

The Prisons (Amendment) Bill.

The Tea Cess Bill.

The Native Hut and Poll Tax (Amendment) Bill.

The Trades Union Bill.

The Medical Practitioners and Dentists (Amendment) Bill.

The 1936 Supplementary Appropriation Bill.

The Local Government (District Councils) (Amendment) Bill.

The Plant Protection Bill.

The Shop Hours (Amendment) Bill.

The Mombasa Shop Assistants Employment Bill.

The Resident Labourers Bill.

The Employment of Servants Bill.

The Native Registration (Amendment) Bill.

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

ADJOURNMENT

Council adjourned till 10 a.m. on Monday, the 26th July, 1937.

Monday, 26th July, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, 26th July, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 23rd July, 1937, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 27—KISUMU TOWNSHIP DEVELOPMENT

MR. HARVEY asked:—

1. In view of the rapid development of Kisumu Township, what action is being taken by Government for a comprehensive survey of the drainage requirements of the town?

2. Will Government arrange for the disbursement of the necessary money from the Roads and Drains Funds for the construction of urgently required drains in Sections XXV and XXVI at the earliest possible date?

3. What steps are being taken for completion of the Kisumu Bazaar Town Planning Scheme?

4. What action is being taken by Government for the provision of fire-fighting appliances at Kisumu?

THE COMMISSIONER FOR LOCAL GOVERNMENT (MR. LOGAN): 1. A proposal that a comprehensive survey of the drainage requirements of Kisumu should be made has recently been received from the Township Authority. It is not possible for the Public Works Department to undertake this work this year.

2. The disbursement of the necessary money from the Roads and Drains Fund involves supplementary provision under Item 14 of Head XXXIV (P.W.E.). The matter is under consideration.

3. The Kisumu Bazaar Town Planning Scheme, which was a road-widening scheme covering Lower Station Road and a few plots in side roads from that road, is complete.

Proposals for road-making within the area covered by the scheme have been received. A portion of the proposed wo[illegible] is a charge against Item 14 referred [illegible] above, and supplementary provision [illegible] under consideration, but the balance [illegible] presents normal township improveme[illegible] as to which no financial provision w[illegible] made in the current Estimates.

4. The question of the provision of fir[illegible] fighting appliances for Kisumu is recei[illegible] ing consideration in connexion with th[illegible] draft Expenditure Estimates for 1938.

No. 30—CURRENCY BOARD RATES

MR. BEMISTER asked:—

In view of the voluntary action o[illegible] the Banks in reducing exchange de[illegible] mand rates three-sixteenths on London is the Currency Board intending to reduce their charges?

THE ACTING TREASURER (MR. STOOKE): The intention of the Currency Board in the matter is not within the cognizance of this Government, but steps are being taken to obtain the required information from the appropriate quarter.

TRUSTEE (AMENDMENT) BILL

SECOND READING

THE ACTING ATTORNEY GENERAL (MR. WILLAN): Your Excellency, I beg to move the second reading of the Trustee (Amendment) Bill.

A trustee who is proceeding out of the Colony for a period of more than one month is allowed to delegate his powers to another person by means of a power of attorney but, under the law as it stands at present, that power of attorney must be registered within ten days after its execution. That has been found most inconvenient, because when a trustee is already out of the Colony it is impossible to get the power of attorney here and have it registered within the prescribed period of ten days.

In order to get over that difficulty this Bill has been introduced, whereby the ten days at present prescribed by law is increased to thirty days. The result will be that after this Bill has become law a power of attorney executed in this Colony by a trustee can be registered within thirty days from its execution, and a power of attorney executed outside this Colony by

[Mr. Willan]
a trustee already residing outside the jurisdiction and sent to this Colony can be registered within thirty days of its first arrival in the Colony.

That is the only alteration in the Trustee Ordinance made by this Bill which, I may mention, was drafted at the suggestion of the Law Society of this Colony.

MR. WALLACE seconded.

The question was put and carried.

PUBLIC TRUSTEE'S (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Public Trustee's (Amendment) Bill.

Under the law as it stands at the present time, the Public Trustee has no power to deal with the estates of natives dying in native reserves. Clause 3 gives that power, so that the Public Trustee, after this Bill has been passed, will be able to deal with such estates; that is, the property which is owned by the native himself.

New sub-section (2) to the proposed new section (4) of clause 4 also extends the power of the Public Trustee to administer the estates in the Colony of persons who die outside the Colony. At the present time, what is happening is this: A person dies in England possessing property in Kenya and England and elsewhere, and the court merely gives an order to the Public Trustee to administer the estate. The order here is granted by the court, and the trouble is that when the order is sent to England it cannot be re-sealed.

The position after this Bill is passed will be that instead of the court here giving an order to administer, they will either give a grant of probate where there is a will or grant letters of administration where there is no will. The position will be that the Public Trustee, armed with the grant of probate or letters of administration, will be able to administer the property here and send over to England the grant of probate or letters of administration, have them re-sealed there, and the property in England can be effectively dealt with by the one or the other.

I have been asked to explain the proposed new sub-section (4) of the new section 4 in clause 3 of the Bill, which reads—

"(4) When the peculiar circumstances of the case appear to the Court so to require, for reasons recorded in its proceedings, the Court may, if it thinks fit, of its own motion or otherwise, after having heard the Public Trustee, grant letters of administration to the Public Trustee even although there are persons who, in the ordinary course, would be legally entitled to administer the estate of the deceased in preference to the Public Trustee."

As you know, relatives very often quarrel among themselves, and you might have a case where there were two relatives each perfectly entitled to take out letters of administration. Those two relatives both apply, and it is quite apparent to the court that they are at loggerheads. There can be no proper administration where there are relatives at loggerheads like that, and that is one of the cases where the Public Trustee might be granted letters of administration by the court.

Another case is where only one person is entitled to apply for letters of administration, who is not in good standing—he is a "bad hat"!—and in such a case the court, of course, would look to the safety of the estate. To guard the interests of minor beneficiaries, the court would consider the circumstances "peculiar", and in such a case as that would grant the letters of administration to the Public Trustee instead of to the "bad hat" who was applying for them.

Passing on to clause 4, this amends section 6 of the present Ordinance. The law as it stands at the present time is that the Public Trustee may apply to administer the estate of a deceased person without serving any previous notice on the next-of-kin or on the executors of the will. Section 6 has now been re-drafted, and before the Public Trustee can apply for a grant of letters of administration he must serve notices on the executors and next-of-kin. In addition to serving notices on them, he must also publish a notice in the

[Mr. Willan]
Gazette, advertise in the Press, and post a notice in a conspicuous place outside the Supreme Court of the Colony. There is a proviso, that the court may extend the period of the notice. There is also provision for the court saying that no notice need be served at all, and there is also provision that where the court thinks the estate will be damaged by means of delay there is no necessity to issue or serve that notice. That is the only change effected by this clause.

Clause 5 re-drafts section 7 of the present Ordinance, and it really sets out in more detail when a grant of letters of administration granted to the Public Trustee may be revoked.

The only principal amendment is this: that such grant shall not be revoked unless an application is made by other parties. Take, for instance, the next-of-kin. That application must be made within six months after a grant of probate or letters of administration has been granted to the Public Trustee.

Clauses 6 and 8 merely make consequential amendments which are necessary on account of the Public Trustee not being granted an order to administer but is granted either a grant of probate or letters of administration.

I come back to clause 7, which amends section 11 of the present Ordinance. Under the law as it is at present, if a person dying leaves movable property, such as jewellery, a motor car, or anything like that, the Public Trustee is bound to convert that property into money unless an order from the court otherwise directs him. That, of course, means that several applications will have to be made to the court to postpone the conversion of the property into money, and those applications of course occasion delay and expense. The law is therefore being amended to substitute the word "may" for the word "shall"—"the Public Trustee may convert into money." It means that he can use his own discretion and need not go to the court every time for means of conversion. That is the only alteration in the law made by clause 7.

I come to clause 9. Here it is proposed that where the beneficiary of an estate is a minor and his share in the estate does not exceed £100, the Public Trustee may pay the minor's share over at once either to the father or mother of the minor.

Clause 10 is designed to enable the Public Trustee to act as custodian trustee and, as sole trustee, to have the power of two trustees where any law requires the presence of two trustees. That follows the English law.

Clause 11 elaborates that and sets out the circumstances in which the Public Trustee may be appointed custodian trustee, and also the effect of such appointment when it has been made. In that respect our law will follow out the Trustee Act of England.

In conclusion, I may mention that the Law Society of Kenya has seen this Bill and has approved of it as drafted.

MR. WALLACE seconded.

The question was put and carried.

GIRL GUIDES (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Girl Guides (Amendment) Bill.

This Bill alters one word in the present Ordinance. It alters the word "Chief" in the section defining the word "Commissioner" to the word "Colony". The reason is this: that the title of Chief Commissioner is reserved for the Girl Guides Association in the United Kingdom, the Dominions and India, and in the colonies the head of the Girl Guides is not entitled to the title of Chief Commissioner. The title has thus been altered to that of Colony Commissioner.

MR. WALLACE seconded.

The question was put and carried.

EVIDENCE (BANKERS' BOOKS) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Evidence (Bankers' Books) Bill.

The reason for this Bill is that there is considerable doubt as to whether the English Bankers Books Evidence Act of

[Mr. Willan]
1879 applies to this Colony. On account of that, the bankers here are placed in a most embarrassing position, because at the present time it is possible for any parties to court proceedings in which it is necessary to obtain evidence of entries in the books of a bank to demand, by subpœna, that the original books of the bank be produced in court. I am sure that hon. members will see clearly that, with that power, those books which are produced in court could be held in court until the case had been heard and determined, quite possibly that might not be for weeks, or even two or three months, so that the work of the bank would be very largely disorganized by having to part with the original books for that length of time.

In order to get over that difficulty, this Bill has been introduced, whereby copies of the entries in the books of a bank can be used in court instead of the production of the original books. This Bill was drafted at the request of the local banks, and it follows almost exactly the wording of the English Act.

Clauses 3, 4, and 5 provide that copies of the entries in the books of a bank may be received in evidence, provided that those books are used in the ordinary course of business and that they are in the custody or control of the bank.

Clause 5 provides that those entries must be compared with the entries in the original books, and proof can be given, either by oral evidence or affidavit, that that condition has been carried out.

Clause 6 provides that the only case in which the original books can be produced in court is by an order of a judge of the Supreme Court. It may be that a question of forgery has arisen, and it is necessary for those books to be produced in court during the hearing of the case. In order to do that, parties concerned must come before a judge of the Supreme Court and obtain his order.

Clause 7 provides that any parties to litigation in court may get an order to inspect and take copies of the entries in the books at the bank for the purpose of the legal proceedings going on, and clause 8 provides that if a bank acts unreasonably and does not carry out an order of the court or delays unduly costs may be awarded against the bank.

The Bill, as I have just said, is practically word for word with the English Act which has stood the test of time for so many years, and in practically every colony that I know there is a Bankers Books Evidence Act. Such a measure is very necessary in order to protect the banks' books being produced in court.

MR. WALLACE seconded.

MAJOR CAVENDISH-BENTINCK: I should like to ask, Sir, whether these shortcomings in our legislation have been brought to light by the advent of income tax in this country and the possibility of banks' books remaining in court indefinitely from now on? (Laughter.)

MR. WILLAN: The answer, Your Excellency, is in the negative. (Laughter.)

The question was put and carried.

TRIBAL POLICE (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Tribal Police (Amendment) Bill.

The sole object of this Bill is to enable the Governor in Council to make regulations for the granting and payment of gratuities to tribal police officers who have given good service for a number of years and have retired.

As hon. members are aware, the system of gratuities is already in force with regard to the K.A.R. service, the Police, Prisons, and Forestry services, and it is considered it is only fair and reasonable that a similar system should be brought into force with regard to the Tribal Police Force.

An expenditure of public money of approximately £120 a year it is anticipated will be involved if this Bill becomes law.

MR. WALLACE seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, as the question of tribal police is brought up under this Bill, we should just like to hear, if we could, what

[Major Cavendish-Bentinck]
exactly are the lines on which the force is supposed to be organized and is going to function from now onwards.

It is suggested that the introduction of a system of gratuities into what must be a fairly large force is going to be limited to £120 a year. It has also been suggested that the reason for the innovation is to bring this force into line with the K.A.R., the Colony's Police Force, the Prisons and Forestry services.

We have no reason to criticize the Tribal Police Force, though the system does seem to vary in different parts of the country, but we are just wondering whether there is any uniform system of training the men or recruiting them, and we would like to know what that Force is eventually intended to become? I believe that the tribal police were supposed to consist merely of local young men engaged in very primitive police duties; they are not supposed to be highly trained or armed or put into uniform. We should just like to know whether the former is the intention, or whether the intention now is to start a sort of rather grand and duplicated police force under Provincial Commissioner or district officers among the various tribes?

MR. HOEY: I shall oppose this Bill, Your Excellency, because I think it is a highly dangerous Bill. It is another commitment on the Colony, and, as the hon. member who has taken his seat has pointed out, although the sum involved this year is only £120, judging by the way our commitments in pensions and gratuities have risen in the past this sum might easily be £1,200 within the next ten years.

I, personally, can see no reason for this. I think there is a grave danger of duplicating our police force, without any real collaboration between the two forces. At present we have the Kenya Police Force, and I quite agree that it is advisable for many reasons to have that Force augmented to some extent within the native reserves by some auxiliary force—I do not like to use the word "police"; I think the proper word is "tribal retainer".

If you allow this to go on, where is it going to end? What authority is there controlling these so-called tribal police? There is no real collaboration between the tribal police and the existing Police Force. It seems to me that the only authority which dictates a policy to the Tribal Police Force is the District Commissioner concerned in the native reserve.

I fail to see how you can get any real continuity because Government are continually changing the District Commissioners within the native reserves, and I think it is entirely wrong to say that these so-called tribal police really act as policemen. They do not; they are merely retainers for a District Commissioner, in many cases. I think it is all wrong that a force such as this should be admitted as entitled to pensions and gratuities, and on the ground of public expense I maintain that there is no case for this Bill.

ARCHDEACON BURNS: Your Excellency, I rise to support this Bill.

I think the tribal police are doing a very excellent work in the reserves, work without which the District Commissioners and others responsible for the administration of the reserves would find it very difficult indeed to carry on.

If a man has served so many years in this work, although the District Commissioners are changed, it makes no difference, for a man goes on with his work, and the next man taking over knows to whom he can turn in the case of sending police into the reserve or for any purpose of trying to keep peace in the reserve. I think myself the Bill is very necessary, and it is only just that such men who have given a long number of years to this service in the reserves should have that service recognized.

There is only one other point that I should like to make, and that is with regard to the detention camps. Where men have been in charge of these camps for a long number of years, say ten or twelve, this privilege of a gratuity should also be extended to them. They have given this number of years in their lives to this work to keep peace in the reserves and to make the reserves more easily administered by the officers in charge.

THE CHIEF NATIVE COMMISSIONER (MR. MONTGOMERY): I did not know, Your Excellency, that these

[Mr. Montgomery]
points were going to be raised this morning, but I will do my best shortly to explain what the tribal police are doing.

The Tribal Police Force was first formed in 1929, partly in order eventually to take the place of the regular police, thus getting equal efficiency for less money. In some districts the regular police have been reduced, and in some districts entirely done away with, as the tribal police become more and more efficient. They are under the control generally in the provinces of the Provincial Commissioner, and under the general superintendence of the Chief Native Commissioner.

They took the place of what we call tribal retainers. Those tribal retainers had no real position as public servants, and no power of arrest which it was necessary for the force to have to take the place of the regular police.

They are not a rabble, as has been suggested by the hon. Member for Trans Nzoia (Mr. Hoey)—

MR. HOEY: On a point of order, I never accused the tribal police of being a rabble at all. That is a pure invention of the Chief Native Commissioner, I object to it.

COL. KIRKWOOD: On a point of information, the hon. Member for Uasin Gishu, not the Trans Nzoia!

MR. MONTGOMERY: If I used the wrong expression I apologize. I understood the hon. member to say they were not as fully organized as they should be. (MR. HOEY: That is very different from rabble.) In some districts they are highly organized, and in all places they wear uniforms differing according to the tribes. Some of them who have proved efficient have arms; in most districts they have not.

They are a useful body of men who have taken the place of the Kenya Police in many areas, and I hope as time goes on that that will be done more and more. It is only fair that, as they have taken the place of the Kenya Police, they should receive more or less the same conditions. They are paid very much less, so why should they not have gratuities as the other organizations have received for some years?

The amount of money which will be spent in any one year has been queried, but it must be remembered that the oldest member in service of the tribal police is only some eight years, and the rules it is proposed to put before the Governor in Council will make the qualifying period twenty-one years. Some people may have attained that period, because they may have had previous service in the regular police or K.A.R., for nearly all the senior N.C.O.S.s in the tribal police have had some such service and are men especially recruited into the tribal police to control and generally instruct the rank and file.

I hope the Bill will not be opposed. This is a useful force doing useful work, and the men ought to be treated the same as their regular brethren.

THE COLONIAL SECRETARY (SIR ARMIGEL WADE): Your Excellency, I have very little to say in addition to what the Chief Native Commissioner has said, but I want to emphasize one particular point. It has been suggested that this is a duplication of police effort. It is nothing of the kind. It is substituting cheap policemen for more expensive ones.

They do regular police work, and they are responsible for arresting criminals and guarding them, and for the custody of public money and public property. They are responsible for the safety and protection of the hut tax when it is collected and taken from the location into the *boma*, to the station. They are responsible for guarding that money when it is there.

I do wish hon. members would understand that there is no question of adding to the expenditure of the Colony; in instituting this particular service it was a question of saving money.

It is also quite proper that the native community should do their own police work. The organization of these tribal police arose partly from a visit by a former Governor, Sir Edward Grigg, some years ago to the Masai Reserve, where he saw Kavirondo policemen on duty. He said to the Masai, "Are you incapable of doing your own police work?" And they replied that of course they would do it if they were given the

[Sir A. Wade]
chance. That incident was one of those which led to the establishment of the tribal police on a regular basis.

I would emphasize that it is not a disorganized force at all. Superintending it is the Chief Native Commissioner, and the administration is in the hands of the Provincial Commissioners, while the local details of training are worked out by district officers.

MAJOR CAVENDISH-BENTINCK: To elucidate what I said, what I was trying to find out was this: Is it the intention to build up a second police force, armed and uniformed, and not trained by professional police officers?

MR. LA FONTAINE: Your Excellency, I should like to state that, as far as the Central Province is concerned, on the point raised by the hon. member Major Cavendish-Bentinck, the training of the tribal police is largely in the hands of the regular police. That is to say, on recruitment they go to the Kenya Police Depot and undergo training there, and from time to time they go back to the Depot for refresher courses, so that in point of discipline there is very little difference between them and the regular police. I think, on guards of honour, when important personages come to the district they are impressed by the efficiency of the tribal police.

COL. FITZGERALD: Your Excellency, I should like also to support this Bill. I think one must realize that if these tribal police did not exist it means that the present police force will have to be increased. Therefore it is really a saving in extra expenditure. The amount involved now seems to me like a saving, because we pay these people a much less wage than the regular police who would be required if the tribal police did not exist.

MAJOR GROGAN: Your Excellency, I have listened with great interest to the explanations of the functions of these gentlemen given by various administrative officers, and I think they are entirely satisfactory. It is perfectly obvious that such a body is required. The only proper inference, as far as I can see, to be drawn from the explanations which have been given, is that this body should be under the control of the Kenya Police. It is a perfectly simple thing to have two categories of policemen, one exercising its local and specialized functions in the reserve, the other exercising the more generalized functions of the ordinary police. I see no reason in the world why the control should be separated because the functions are different.

I think the objection on this side of the Council, which began long ago, is to the idea that we are going to get two forces with more or less similar functions not focussed under one control. If these tribal police are, in fact, sent to the orthodox police to be trained, surely that is a very strong argument for their being retained under the centralized control of the Commissioner of Police. I see no reason why they should not be allocated in the ordinary way to the district officers. It seems to me dangerous to have two forces of this kind growing up on differentiating lines.

On this ground I am opposed to this Bill. I do not mind these people getting gratuities if they deserve them, but I take this opportunity of pointing out what I believe are the objections to the evolution of this double type of police.

COL. KIRKWOOD: Your Excellency, I should like to ask for figures; that is, figures of the numbers of tribal police before the Ordinance was passed in 1929 and figures showing the numbers to-day; also the total numbers of the Kenya Police Force before 1929 and to-day. I should also like to know why, when the Ordinance was passed, the question of pensions and gratuities was not introduced then. It is quite obvious that the Ordinance went through and for some reason, apart from others, there was no pension or gratuity attaching.

I do not accept the statement that the tribal police are trained and are a disciplined body. I do not see how they can be in the method of functioning under district officers. They are not centralized, and I am not aware that they do any annual training, and the preliminary training is very superficial.

While I am not criticizing the tribal police at all, I am not satisfied that they are entitled to the proposal contained in

[Col. Kirkwood]
this Bill. Although general statements have been made that the formation of the force was an economy and we saved money, no figures have been produced to prove it, and I say that figures should be put up to show the Council that the regular force has not been augmented considerably by the formation of these tribal police, and, regarding the financial commitment of £120, what is going to be the increase per annum for, say, the next ten years.

I should like some concrete information, something definite on these lines, before I am in a position to vote for the measure.

MR. LONG: Your Excellency, during this debate it has been said that the Kenya Police Force and the Tribal Police Force are run more or less together. I am sorry, but I must differ, for I consider it is not so.

If in the ordinary course of events a cattle thief is pursued by the Kenya police and he crosses over the borders of the reserve, the Kenya police are in fact not allowed to enter that reserve, so that to say the two things are run together seems to be absolutely ridiculous.

One further word. It was said by one hon. member representing native interests that unless these people got gratuities the tribal police would cease to exist. That was never suggested by anybody, that they should not be given gratuities. The whole question is whether they deserve gratuities or not.

MR. WILLAN: Your Excellency, in replying to the debate on this highly dangerous Bill, I shudder to think how the hon. Member for Uasin Gishu (Mr. Hoey) will describe some of the later Bills if this is a "highly dangerous Bill"!

First of all, in his own words and by his own words, he really wants a much more expensive system; in other words, he is not satisfied that he is getting something for nothing. At the present time these tribal police are paid less than the Kenya police, and I think it most unfair that the members of the former force should not have gratuities.

If the hon. member wants to abolish these tribal police, what is he going to replace them with? By expanding the Kenya police into a bigger body and paying more for them? If that was done, I am certain that the hon. member would be the first to rise to his feet when the Estimates were before the Council and oppose that increased expenditure.

As the Chief Native Commissioner explained, it is the policy to give these gratuities after twenty-one years' service. In effect it is proposed to give gratuities after twenty-one and twelve years' service; the latter will be on a much lower scale than those for twenty-one years.

With regard to the comments of the hon. Member for the Coast (Major Grogan), his suggestion is this: that the tribal police should be controlled by the Kenya police and not by the Provincial Commissioners and district officers. That is another expensive suggestion, because if you are——

MAJOR GROGAN: On a point of explanation, I never suggested anything of the kind, but that they should be co-ordinated under the proper policeman and allocated to the district officers or administrative officers for the use for which they are going to be applied.

MR. WILLAN: Well, you cannot co-ordinate unless there is one control, and if you want one control you have got to have that under the Commissioner of Police. You can then transfer the control of these tribal police from the district officers to the Commissioner of Police, and in order to do that what is your suggestion? You have tribal police stationed at Meru and Embu and other places where there are no police officers. The only solution will be to recruit further inspectors and assistant inspectors to station at Meru and other places, so that you would have a much more expensive system than the present one.

With regard to the comments of the hon. Member for Rift Valley (Mr. Long), I understand that he does not oppose the Bill. But I wish to disillusion him that Kenya police cannot enter a reserve. They can, provided that, having so entered, they report afterwards.

With regard to the hon. Member for Trans Nzoia (Col. Kirkwood) and his demand for figures, I have not got them

[Mr. Willan]
available, but if the hon. member really presses for them they will be made available for him.

The question was put and carried.

TRAFFIC (AMENDMENT NO. 2) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Traffic (Amendment No. 2) Bill.

Clause 2 is necessary because in 1931, when section 30 (2) was enacted, unfortunately an elusive comma got into the wrong place. The only object of this clause is to remove the comma after the word "sub-section" in the second line, and to insert another comma after the word "cease" in the fourth line of this sub-section.

This sub-section deals with insurance policies relating to public service vehicles which convey passengers for reward or hire, and the only object of the sub-section is to prevent policies being rendered void by some default or breach of conditions by the insured after the accident has occurred. Such terms are occasionally found in policies of this class. For example, admission of liability by the insured after the accident might render the policy void. So the Accident Insurance Association of East Africa has pointed out that the punctuation in the section as it stands at present is wrong, and that has been verified, so the elusive comma which appeared where it should not be has been taken out and the other comma inserted after the word "cease". That is the only object of clause 2.

Clause 3 is a safety provision, providing that all bicycles used on the roads of the Colony must have a red reflector on the back thereof. There is a proviso that this section shall come into operation on such date as Government by notice shall appoint. The only reason for that proviso is to ensure that there are sufficient stocks of these red reflectors in the Colony.

Clause 4 adds a new section, 48A, to the Ordinance, and makes it incumbent on the owner of any motor vehicle to supply the name of its driver who was driving the vehicle at a time when any offence was alleged to have been committed against the provisions of the Ordinance or any other law in force in the Colony.

The position at the present time is this. A motor vehicle is driven on the roads, an offence is committed (it may not have proper lights or be involved in an accident), and all that happens is that the police are able to obtain the number of the car, which does not stop, as it ought to have done, after the accident. The police then go to their records and are able to trace the name and address of the owner of the car. Under the present law, having done that they come to a full stop, because they have no power to compel the owner to give the police the name and address of the person driving the car at the time of the offence alleged to have been committed.

This new sub-section will give the police that power, to demand the name and address of the person driving the car. If the owner says, "I was driving the car myself," under the Evidence Ordinance that would amount to a confession and be inadmissible in evidence. To get over that a new sub-section (2) has been drafted whereby that admission could be used against the owner when the case was heard.

Those are the only alterations made by this Bill.

MR. WALLACE seconded.

MR. HARVEY: Sir, I intend to support the second reading of this Bill. My main object in rising is to ask for an explanation, and to offer a simple suggestion, in regard to clause 4 which adds the new section 48A.

The simple lay mind is quite unable to grasp the justice of enacting a law forcing people to do the impossible. As this section is expressed at the moment, while I stand here entertaining hon. members some nasty person may take my car from the front of the hall, be involved in an accident, and, as I read this section, I, knowing nothing whatever about the individual concerned, am compelled by law to furnish his name and address! (Laughter.) I suggest that since that is utterly unreasonable, doubtless the explanation will be that magistrates put a reasonable interpretation on legislation.

[Mr. Harvey]
But in reading the columns of the local Press I often see a statement to this effect by a learned magistrate: "We have no discretion in this matter. We have to take the law as we find it set before us in black and white."

That being so, I would respectfully suggest that my point might be met by inserting the word "authoritatively" between the words "was" and "driving" in the fifth line of the proposed new section, in order to make it perfectly clear.

As hon. members have doubtless already noticed, the law we are now asked to pass states that the "owner of any vehicle shall furnish to a licensing officer or to a police officer the name and address of the person who was driving such motor vehicle at any particular time when an offence, under this Ordinance or under any other law for the time being in force, is alleged to have been committed." I shall be pleased to hear what the hon. the Attorney General has to say on that point and whether he will give due consideration to my suggestion that the meaning is clarified and interpretation rendered reasonable by putting in the word "authoritatively", which is offered at the suggestion of my hon. friend the Member for the Coast (Major Grogan).

MR. WILLAN: I accept *in toto* what has been suggested by my learned friend, and in committee I will move that that word be inserted.

The question was put and carried.

STAMP (AMENDMENT NO. 2) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Stamp (Amendment No. 2) Bill be read the second time.

The object of this Bill is twofold: First of all, clause 2 is designed to assist interterritorial trade between this Colony and Uganda and Tanganyika. It provides that where certain instruments are drawn or made in Uganda and Tanganyika and there stamped, when they come down here to be used in this Colony they need not be re-stamped here. Both Uganda and Tanganyika are enacting reciprocal legislation, and the position then will be that an instrument stamped in Kenya and which is to be used in Uganda or Tanganyika, need not be re-stamped in either territory. That is the only object of clause 2.

Clause 3 deals with spoilt stamps. In practice, at the present time, with the exception of a few large business houses in this Colony, the bulk of the stamp duty collected on bills of exchange and promissory notes is effected by sale over the post office counter, or by stamping officers, of forms on which stamps are embossed. These forms are printed and the paper provided out of the public revenue of the Colony. When one of these forms is spoilt, what happens is that the person brings it back to the stamp office and applies for another in exchange. He is given another, and on that form is the exact value of the stamps on the original form. So, in addition to the value of the stamps, he gets another form the paper of which is supplied and the printing done at the cost of the public revenues of the Colony.

Each time a spoilt paper is presented to the Revenue Department it means it has to be carefully examined to see that the provisions of the Ordinance are complied with and that there is no leakage of revenue; secondly, a voucher has to be made out for the refund, and that has to be signed; thirdly, an additional form has to be stamped in order to exchange it for the spoilt form handed in. The numbers of these spoilt forms have been increasing year by year. In 1934, there were 3,206 applications for refunds on account of spoilt bills of exchange or promissory notes; in 1935 that figure had risen to 3,882, and last year it rose to 5,122 applications.

Hon. members can quite see if these figures are going on increasing like this, the amount of work involved is going to be considerable, and there will probably have to be an increase of staff in the Revenue Department. The only way to stop this—and I am perfectly certain that the majority of the spoilt forms are due to the fact that people do not take sufficient care in filling them up—is to make people more careful by means of imposing a small penalty of 10 cents in every shilling, with a maximum penalty of Sh. 20. The object is not to raise revenue but to make people more careful.

MR. WALLACE seconded.

MR. MAXWELL: Your Excellency, I do not intend to oppose the Bill, but it has been pointed out to me by Nairobi Chamber of Commerce that the charge of 10 cents, especially on big bills, is on the high side, and that perhaps the maximum penalty of Sh. 5 or Sh. 10 is fairer than Sh. 20. I should like that to be considered.

MR. WILLAN: I am authorized by Government to accept an amendment proposed by the hon. member, which will be duly made in committee, to that effect.

The question was put and carried.

TRADERS LICENSING (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Traders Licensing (Amendment) Bill.

This Bill is necessary because of a decision of a court recently that neither section 13 nor section 17 of the present Ordinance applies to persons who should have taken out licences, but only to persons who have actually taken out traders' licences; that is, the latter are the only persons who need keep books of accounts and the only persons who need put up signboards outside their premises.

The result of that decision is that if a person trades and does not take out a licence when he ought to have taken out one, he need not keep books of account nor need he put up a signboard outside his premises.

This Bill, by clauses 2 and 3, amends the provisions of sections 13 and 17 so that they will cover all persons liable to take out a trading licence under this Ordinance.

MR. WALLACE seconded.

The question was put and carried.

Council adjourned for the usual interval

On resuming:

PRISONS (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Prisons (Amendment) Bill.

Under the law as it stands at the present time, prisoners undergoing sentence of three years or upwards and previously imprisoned for a period of six months or more, cannot be released on licence after serving a portion of their sentence. Such licences are not given to recidivists.

By clauses 2 and 3 of the Bill, prisoners who undergo a sentence of more than six months and less than three years can earn a remission of their sentence by good behaviour, and prisoners serving three years or more can be released on licence, irrespective of whether they have been previously convicted or not, but still with the proviso that that does not apply to prisoners who are sentenced to imprisonment for life.

That agrees with the system in England, and it is reasonable and logical, because once the court, in assessing the sentence, has before it the fact that it is the first offence or that the prisoner has previously been convicted, it will then take all those circumstances into consideration. It seems logical that, the court having done that, there should be no discrimination between the two classes of prisoners once they are sent to prison.

Clause 3, which amends section 42 of the Ordinance, also extends the power of the Commissioner of Prisons to grant licences to be at large in neighbouring territories. Those territories will be the territories into which this Colony has entered into reciprocal arrangement, namely Tanganyika and Uganda, and the Governments of both those countries have undertaken to introduce reciprocal legislation.

This brings me to clause 4, which inserts a new section, 48A, into the Ordinance. The only object of it is that when a person who is imprisoned in Kenya is released on licence, and goes to Uganda or Tanganyika, and commits a breach of the conditions of the licence, his licence is at once revoked and he is brought back to prison.

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What will happen is that a warrant will be issued by this Colony, sent to Uganda (supposing he was a licensee there), and the Uganda authorities will have power to arrest him and send him back to Kenya. The same thing would happen the other way. A person is released from Uganda prison on licence and comes to Kenya; he commits a breach of the conditions of his licence and a warrant is issued in Uganda, sent to Kenya, and the licensee is arrested and sent back to Uganda. That is all that happens under this new section.

Clauses 5 and 6 merely make minor amendments to sections 58 and 59 of the Ordinance empowering prison offenders to be punished by delaying the granting of these licences to be at large.

MR. WALLACE seconded.

ARCHDEACON BURNS: Your Excellency, I should like to ask whether those who are given a certificate by the Commissioner have to report to the police in any way, or are they absolutely free to go here and there in the Colony or wherever their homes may be?

MR. WILLAN: A licensee must report occasionally to the police.

The question was put and carried.

TEA CESS BILL

SECOND READING

MR. WILLAN: Your Excellency, I move the second reading of the Tea Cess Bill.

This Bill is the outcome of an inter-territorial meeting between representatives from Nyasaland, Tanganyika and Kenya Tea Growers Associations.

The cess collected by means of the provisions of this Bill will be used for the welfare of the tea industry, principally in contributions to the Tea Marketing Expansion Board, which uses such contributions for propaganda work. The International Tea Committee regards this question of propaganda as being of the first importance, and in establishing the International Tea Marketing Expansion Board has put on a satisfactory basis the allocation of funds for such propaganda. That world-wide propaganda can only be effectively carried out provided that each tea-growing colony plays its part, and the object of this Bill is to enable this Colony to play its part in that world-wide propaganda with regard to tea.

The general scheme of the Bill is that the Governor is empowered to levy a cess on all tea manufactured in the Colony, for the proceeds to be handed over to the board to be created by this Bill, and the board applies the proceeds of the cess for the benefit of the tea industry.

Turning to the details of the Bill, clause 3 provides in a proviso that the amount of the cess shall in no case exceed Sh. 1 per 100 lb. or part thereof, and by sub-clause (3) the Treasurer of the Colony is empowered to pay over to the board the proceeds of the cess.

Clause 4 (1) deals with the constitution of the board, which shall be the District Commissioner (if you will turn to clause 3 you will see that that is the District Commissioner, Kericho), and six members who shall be nominated by the Kenya Tea Growers' Association—seven members altogether.

The other remaining sub-clauses of clause 4 and clauses 5, 6, 7, 8, 9 and 10 are in common form, and hon. members are already well acquainted with them in the Passion Fruit Ordinance and the Ordinances dealing with sisal, coffee, wheat, so that there is no need to go into these sub-clauses and clauses in detail.

Clause 6 deals with the collection of the cess, and you will notice from that that a rule has to be prescribed. In fact, the rule which will be made under this clause will be on the lines of Rule 9 of the Excise Duties Rules, 1936, that every person liable to the payment of the cess must transmit to the Commissioner of Customs before the 28th of each month the amount due in respect of the preceding month.

Clause 7 sets out the purpose for which the cess will be used, the principal being (*a*); the others are subsidiary.

Clause 11 gives the board, with the approval of the Governor in Council, power to make rules carrying out the purposes of the Bill.

Nyasaland has had an Ordinance on these lines since 1935. I might mention, in

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conclusion, that before the Bill was finally drafted and published I discussed it with the representatives of the Kenya Tea Growers Association, and that association has approved of this draft and strongly supports the Bill.

MR. WALLACE seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I think we all welcome this Bill in principle. I would like, however, to ask—and possibly the Director of Agriculture can answer it—whether there are any other persons who manufacture tea who do not form part of the Kenya Tea Growers Association?

Under this Bill it is laid down that the Board shall consist of the District Commissioner, Kericho, and six members of the Association, and they have complete powers, as they probably should have. But I should like to know whether there are any interests which have been entirely disregarded in this measure.

THE ACTING DIRECTOR OF AGRICULTURE (MR. WOLFE): Your Excellency, there are some twenty-five tea growers in the Colony (I am not sure of the exact number), and there are not more than three or four who are not members of the Association. I am afraid that my information is a little vague, but I can give the hon. member exact figures later outside the Council.

MR. HARVEY: Your Excellency, supplementary to that, I can say that I was present at the meeting in the hon. the Attorney General's office when the representatives of the Association discussed the original draft of the Bill. I raised the point which the hon. gentleman on my right (Major Cavendish-Bentinck) has just mentioned.

The answer given to me was, as stated by the Director of Agriculture, that a very small number of people are not members of the Kenya Tea Growers Association. They have such a very small acreage that it makes very little difference, and they will share in the advantages of this advertising campaign, and they have had full and ample opportunity of making representations had they wished to do so before this subject was discussed.

MAJOR GROGAN: Your Excellency, it appears from the information given us that there is no need whatever for this Bill, because if all the tea growers, virtually speaking, are in agreement to have a cess levied on their tea, why do they not agree to do so in the ordinary course of events as an ordinary matter of business, instead of having a Bill appointing a board and so on?

It seems to me that there is much too much of this going on at the present time, and when it comes to clause 10—where an old lady may get three months in prison because she has not sent a contribution to the board for having made tea for her own use, as many do in this country—that is getting into a rather extravagant conception of our social legislative needs. I do not see any point in it.

MR. WILLAN: Your Excellency, viewed from a purely parochial standpoint, the hon. Member for the Coast (Major Grogan) is correct, but we are dealing with an international affair, and although we know the hon. member knows that the tea growers here will contribute to this international fund, how are countries, for instance, like Malaya and Ceylon, going to know that we are playing our part without legislation?

In other words, this is just as if we put up a placard on a hoarding to advertise the fact that Kenya is playing its part in the international situation with regard to tea. I do consider it is necessary to have this legislation so that the other tea-producing countries know that Kenya is playing its part.

MAJOR GROGAN: Will the Attorney General explain what international has got to do with it? My point was that if these gentlemen want to advertise their tea collectively and are eager to do so, why is there any need for legislation?

MR. WILLAN: As I stressed in my opening remarks, this is an international affair, I stressed that. It is so that Kenya can play its part in this International Tea Marketing Expansion Committee work, so that we have to view it in the light that, being one small unit in this international body, we have got to play our part just as effectively as Ceylon, Malaya, and other

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tea-producing countries. I do stress that this is in the nature of showing these countries that we are playing our part, and enables the cess to be collected and paid over to the International Committee, which will apply the proceeds of this cess to propaganda work.

The question was put and carried.

NATIVE HUT AND POLL TAX (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Native Hut and Poll Tax (Amendment) Bill.

The only object of this Bill is to amend the Principal Ordinance providing that the tax may be paid wholly or partly by means of what are known as "kodi" stamps.

As hon. members are aware, in 1936 a committee, consisting of the hon. the Treasurer and the hon. the Chief Native Commissioner, was set up to consider and report on native taxation. In that report, the committee dealt with the system of collection by means of kodi stamps, and recommended that legislation should be introduced so that employers might pay part of their employees' wages by means of the kodi stamps.

The committee pointed out that this system would have two advantages. One was that the native would be able to pay his tax almost imperceptibly, and the employer would be freed from any necessity of losing the services of his employees on account of prosecutions for non-payment of tax.

This Bill was drafted to carry out the recommendations of that committee, and clause 3 adds a new section to the Ordinance—6 (a), (b) and (c).

(a) merely provides that the tax can be paid by means of kodi stamps, but does not prevent a native, if he wishes to do so, paying the tax wholly in cash or part in cash and part in stamps.

(b) makes it permissive—I emphasize that word "permissive"—for an employer to pay his employees' wages in cash and two Sh. 1 kodi stamps. It is purely optional on the part of the employer: if he wants to do it he can, if he does not he need not. But before he pays the employee the two stamps he must ascertain from the employee whether he has already paid his tax. If he has, the employer is forbidden from paying any part of the wages in kodi stamps. In committee, I shall move an amendment to the first line of (b), on page 2 of the Bill, that the words "a month" be deleted and there be substituted "a period of one month or longer," because as the Bill is drafted now it only applies to contracts for a month, whereas it should apply to contracts for a period of one month or over.

(c) is formal, and provides for these stamps being taken into account as part payment of the tax in any proceedings instituted for the recovery of the tax. In committee, I shall move an amendment to that sub-section, that the words "purchased by any native or received by him from his employer in part payment of wages" be deleted. I am much obliged to the hon. Member for Nairobi South (Mr. Maxwell), in conversation with him one day, for pointing out that if those words were left in it would really preclude a native from paying his tax with kodi stamps which have been presented to him, either by a kind friend, relative, or any other kind of person, so that the new section will read, "Any kodi stamp shall . . . be taken into account as part payment of the tax due from such native in any proceedings instituted for the recovery of tax . . . or for the purpose of assessing the amount due from any native when he pays, or is called upon to pay."

In conclusion, I would stress that this Bill really only legalizes existing practice. Last year (1936) over a million and a half kodi stamps were used to pay the tax. In the first five months of this year over half a million have been used, so that there is no doubt the system is popular. It is an equitable system, and I would submit is approved by the majority of the people in this country, and this Bill really only legalizes existing practice.

As I said, it is an advantage that the native pays his tax as he goes along, he is not worried at the end of the year with having to pay the whole of the tax at one time, and it relieves the employer of any

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likelihood of losing the services of employees because they are prosecuted for non-payment of the tax.

MR. WALLACE seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, we have just heard that this measure merely legalizes existing practice. We have also been told earlier in the remarks of the Attorney General that he wished particularly to stress the fact that it was merely permissive for the employer to give kodi stamps up to Sh. 2 in lieu of wages to a native. I submit this measure does nothing of the kind: on the contrary, it brings in an entirely new procedure, as although it makes it permissive for the employer to give kodi stamps it makes it compulsory on the native to accept them.

There are a good many employers who have natives in their employ, incidentally, who may not be Kenya natives at all, but who are Tanganyika or Uganda natives. Is it suggested that those employers, when a man comes for his wages to send to his family in the neighbouring territory he gets so many shillings and so many kodi stamps, and is told that he jolly well has to take them? I submit that if this kodi stamp system has proved such a success, which I believe it has, it is quite unnecessary to bring in this form of compulsion, and very unwise for us to do so.

ARCHDEACON BURNS: Your Excellency, the only point I wish to emphasize is that there should be between the employer and his employees a certain amount of give and take allowed as to whether a native does want to receive his whole month's wages in cash or whether he would rather have his month's wages include Sh. 2 in kodi stamps.

Sometimes a native has needs in his village and at his home where it is necessary for him to receive a whole month's wages in cash to use in his home. As long as that native in collaboration with his employer pays his whole kodi within good time, say by the end of September or something like that, I think there should be allowed a give and take, neither making it compulsory for the native to accept kodi stamps nor compulsory for the employer to pay part of the wages in kodi stamps.

That the kodi stamp system has been a success there has been no doubt at all. As Your Excellency gave us to understand in your opening address, the difference between this year and last year in the first three months was over £100,000 in the collection of native taxes, which shows that the natives themselves are appreciating very much indeed these kodi stamps. But there should be allowed a give and take, not making it compulsory for them to receive nor the employer to give these stamps.

COL. KIRKWOOD: Your Excellency, it is my intention at a later stage to move an amendment to clause 6 (b) (1), to make it permissive to pay the Sh. 2 in stamps and thus relieve the compulsion contained in that clause.

SIR ROBERT SHAW: Your Excellency, I think it is a matter which requires more than a moment's examination, for I do not conclude it is made permissive for an employer to adopt this method, and it does look as if the native were compelled to accept that method if the employer so desires.

The point is if the employer does wish to make use of the kodi stamp system. We don't all do it. An employer with a regular labour supply from year to year and who collects the tax from year to year is likely to. It means that if an employer does wish to make use of it this will undoubtedly be a great help to him to know how many stamps he will have to buy in any given month. Otherwise he may buy a great many and find that he has more than he requires. So that, as far as it goes, this permissive clause will be helpful.

But we can get over the difficulty pointed out by the hon. Member for Nairobi North (Major Cavendish-Bentinck) by adding a further small proviso to the effect that there has been or there exists an agreement between the native and his employer that the employer shall collect his tax for him. That is what happens to-day. There is no compulsion on a native to accept that method of paying his tax, but many accept it because it is helpful, and if we provided a provision that it would only apply in cases where such an

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agreement exists I think everybody's point is met and also of the hon. and venerable member. I suggest that might be a way of dealing with the matter quite simply.

MR. MONTGOMERY: Your Excellency, with regard to the last point raised by the hon. Member for Ukamba (Sir Robert Shaw), I do not personally see any necessity for this extra proviso because the whole section is so worded that an employer can come to an arrangement with his employees.

For many years employers, I am glad to say, have assisted Government in the collection of taxes by deducting from their labour small sums of money, sending in a cheque to the District Commissioner, and getting receipts to hand out to the natives. It may have been that those employers could have been "run" by particular natives for withholding part of their wages, so that this legalizes that position.

There is a very large body of natives wandering about the Colony in the settled areas who never pay the tax at all. I can best describe them as regular tax-dodgers! This Bill, with the assistance of employers of labour, will mean that these people will have to pay something anyway. Every time they are paid their wages at the end of the month or the 30-day ticket they will pay Sh. 2 of their wages towards the tax until it is completed. A native may avoid a certain amount, but he will pay something and not get away with the whole lot, as he does now.

The hon. Member for Nairobi North (Major Cavendish-Bentinck) made a case of possibly a native being badly hit because he resides in Uganda or Tanganyika. A native residing over a certain period in Kenya would have to pay here, but to meet the cases of tribes who live on both sides of the border, such as the Digo and Masai and others and possibly work for a short time in Kenya, arrangements have been made with the Governments concerned that these stamps are accepted in Uganda and Uganda stamps in Kenya.

I should be sorry if the hon. member insisted on an agreement with the natives employed. A good native probably has no objection, but the ones I describe as tax-dodgers of course would never agree, and the whole system would not apply to them. We want to make it necessary that that sort pays his tax, that he should contribute something each month.

This system of kodi stamps in no way alters the existing law under which the tax becomes due in January and after the 31st January can be collected by process of the court. It is not meant to give time to pay by instalments. But the tax is never collected in any district until the District Commissioner is certain that the ability to pay is there. For instance, in the cotton area of Nyanza the tax is collected and fully paid in January; in the Trans Nzoia and other areas we never attempt to collect it until October. The collection differs in various parts of the Colony, according to ability to pay, that is, when the crops come in or the chief labour is available. But we do want every native in employment to make an effort to pay something every month and thereby be quite certain that he will never have to pay costs in the case of prosecution for non-payment.

THE COMMISSIONER OF MINES (MR. HOSKING): Your Excellency, I should like to see clause 6 (b) (2) qualified. Clause 6 (a) (1) says that any native is entitled to purchase kodi stamps. Under (2) it says:—

"Any employer who pays to any native any kodi stamps in excess of the amount of tax payable by such native shall, on conviction, be liable to a fine not exceeding five pounds or to imprisonment for one month or to both such fine and imprisonment."

It often happens that a native in employment has a brother out of employment who comes to touch his working brother for money to pay his tax. The brother in employment may well wish to see his money paid in tax instead of in instalments on a bicycle. Why should it be a crime for an employer to sell to a native what the native is entitled to ask for and to deduct it from his pay, even though it is in excess of the amount of the tax payable by that particular native? I should like to see the clause qualified by the addition of the words "except at the express desire of such native". Why should not a native pay the tax for a relative or friend if he so desires?

MAJOR GROGAN: Your Excellency, I welcome the introduction of this Bill because, comparing it with Bills which will come on later, it represents a very complete substantiation of our challenge that a great deal of the stuff that is talked about trusteeship may be characterized by terms that I will not repeat here! If you follow the later Bills you will see that the most infinite precautions have been taken to ensure the employer meeting what are often exaggerated obligations with regard to the native, but as soon as the question of the native paying his tax arises it is looked on as a proper procedure to invest the employer with improper powers.

I suggest they are improper. Why should the employer be empowered to decide how a native shall spend his hard-earned—if they are hard-earned!—gains? It may be extremely inconvenient for a native at any given time to find Sh. 2 in a month, but he may want his money to send to his wife, or for other domestic reasons, and it is improper that anybody should be given such authority as is proposed by this Bill.

It is suggested that it is current practice. So it is, but only current practice by the consent of both parties. I think it will be found in general practice and in a very large number of cases that, at the request of the natives, they will be given a kodi stamp every month, perhaps two in one month, to suit their convenience, but if it is by consent what do we want any legislation for? Personally I am opposed to this principle, because I think there is too much encroachment on the rights of the individual.

I see no reason in the world why a native should be differentiated from any other person in respect of how to spend the money he earns, and certainly no third party should be entrusted with powers to take it away from him.

MR. WILLAN: Your Excellency, the points raised by the hon. Member for Nairobi North (Major Cavendish-Bentinck) are, I submit, already satisfactorily answered by the Chief Native Commissioner, that there are reciprocal arrangements with Tanganyika and Uganda regarding these kodi stamps.

The main bone of contention is this question that the native must concur before he can be forced to take kodi stamps from his employer. There is nothing in the present Bill which alters the existing practice. At the present time the employer says to the native, "Would you like two stamps this month?" and the native says "No," so the employer pays him Sh. 2 in cash instead. On the other hand, the native says "Yes," and the employer pays him the stamps. There is nothing in the Bill which alters that practice. Under the Bill the employer is empowered to hand over kodi stamps; there is nothing at the present time empowering him to do that, although it is actually being done. That is the point I emphasize, and so the Bill legalizes the practice.

MAJOR CAVENDISH-BENTINCK: Is he entitled to do so according to the wording of the Bill against a native's wish if the native has not paid his tax?

MR. WILLAN: My point is that under this Bill the employer can legally pay kodi stamps to his employee. At the present time the practice goes on, and there is no legal sanction for it. When this Bill has become law, if and when it does, the employer will say to the native, "Do you want these kodi stamps?" The native will say "No," and there is nothing in the Bill which obliges the employer to pay the stamp over. That is the whole point.

I may not have made myself clear, so I will repeat that.

Under this Bill there is nothing to prevent the employer saying to his native, "Do you want kodi stamps?" If the native says "No," there is nothing in the Bill which pledges the employer to pay him the kodi stamps. It is purely at the wish of the employer. If the employer chooses to pay over kodi stamps, although the native does not want them, that is a matter which is the concern of the employer, but I cannot imagine any employer wishing to pay over kodi stamps when a native does not want them. I cannot imagine such a thing happening.

DR. DE SOUSA: Is it not a fact that under this proposed law I, as an employer of labour, would have the privilege or the legal right to pay a native in kodi stamps?

MR. WILLAN: The answer is in the affirmative definitely ...

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issued, is conclusive that the provisions of clauses 5 to 8 have been carried out.

Clause 10 is important because it contains provision for dealing with members of an unregistered trade union who are liable to the penalties prescribed by clause 16 of this Bill.

Clauses 11 to 15 I need not say anything about; they are self-explanatory.

Clause 17 sets out that the Registrar may cancel the registration of any trade union which has been registered, and, except in cases where a union has ceased to exist, he has to give two months' notice, and in that notice he has to set out the grounds on which he proposes to cancel the registration of that particular union. An appeal to the Governor in Council will be under sub-clause (3) against the decision of the Registrar.

That covers the whole field of the Bill, and I trust hon. members will agree with me that it adequately safeguards both the interests of the employers and employees without the necessity of having any more complicated measure.

MR. WALLACE seconded.

MR. MAINI: Your Excellency, I understand that representations have been made by a body calling itself the Labour Trade Union of East Africa to the hon. the Attorney General, and I expected that he would, in introducing this measure to Council, deal with the points raised by that particular body. As he omitted to do so, I think it just to the people who form that particular body that their points of view should be presented in this Council.

The first point made by them is in regard to unregistered unions. I think it only fair that when you are giving protection to a registered trade union you should not make it penal for an unregistered trade union to exist. That, in substance, is the first point made by a body which, as Your Excellency knows, is an organized body and has a good membership.

As I understand it, the Bill affords protection to the public, and affords protection to the workers when they amalgamate themselves into a union which conforms with the rules and regulations laid down in this particular measure. I think that since this measure is a measure purely for the purpose of the registration of trade unions, it should not be for the purpose of controlling what they ought to do and ought not to do. I hope Government will consider whatever merits there are in this point.

Coming to the Bill itself, there is a point regarding clause 6 (*c*). I think that does not meet the case where there exist two trade unions in one particular trade or in one particular type of business by rendering it impossible for those two unions to register. Knowing these people as I do, it is possible that it may happen that two rival organizations may spring up within one particular trade, and it would be in the interests of the workers if sub-clause (*c*) was made a little more explicit to make impossible the registration of a trade union not only on account of the names but on other grounds; for example, the unions being for members of the same trade or profession. I want to suggest that in every particular trade there should be only one trade union according to the provisions of the Bill.

To come to clause 7, as to when the Registrar may require further particulars. Clause 6 deals with some of the particulars which must be furnished by a union that desires to be registered under this Bill. I think all the necessary details are included in that clause, and in my humble opinion it would seem that clause 7 is unnecessary and is vague generally.

I have to lodge an objection to the proviso to clause 8; that is, the discretion given the Registrar to refuse the registration of a particular trade union. That is a very difficult matter, and the responsibility is on the Registrar to decide the issue as against a particular union which is refused registration. I think provision should be made in this Bill that if the Registrar refuses for some cause to register a union he should state those reasons, and that those reasons should be subject to review if desired by the Supreme Court of this country.

Finally, to come to clause 17 (1) (*b*). It contains provisions under which the Registrar may cancel the certificate of a union if in his opinion it was gained by fraud, mistake, or for certain other

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reasons. The terms "fraud or mistake" are not simple terms, and I suggest when the issue comes to be adjudged whether a certificate was gained by fraud or mistake it should be decided by authorities who know what is fraud and what is a mistake in the technical and legal sense of the terms. I also suggest the power to cancel the certificate of an existing union should not be given to the Registrar. The Registrar should be, as seems to be the intention of the Bill, only the executive officer for the purposes of registration, like the Registrar of Companies. I submit that the power of the Registrar to cancel the certificate of a union should be subject to review, if desired, or if the Registrar desires to cancel a certificate application should be made to a magistrate's court or the high court and a legal ruling given there whether the union obtained that certificate by fraud or honestly.

DR. KARVE: Your Excellency, while agreeing with most of the remarks made by my friend, there are a few other points which I should like to raise.

One is on clause 5, under which within thirty days of its formation a union must be registered. Most of these unions are formed by first calling a meeting of members of a particular trade who are going to be members of a trade union, and on their agreeing to form a union thirty days does seem to me a short period in which to frame rules and regulations. I think this period should be extended to at least sixty days, which will give sufficient time for the officers appointed to go through all the necessary provisions of the Bill.

Secondly, under clause 6 there is paragraph (7) containing the provision for—

"the inspection by every person having an interest in the funds of the trade union, of the books and names of members of the union."

That, it seems to me, will occasion a lot of hardship on the officers of a trade union, and will cause a lot of difficulty to them to have to show these books and lists of members to anybody who may want to look at them.

My third point that I want to call attention to is that the Registrar should be made to keep these names, particularly of the officials, of a union secret, on the chance otherwise of their being victimized in those cases where employers may get hold of names from the Registrar by inspecting these books.

SIR ROBERT SHAW: Your Excellency, it would hardly be necessary for me to rise in order to express my support of the Bill were it not that I have one small point on which I should like a little information and to possibly in committee suggest a small amendment.

One line 3 of clause 2 of the Bill the word "principal" appears before the word "purposes". For myself, I can hardly imagine what the object of that word "principal" is. It seems to me the purposes of a proper trade union cannot be other than to look after and manage the matters suggested later on in the clause, the relationships between workers and masters, masters and masters, workers and workers, or however it is described. Why suggest there may be other purposes which a trade union may desire to achieve? By qualifying the word "purpose" it seems to me you allow to creep in a suggestion that a trade union may be allowed to have other purposes definitely contrary to public interests in the manner described by the Attorney General himself. I suggest it would be better if the word "principal" were eliminated.

That is my only point, and the only comment I have to make on the remarks of one hon. Indian member is to draw attention to the fantastic suggestion of the hon. Indian member who spoke first, that the protection afforded registered trade unions should be equally afforded unregistered trade unions.

MR. MAINI: On a point of rder, I never said anything like that. What I meant was that a registered union would get protection which would not be extended to unregistered trade unions.

SIR ROBERT SHAW: It seems to me that what I suggested is hardly contradicted. The protection extended to registered unions should not, emphatically, be extended to unregistered unions. There is no reason whatever that any union which has formed itself for legitimate purposes should not register itself under the Bill,

[Sir R. Shaw]
so that the argument defeats itself. That would, as far as I see, make the Bill completely inoperative.

I give freely my support to the Bill, and hope the little suggested amendment of mine will receive consideration.

MR. SHAMSUD-DEEN: Your Excellency, I have only one or two remarks to make.

One is as regards the remarks made by the Attorney General when he said the last two strikes were based on class dispute, or something. If by class dispute he means a dispute between employers and employees, of course all disputes and trade unions are based on that class basis. But if the hon. and learned mover meant that the last strikes were based on any racial basis or discrimination between any two classes of employers, then, from the information that has been available to me, I can assure him that that was not the case.

As far as the Bill is concerned, there is no doubt about it, some measure of this sort was certainly overdue for a long time. What it actually means in operation has to be seen. Unfortunately, I was not quite closely associated with what happened in the last two strikes, but I was told that some members of the present trade union seem to be very jubilant and think Government has come to their rescue or help by introducing a Bill of this sort.

To my mind, this Bill is certainly not an enabling Bill, but a restricting Bill, in restricting the activities and movements of those who have been described sometimes as agitators without any kind of restriction on them. To my mind, the Bill does not go far enough. There is no doubt about it there is no harm in restricting the activities of all and sundry unauthorized bodies from carrying on an agitation which sometimes tends to intimidation and others undesirable methods. But the Bill should not stop at that.

There should be something to bring an end to any dispute which may arise between employers and employees, exactly as happened last time. When you recognize a trade union duly registered in accordance with the Bill, there should be something more to bring the two parties together; also there should be some machinery by which Government could intervene, which in practice happened at the last strike.

Incidentally, perhaps I may say that the services of the Principal Labour Officer, Mr. Allen, during the last strike and the settlement thereof, were very praiseworthy indeed. If he had not intervened, this strike might have continued for a long time, and created a great deal of hurt on employers and employees.

What I am trying to get at is that the Bill should provide means for the union and employers to come together, with powers of arbitration or something of the sort, and power to Government to intervene to bring about reconciliation in the interests of the whole Colony and the progress and development of the country.

COL. FITZGERALD: Your Excellency, having read through this Bill very carefully, I am of the opinion that it is a form of discipline which it is wished to enforce on certain sections of the community.

Having spent some forty years of my life in the military forces of the Crown, I am of opinion that any form of discipline is good discipline, and particularly in a country of this sort where one has so many different types of people to deal with.

Furthermore, it was my unpleasant experience some years ago in this particular town, when attached to the local military forces, to be called out in aid of the civil power, and that is a duty which you are well aware, Sir, is repugnant to the mind of a soldier. One is usually between the devil and the deep sea: whatever one does on those occasions is usually wrong.

MR. SHAMSUD-DEEN: On a point of order, I should like to ask the hon. member if that arose out of a trade union dispute? It was entirely different.

DR. DE SOUSA: On a point of information, had it any connexion whatever with any labour dispute?

MR. BEMISTER: Your Excellency, perhaps it is not right for me to intervene because I am a biased and partisan person, and I know that is counted against

[Dr. de Sousa]

unions would perhaps have been conducted in a better way and, incidentally, been more embarrassing to Government.

I am pointing these things out because it is necessary that before the Bill becomes law it should be well considered, and I hope Government will appoint a select committee on the Bill.

Another point concerns the powers granted the Registrar and, as suggested by the hon. member Mr. Maini, whatever the Registrar does against a trade union should be a matter not for the Governor but for an independent court, because, after all, the Registrar of trade unions would only be an officer of Government and the Colonial Secretary must influence to a great extent the views of the Governor himself. I do not know what the procedure is in England, but here it is the desire of everyone that the final decision in the case of any objection should lie not with the Governor but with the Supreme Court.

That is about all I have to say, and I hope Government will give due consideration to the points raised.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, the 27th July, 1937.

Tuesday, 27th July, 1937

Council assembled at the Memorial Hall, Nairobi, at 11 a.m. on Tuesday, the 27th July, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The Minutes of the meeting of the 26th July, 1937, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 31.—Takaungu School

MR. BEMISTER asked:—

What date was the new school at Takaungu opened?

How many pupils applied for entrance?

THE DIRECTOR OF EDUCATION (MR. MORRIS): (*a*) The school was opened on the 1st July, 1937.

(*b*) 69 children applied for admission and there were no refusals. The number at present on the roll is 93.

MR. BEMISTER: Arising out of that answer, Sir, may I ask the hon. member if he is impressed now with the desire of the natives of the coast for education?

MR. MORRIS: The answer, Your Excellency, is in the affirmative. This school was opened some years ago and had to be closed owing to the apathy of the local population, who refused to send their children to school. I agree with the hon. member that the present position is very much more satisfactory.

SCHEDULES OF ADDITIONAL PROVISION

No. 5 of 1936 and No. 1 of 1937

SIR ARMIGEL WADE: Your Excellency, I beg to move—

Your Excellency, I beg to move—

"That Schedules of Additional Provision No. 5 of 1936 and No. 1 of 1937, be referred to the Standing Finance Committee."

Schedule No. 5 of 1936 makes provision for gross additional expenditure of £40,719. Of this sum £5,927 is covered

[Mr. Willan]

said nothing of the kind. What I did say yesterday was that there was evidence which came to light during those two strikes in April and May, and from that evidence it was apparent that an attempt was being made to organize labour in Kenya on a class basis. That is all I said.

Now I come to the remarks made by the hon. member Col. FitzGerald and the hon. Member for Mombasa (Mr. Bemister), and I am grateful to them for their wholehearted support of the Bill, and also to the hon. Member for Nairobi South (Mr. Maxwell) who has just spoken.

There is no provision for compulsory arbitration. There again, that is quite irrelevant to a discussion on a Trade Union Bill which merely provides for the registration of trade unions. You do not have it in the Trade Union Acts in England. What you have is the Conciliation Act, 1916, and the Trades Disputes Act, 1918, but in both there cannot be arbitration unless both parties agree to it. In other words, it is only by the will of the employer and employed that you can get arbitration. Therefore it is quite unnecessary to have any such provision in this Bill before Council. I may say this at once, that Government would always be prepared to act as mediator in any trade dispute provided—and I stress this—both parties wished Government to act as mediator. That was done in the two recent strikes, and I am happy to say was carried out successfully.

Now I come to the one comment by the hon. Member for Ukamba (Sir Robert Shaw) on the Bill, the word "principal" in line 3 of clause 2.

I disagree with the hon. member, because if you delete that word "principal" then you confine yourself most strictly to the purposes which are set forth in that clause. That, of course, would prevent a trade union consisting of employers from owning a building in which to hold their meetings or a union of employees from owning a building in which to have their meetings, and it would also prevent them holding land or buildings for social activities. Therefore I hope I have satisfied the hon. member on that point.

The hon. member Dr. Karve suggested that the 30 days in clause 5 should be increased to 60 days. I disagree for the reasons I mentioned in my opening speech, that you cannot register a prospective trade union. You must have your union established before application can be made for registration. If you have it established, surely 30 days is sufficient in which to decide who are to be the officers of the particular trade union.

The hon. member went on to criticize clause 6 (*b*) (vii) which provides for—

> "the inspection by every person having an interest in the funds of the trade union, of the books and names of members of the union."

He suggested that this might be deleted. Surely if a person is a member of a trade union, who subscribes his part to the funds of that union, he is entitled to inspect the books of the union to see how the funds are applied? Not only will he be entitled to inspect the books of the union, but he will be entitled to take along an auditor or accountant to find out whether the funds of the union are being applied in a proper way. I do suggest that if one does subscribe to the funds one is equally entitled to find out how those funds are being used.

Now I come to the hon. member Mr. Maini. He suggested that there should be no penalties imposed on unregistered trade unions. If the hon. member will look again at the title of the Bill, he will find that it is "A Bill to provide for the Registration of Trade Unions." If the hon. member's suggestion were adopted, it would cut right across the Bill and there might as well be no Bill at all.

Then he criticized clause 6 (*c*)—

> "no trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members of the public."

He suggested that all the members of one trade should be bound to belong to one union. That, of course, cuts right across what I said in my opening speech, that it would be restrictive of individual liberty.

[Dr. Paterson]

The purpose of this Bill, as indicated in the "Objects and Reasons", is to protect the public from the practice of dentistry by unqualified persons, and it is necessary because, although, under the law as it stands to-day, the practicing of dentistry by unregistered or unlicenced persons is illegal, there is unfortunately no definition in the law of what the practice of dentistry may be. The law is therefore largely nullified.

Clause 2 of the Bill provides a definition of the practice of dentistry, and if the Bill be passed it will be clear what the practice of dentistry is: anyone who does any of the things indicated in that section will be practicing dentistry.

If, however, that definition were to stand alone, then any person in a remote part of the Colony who attempted to alleviate suffering by pulling a tooth, would be committing an offence. That is undesirable, and therefore a second clause has been added, of which the most important part is the last part.

The clause says—

"Nothing in this Ordinance shall be construed to prohibit or prevent . . . the extraction of teeth by any person when (i) the case is urgent; and (ii) no registered medical practitioner, registered dentist or registered druggist is available within 5 miles; and (iii) provided that no drug or anaesthetic is used or administered; and (iv) provided that no fee is charged or received."

In very remote places, therefore, one will be able to attempt to alleviate suffering if necessary.

The Bill has been drafted at the instance of the board established under the Medical Practitioners and Dentists Ordinance, it has been submitted to and approved by the council of the Kenya branch of the British Medical Association and, quite naturally, it has the support of the dentists. The Bill ultimately, if it passes its second reading, will be sent to the committee of the whole Council, when I shall have a small amendment to move in order to make more clear the definition of dentistry.

MR. WALLACE seconded.

DR. DE SOUSA: Your Excellency, I am in the unfortunate position of having to oppose this Bill which ordinarily I would be expected to support. I oppose it for two reasons.

The first is because in the definition of dentistry in section 2 are the words "inserts or attempts to insert any artificial teeth or appliances." This Bill is evidently designed to protect dentists from people we have now in the country who style themselves dental mechanics. In the last one or two years I think two or three Chinese and one Indian have set up shops where they do dental sets.

I think this is really class legislation brought about at the instigation of the dentists. I quite agree that dentistry should be placed where it ought to be like all other branches of science, but the mere making of a set of teeth, like the making of an artificial leg or glass eye, any of these artificial appliances, should not be included in protective legislation.

In this connexion I oppose the Bill, because no protection is being given to the people who are already engaged in this trade. Perhaps the hon. mover will recollect, or he may have read, the debates at the time the Medical Practitioners and Dentists Ordinance was introduced, when there were in the country several medical practitioners who ordinarily would not be entitled to be registered under the British Medical Council. Those men, who were practising the art of healing, were given permission to continue. There are at the moment, within my knowledge, at least two of those old men to whom those rights were not denied. Again, the same was done with compounders who were practising the art of chemistry: one is still alive practising in Nairobi and he was given the status of a chemist.

I fail to see any provision in this Bill to protect these three or four persons who are engaged in this trade of dental mechanics. Why do I insist that they should not be included? The mere fact that a man produces artificial teeth does not indicate that he is practicing the science of dentistry, which is already defined, and that is where the definition should end.

[Dr. de Sousa]

In legislation like this one expects not only the people to be protected from what they call false dentists, but also from false medicine men, and I oppose the Bill for these two reasons. I shall be glad if, in his reply, the hon. mover can give me an indication that he will exclude the words to which I referred from clause 2.

MR. SHAMSUD-DEEN: Your Excellency, I support the Bill in principle. I think a Bill of this nature was necessary, and it should have come much earlier than this. But I do think matters are carried too far when the definition of dentistry includes the words "inserts or attempts to insert any artificial teeth or appliances for the restoration, regulation, or improvement of the teeth or accessory structures." That, I think, is stretching it too far.

After all, there should be nothing to prevent anybody, a man's relatives or friends, from inserting in his mouth a set of teeth. I might have bought a set from Bombay in a cheap market or may have imported one by sending some sort of pattern of my mouth to another country.

This is the point I think I must take, and that is the part that ought to be deleted.

I have seen natives in this country who have made quite good artificial teeth and inserted them in the mouths of their friends, and they have proved to be quite useful. (Laughter.) I do not think this Bill means to prevent any such thing, but things can be carried to a very great extreme even in medical science. For instance, you do not allow anybody to hold an operation on any person unless they are qualified medically to do so, but the definition might easily be extended to include the extraction of a jigger from a man's foot, which we do every day in our own houses, and it is a medical operation.

I submit, Sir, that while it is absolutely necessary that unauthorized people should not be allowed to tamper with teeth by extraction—I have known of actual deaths taking place by reason of teeth having been extracted by people who do not know how—to say that they cannot "insert" in the mouth a set of teeth that might have been made in some other country, is rather stretching it too far.

MAJOR GROGAN: Your Excellency, I find myself in very considerable agreement with much that has been said by the hon. Indian gentleman on my left (Dr. de Sousa).

I think there is a tendency, as I said yesterday, to go much too far in this legislative restriction. I quite realize that in medical matters a very considerable amount of control of people who pretend to be medical practitioners is right and proper, but in the case of advice on a physical happening like extracting people's teeth, which everybody is in a position to judge for themselves, it is unnecessary to have this exaggerated legislation.

It is a well known practice at agricultural shows and circuses in England to have places where teeth are extracted to the accompaniment of drums and trombones to drown the agony and shrieks of the victim! But the victim is willing, and I see no reason in the world why, if both parties agree to this method, they should not be allowed to do so.

When I was young, and the fortunate possessor of natural teeth, if only the first edition, it was a common practice on the promise of half-a-crown to attach a bit of string to a tooth, the other end to a door handle, and to slam the door, thus extracting the tooth! If I read this correctly, under a part of the clause, "the case being urgent," it is utterly impossible for a nurse to carry out such a mutually beneficial operation if there happens to be a medical practitioner or dentist within 5 miles of the place.

Apart from any joking, I really think this kind of thing is carried too far. There is no doubt this is a purely Trade Union Bill which has been promoted by gentlemen with a desire to have an effective trade union and who desire to extend its authority. That is only right and proper, but having given them every facility to register as a trade union they should be enabled to do so and should devise some method of asking for a special enactment to enable them to exercise special powers as a trade union. (Laughter.)

[Mr. Logan]
4 of the old section 60 has been moved up and now appears as a proviso to the new section 60 (1) appearing in this Bill.

We have taken the opportunity of re-drafting slightly clause 2 for the purposes of clarity, and the original provisos to sub-section 2 have now been reinserted as sub-clause 3 of the Bill.

In regard to sub-clause 5, section 47 of the principal Ordinance authorises Councils to appoint such and so many committees of their members as they think fit for the purpose of examining and reporting on various matters, and it authorizes them to delegate to any committee such powers, other than the power to raise money by rate or loan, or any other power as to the exercise of which special provision is made in this Ordinance.

Actually in section 60 specific provision was made for the particular control that Councils should exercise over their district roads, and doubts have recently arisen as to whether that fact does not constitute a special provision within the meaning of the phrase in section 47.

In regard to the control of the roads, it is essential for the purposes of Councils that such powers should be delegated, and therefore, in order to make that position perfectly clear and that they should have the power of delegation, this new sub-section 5 has been drafted.

Opportunity has, further, been taken to widen the scope of the delegation. Whereas in the main Ordinance delegation may only be given to committees of the Councils, it is now proposed that delegation may be given to single members or to employees of Councils. The reason for that is local conditions, such as rain and sudden storms, in virtue of which it is necessary if roads are to be protected that quick and early action should be taken to close them for some short period of time, and the extension of this power to employees is considered to be perfectly reasonable and, indeed, almost essential, if the Councils are to exercise their functions efficiently.

MR. WALLACE seconded.

MR. SHAMSUD-DEEN: Your Excellency, I look on the delegation of these powers to employees of Councils with a great deal of alarm. I personally think that even the powers of District Councils to close roads are formidable enough.

I have had only recently a very unpleasant experience. It was at the beginning of this year, or the end of last year, that the whole of the road from Nakuru to Kisumu was closed by the District Council, having got authority from the Director of Public Works under, I think, a different Ordinance. All sorts of representations were made. The road was, of course, closed to lorries when there were no rains and there was, evidently, no need for the road to be closed. But they simply took the line of least resistance and, instead of spending money on the road they closed it to heavy motor traffic. In spite of representations made nothing was done until, I understand, the Governor of one of the adjoining territories came along, passed through in his motor car, and then found that the lorry containing all his personal luggage (including his pyjama suit) was left behind. That was the reason why the road was opened next day.

I think this in principle is the wrong thing to do, to delegate powers to any employee or any member, to close roads. Closing roads is a very serious thing, and it is wrong to delegate these powers in that way.

MAJOR GROGAN: Your Excellency, I agree with the last speaker, that allowing delegation of these powers to employees is going much too far. Surely it is quite possible for a District Council to lay down general instructions and conditions, that a road, in the event of rain or heavy storms, shall be closed for so long.

This thing may become a serious menace to the interests of citizens. The last hon. member quoted one example, and I can quote another of quite recent happening.

I have property some considerable distance away from Nairobi. I had a lorry on the road going there which was very urgently required, with a very urgently required employee driving. When he got about half way there, no adequate steps having been taken to maintain the road,

[Mr. Maxwell]

One or two heavy lorries going over such roads when the latter are in a soaked condition can completely destroy them, creating enormous ruts into which other lorries get; in a short time the road is impassable to any traffic, lorry, car, or otherwise.

It is quite obvious that District Councils, or even committees of those Councils, cannot be on the spot sufficiently quickly to close a road against the class of traffic which is going to damage that road, and when a road dries out and can be used by lorries, a Council or a committee is not there in sufficient time to open it, and inconvenience which is not necessary may be caused the public.

But if we were allowed to delegate to members of the Council and to employees—and I think you must assume that District Councils are reasonable bodies and endeavour to delegate reasonable authority to reasonable people—we shall be able, by opening up or closing a road more quickly, to give greater convenience to the public. The hon. member Mr. Shamsud-Deen has more or less proved this argument of mine in stating that a road was closed for three months when there was no necessity to do so. It was a rather exaggerated case, but I have known roads closed for longer periods than was necessary simply because nobody was available on the spot who knew the road could be opened. Nor is it possible for anyone to be available under the present Ordinance.

I think if this Bill goes through, and power to delegate is given, a large amount of the storm damage suffered by our roads in this district will be prevented in future, and at the same time the public will be put to much less inconvenience.

MR. LOGAN: Your Excellency, the objections to the Bill are largely answered by the hon. members who have spoken in support of the Bill, but I should like to say this. Everybody will agree that the chief object of a local authority is to keep the roads open, and the object of this Bill in effect is to keep the roads open for so long as possible with the existing conditions of road traffic and the present financial competence of the road authorities.

Some members of the travelling public are undoubtedly not so interested in the general welfare of the public as they are in themselves in getting to their destinations in the quickest possible time on the day they happen to be travelling, and by so doing they can reduce the road to a condition which makes it entirely impassable for a great number of people who happen to go over it a short period of time afterwards. From that point of view it is necessary in this country to give power to some authority to close roads from time to time in order that they may be kept open for longer periods than otherwise would happen for the general travelling public.

I have no doubt myself that in giving these powers of delegation to District Councils in respect of district roads, we are not going too far, because if District Councils do exercise their powers in any arbitrary manner there is the ordinary course that any public authority has to expect, in protests from their constituents. The exercise of these powers so far has not, within my experience, been wrongfully exercised by Councils, and I have no reason to think that in future they will be wrongfully exercised by them.

The question was put and carried.

PLANT PROTECTION BILL

Second Reading

THE ACTING DIRECTOR OF AGRICULTURE (MR. WOLFE): Your Excellency, I beg to move the second reading of the Plant Protection Bill.

I think hon. members must know the purpose of legislation of this kind, but it may be desirable to say why we are asking for a new Ordinance when we already have a perfectly good one.

The reason is that it is desirable to have uniform legislation throughout the East African territories, so that they may present one block against the interoduction of dangerous pests and diseases, and so that they may also adopt uniform measures within the territories to prevent the spread of pests and diseases from one to another, and also to perform a duty we owe to our neighbours in checking the spread to their territories.

[Major Cavendish-Bentinck]
the public may at least be allowed to see, and if necessary to comment on, rules before they are introduced. (Hear, hear.)

We are told that one of the advantages of this Bill is that rules may be produced by the Governor, whereas under the old legislation it had to go before the Governor in Council. I venture to say that if that is the case the old legislation is much more desirable than the new. It at least allows any suggested rule put forward by possibly an over-enthusiastic officer of Government to be vetted by people perhaps more in touch with those whom those rules are going to concern.

We should like to suggest that in this Bill the rule-making powers should be relegated to the Governor in Council. As an example, I will only quote (*g*) under clause 3, where the Governor may make rules as to the "methods of planting". That seems to be going rather far.

Those are the only comments I have to make on this Bill, Sir.

MR. HARVEY: Your Excellency, on behalf of the agricultural community chiefly, I do most cordially support the main principles of this Bill, as I believe effective legislation dealing with the spread of plant disease is long overdue. I would remind my hon. and gallant friend who spoke last that we are not having two measures, inasmuch as clause 11 of this Bill repeals the existing Diseases of Plants Prevention Ordinance.

Powers under that Ordinance have been stretched on various occasions to breaking point by those responsible for its administration, when rules have been approved and put into effect for the destruction of locusts. I suggest a more comprehensive Ordinance is highly necessary.

But, Sir, I should like to associate myself very strongly indeed with the point made by my unofficial colleague, that rules should not be made without prior consultation with the accredited representatives of the agricultural industry whose interests might so very seriously be affected.

Presumably, it is anticipated that Your Excellency will be guided very largely by your technical officers. I have a very high opinion of the officers of the Department of Agriculture in this Colony and the adjoining colonies, but, with tremendous respect, I would point out that although they possess the highest academic qualifications, their knowledge is mainly theoretical rather than practical, and I think it very important indeed that the point of view of the man whose vested interests are likely to be affected should be given some opportunity of expression, for acts prejudicial to his interests may be unfortunately done by His Excellency the Governor on the advice of such gentlemen as I have just mentioned.

Council adjourned for the usual interval.

On resuming:

COL. KIRKWOOD: Your Excellency, I agree with the remarks of the hon. Member for Nairobi North (Major Cavendish-Bentinck) and the hon. Member for Nyanza (Mr. Harvey) and, in reference to the rules to be made by Your Excellency under this Bill, I suggest that it would meet with general approval if clause 3 were altered to read: "The Governor in Council, after consultation with the Board of Agriculture when available," or words to that effect. I intend at a later stage to move that amendment and am giving notice to do so now, so that Government will have time to consider the matter.

I should like to point out that, while concurring in this, there is far too much asked from Your Excellency as Governor on these sort of matters. Under clause 3, from (*a*) to (*l*), there are twelve items on which rules may be made, and it would be more appropriate, I think, if that clause were altered as I suggest.

I have no doubt at all that Your Excellency will be advised by the hon. the Director of Agriculture, but the Board of Agriculture was appointed as an advisory body to the Director, and I think that is where rule-making under this Bill should start. The Board should be consulted when possible, and the Director should then advise the Governor, and I have no doubt that the recommendations made through channels of that sort would be

SHOP HOURS (AMENDMENT) BILL

SECOND READING

MR. WALLACE (ACTING SOLICITOR GENERAL): Your Excellency, I beg to move the second reading of the Shop Hours (Amendment) Bill.

Representations have been made to Government by various bodies throughout the country that the existing provisions of the Shop Hours Ordinance, regulating and controlling the hours which shop assistants may be required to work during the week and each day, are somewhat defective, as also are the provisions regulating the occasions upon which an extension of those hours is permitted for the purpose of stocktaking. The main function of this Bill is to tighten up those provisions; opportunity has also been taken to make one or two other minor amendments.

Coming to the Bill itself, clause 2 at a casual glance might appear to be rather a mouthful and somewhat difficult to digest. I think on closer examination it will be seen that it is not quite so complicated as it looks at first blush.

Sub-clause (1) of the proposed new clause 5 merely provides that shop assistants shall not be required to work for more than nine hours, inclusive of meals, in any one day, or for more than fifty hours in any one week, or on any weekly half-holiday or any public holiday except where specifically exempted.

Sub-clause (2) provides that where a shop is permitted to remain open under the provisions of sections 7, 8 and 9 on a weekly half-holiday or a Sunday or any time fixed for closing, shop assistants may be required to work during those hours provided that such work does not have the effect of making the day's work more than nine hours or a week's work more than fifty hours.

Sub-clause (4) provides that although the normal working hours are fifty per week, nevertheless, on not more than two occasions in a year, where a Monday is a public holiday, an employer for the purposes of stocktaking, may permit his shop assistants to work on the Monday, the Sunday (i.e. the day before), and on the afternoon of the Saturday, but only at the rate of nine hours per day. It should be observed that the provision is merely an alternative to the provision in sub-clause (3), which provides that an occupier, if he so wishes, may require the employees to work for not more than two hours a day extra on not more than thirty days a year. But, in order to safeguard the interests of the shop assistants, there is provision in sub-clause (4) that any person who proposes to take advantage of the long week-end for the purpose of stocktaking shall give notice to the police, so that they will be able to keep a check and ensure that shop assistants are not required to work under the provisions of sub-clause (3) as well.

Sub-clause (5) merely provides that the occupier shall not permit assistants to remain in the shop for more than fifteen minutes after the closing hour prescribed by the Ordinance, and then only for the purpose of serving a customer who has entered the shop prior to the closing hour.

Sub-clause (6) deals with the burden of proof, and provides that any person found in a shop after the closing hours prescribed by the Ordinance shall be deemed to be in the employ of the occupier.

Clause 3 is a consequential provision, renumbering the old section 5 (2) and (3) as 5A (1) and (2). There is also a drafting error to be amended in select committee.

Regarding clause 4, it has been pointed out by the Nairobi Municipal Council and by other bodies that section 8 leaves several loopholes. As present the section reads, "All shops in township and other areas shall be closed for the serving of customers on Sundays." It is therefore impossible for any prosecution to succeed unless it can be proved that the shop is open for the purpose of serving customers, and it has been suggested by various bodies that these words "for the serving of customers" should be deleted from the section. The effect will be that all shops in townships and other areas must be physically closed on Sundays.

It is considered unnecessary that every order of a local authority should have to go to the Governor in Council to be confirmed, and the effect of clause 5 is that the only order which it is necessary should be confirmed is a closing order under section 9.

[Mr. Shamsud-Deen]

"It was further resolved that the subject should also be brought under discussion at the forthcoming session of the Federation to be held at Kisumu."

That session was duly held, and the views contained in this letter were the result. The letter continues:—

"The Nairobi meeting was also of the opinion that the introduction of the proposed amendment would necessitate the employment of a large inspecting staff totally unjustifiable at the present juncture of depression and would result in undue interference with and annoyance to all the traders.

"A very large number of assistants in small shops are working partners being, in most of the cases, relatives to each other and it would be extremely difficult for the Police to ascertain who is a working partner or a relative of the shopkeeper and who is a pure employee.

"In most cases the proposed amendment would necessitate the employment of a double set of shop assistants with the resultant reduction in salaries of the present staff.

"The meeting, however, realized the evils and hardships of shop assistants working for long hours but thought this could be remedied by a propaganda for social reform to eradicate the present evil of the system of long hours of employment."

These are the views of employers. Of course, the Ordinance itself mainly represents the views of employees, and I think this Bill is brought in mainly as a result of representations to Government by employees.

I think I have done my duty in placing both viewpoints before Council, and I hope when the select committee is appointed, which I hope will be the case, that these points will be taken into consideration.

MR. BEMISTER: Your Excellency, as the next Bill deals with the employment of shop assistants in Mombasa, perhaps I ought not to say anything on this one, but I do hold strongly that the Government is going much too far in limiting the times that people should open their shops.

I happen to have spent, unfortunately, a week-end in Nairobi, and I have found the most terrible inconvenience even to an individual in getting things at reasonable hours. I live in a place where the shopkeepers are allowed to work in with the steamers, and I contend that where you have a new Bill for trade unions, with the possibilities of men arranging their hours of work and combining to secure proper terms of service and other matters, I cannot see why we should lay down any definite rule for shops to be opened at definite times or closed for certain periods.

Shops are open, from my point of view, for the purpose of enabling customers to obtain goods, and they are there for the convenience of the public. It cannot be for the convenience of the public if some arbitrary body closes those shops and keeps customers from obtaining goods at comfortable hours where the shopkeeper is willing to keep his shop open.

The protection of the shop assistant is obviously the duty of Government, and it is a great duty and a great privilege to protect those people from being forced into horrible hours and conditions of work. But I do think Government is going too far in stating the hours or days a shop should open. There is nothing like spirits and wines that injure people sold in shops of this kind, and I think they should be free to open at reasonable hours. At the same time, you must protect the men working in them, and that is exactly the method you have in Mombasa, which must commend itself to all reasonable people.

MR. WALLACE: Your Excellency, I think it is abundantly clear from the remarks made by the hon. Member for Mombasa (Mr. Bemister) and the hon. member Mr. Shamsud-Deen that both hon members agree with the principle of the Bill.

In so far as the minor points are concerned, I can give an assurance to the hon. member Mr. Shamsud-Deen, which he has asked for, that the views of the Indian employers will be taken into consideration in select committee to which this Bill will go in due course. Those views

[Mr. Wallace]
two, I think, European police officers stationed in Mombasa, and it would be quite impossible for the police to see that this Ordinance was being properly carried out if the word "assistant inspector" in (2) of clause 7 is allowed to stand. It is therefore proposed to move in committee that that be altered to "assistant sub-inspector" to allow the Asian police staff to visit the shops.

Clause 8 is the penalty clause, and clause 9 gives the Governor in Council power to make rules. Clause 10 merely gives the Governor in Council power to exempt. There is a slight verbal printing error in the second line which I propose to amend in the committee stage. It reads "classes of person" instead of "class of persons".

This Bill is an agreed measure, and is the domestic concern of Mombasa. It is only after very prolonged discussions that agreement has been reached by the bodies interested, and I trust it will receive the blessing of this Council.

MR. WILLAN seconded.

MR. BEMISTER: Your Excellency, I only rise to congratulate Government on passing legislation which will suit everybody that is concerned.

DR. DE SOUSA: Your Excellency, I have a request, made by the Indian Youth League, in connexion with the division of the hours into periods. I am afraid I did not follow the hon. and learned mover when he said he was proposing some amendment to clause 4 of the Bill, but I have been asked to suggest to Government that an amendment of this nature be introduced; that is, as sub-clause (5) to clause 4: "No shop assistant shall be required to work daily for more than two periods." The contention of the Indian Youth League, which, as Your Excellency knows, is the chief instigator of this Bill, is that an assistant might work for a couple of hours in the morning, a couple of hours in the afternoon, and then be compelled to go and work at night. There is nothing in the Bill to prevent this being done, and the League states that the main struggle would be on this point.

MR. WILLAN: On a point of order, Sir, the mover has already dealt with this matter and intends to move an amendment.

DR. DE SOUSA: I did not have that assurance until the hon. and learned Attorney General has just said so.

HIS EXCELLENCY: I think your point is going to be covered by the proposed amendment.

DR. DE SOUSA: Thank you.

DR. KARVE: Your Excellency, I also associate myself with the hon. Member for Mombasa (Mr. Bemister) in congratulating Government on bringing in an agreed Bill, although at a late date. The rest of the Colony has had the advantage and benefit of the Shop Hours Ordinance for quite a long time. The shop assistants of Mombasa have laboured under great disadvantages, and now that this Bill has been brought in it will at least remove some of their disabilities.

But Government should keep in mind that, when having compromises in committees where representatives of different interests come together, there has to be, in order that agreement be arrived at, a great deal of give and take on both sides. In my opinion, the Indian Youth League, who are mainly the representatives of the shop assistants, had to give in on very many points in order to get agreement so that the Bill could be introduced as early as possible.

This will have to be kept in mind while making the rules, for I am not quite sure that the shop assistants in Mombasa will be on the same footing as those in other parts of the Colony. It is quite true that conditions in Mombasa make it imperative that the shops are not physically closed as they are in other parts of the country. Even so, there are other things, such as an arrangement for leave for so many days during the year, and not working more than forty-nine hours a week. In the other Bill the nine hours a day includes meal times, but under this the forty-nine hours excludes meal times, so that shop assistants in Mombasa automatically work much longer days than shop assistants up-country.

I support the Bill; it being an agreed Bill, I do not oppose it, but I consider the condition of shop assistants in Mombasa deserves more consideration from Government at a later stage.

[Dr. Karve]

MR. SHAMSUD-DEEN: Your Excellency, I only feel that the provision in clause 6 is not a very happy one, that an employer is required to exhibit a copy of the Ordinance in his shop "translated into the language understood by the majority of the shop assistants employed therein." By saying this, I think it is introducing a principle which can be carried very far.

I, as a matter of fact, have maintained all along that it was the duty of Government to have translations of the laws that are applicable to natives and other communities made into languages that are understood by them. Now that Government recognizes tacitly the necessity for such laws being translated for the information of the people who are affected, I think it really is the duty of Government to do that rather than leave it for every shopkeeper to make a translation of the Ordinance, with the possibility of making inaccuracies in it.

I do not see any provision in this Bill as to who is going to certify that the translation of the Ordinance is a correct one, and with so many languages it may lead to serious complications. An unscrupulous shopkeeper might incorporate something into the translation to the disadvantage of his employees, and so on.

With the exception of that point, and as the hon. Member for Mombasa seemed to be satisfied, I have nothing to move.

MR. WALLACE: Your Excellency, this Bill appears to have the blessing of the hon. Member for Mombasa and the hon. member Dr. Karve.

Perhaps I might at this stage inform the hon. member Dr. de Sousa of the exact amendment which it is proposed to make to clause 4 (4)—I regret I did not make myself clear—that clause 4 (4) be deleted, and that there be substituted therefor the following: "(4) No shop assistant shall on any full working day be employed in or about a shop for more than one period before the interval referred to in sub-section (3) of this section or for more than one period after such interval, and no such period shall in any case exceed five hours, whether before or after such daily interval." That, I think, will meet his case.

As the hon. member Dr. Karve pointed out, this Bill has been agreed to by the various interested parties after a great deal of *meum* and *tuum*, and therefore I do not think Council should alter it in any respect without further consideration by those bodies.

In answer to the hon. member Mr. Shamsud-Deen, if the employers concerned have agreed, as apparently they have, that they are prepared to make this translation, I do not think it is a matter for this Council to alter.

The question was put and carried.

BILLS

IN COMMITTEE

MR. WILLAN moved that the Council do resolve itself into committee of the whole Council to consider, clause by clause, the following Bills:—

The Trustee (Amendment) Bill,
The Public Trustee's (Amendment) Bill,
The Girl Guides (Amendment) Bill,
The Evidence (Bankers' Books) Bill,
The Tribal Police (Amendment) Bill,
The Traffic (Amendment No. 2) Bill,
The Stamp (Amendment No. 2) Bill,
The Traders Licensing Bill,
The Prisons (Amendment) Bill,
The Tea Cess Bill,
The Native Hut and Poll Tax (Amendment) Bill,
The Medical Practitioners and Dentists (Amendment) Bill,
The Local Government (District Councils (Amendment) Bill,
The Plant Protection Bill,
The Mombasa Shop Assistants Employment Bill.

MR. WALLACE seconded.

The question was put and carried.

Council went into Committee.

His Excellency moved into the Chair.

The Trustee (Amendment) Bill was considered clause by clause.

The Public Trustee's (Amendment) Bill was considered clause by clause.

Clause 7.

MR. WILLAN moved that clause 7 be amended by substituting the words "is administering under the provisions of this Ordinance" for the words "shall have been ordered to administer" which occur in the fourth and fifth lines of sub-section (2) of the proposed new section 11.

The question was put and carried.

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

The Girl Guides (Amendment) Bill was considered clause by clause.

The Evidence (Bankers' Books) Bill was was considered clause by clause.

The Tribal Police (Amendment) Bill was considered clause by clause.

The Traffic (Amendment No. 2) Bill was considered clause by clause.

Clause 4.

MR. WILLAN moved that clause 4 be amended (*a*) by substituting a colon for the full stop which occurs at the end of the eleventh line thereof, and (*b*) by inserting immediately after such colon the following proviso:—

"Provided that nothing in this sub-section contained shall be construed to mean that any owner shall be required to furnish to such licensing officer or such police officer, as the case may be, the name and address of any person who was so driving such motor vehicle if such owner satisfies such licensing officer or police officer, as the case may be, that, at the time in question, the motor vehicle was being driven by such other person without such owner's knowledge."

MR. WILLAN: This is the amendment which has been agreed to by the hon. Member for Nyanza (Mr. Harvey) and myself after a discussion with regard to his proposal yesterday.

The question was put and carried.

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

The Stamp (Amendment No. 2) Bill was considered clause by clause.

Clause 3.

MR. WILLAN moved that clause 3 be amended (*a*) by substituting the word "five" for the word "ten" where it occurs in the fifth and eighth lines thereof, and (*b*) by substituting the word "ten" for the word "twenty", where it occurs in the thirteenth line thereof.

MR. BEMISTER: Your Excellency, it was admitted by the hon. the Attorney General yesterday that the cost of replacement to Government was merely that of the paper, and I cannot quite see that a piece of paper on the top of which a crown is stamped or printed is any more expensive than a Sh. 10 stamp. It could never cost more than a few cents for the piece of paper, so that I suggest the maximum be cut to Sh. 5.

MR. WILLAN: The object of this is not to make money but to make people more careful. That is the real object, and if you reduce the maximum from Sh. 10 to Sh. 5 it will not have that object.

MR. BEMISTER: I do not know what experience the hon. and learned Attorney General has had in issuing bills of exchange, but I can assure him that when a ship has come in and you have just received your bills of lading and have to make up 40 or 50 bills of exchange, after calculating your interest and including exchange, it is quite reasonable people should make a few mistakes. I am as careful as most people, but often I make mistakes! (Laughter.)

SIR ARMIGEL WADE: I understood it was not only the cost of the paper concerned but the cost of the clerks' time and all general business involved in a man's mistake.

MR. WILLAN: There are vouchers to be made out and every one of them to be signed. As I pointed out, last year there were over 5,000 vouchers to be made out and signed and checked, and unless we impose a penalty which is in some way a deterrent we shall have to increase the staff of the Revenue Department.

MR. BEMISTER: It will not be a deterrent. You cannot prevent a man

[Mr. Bemister]
making mistakes. However, it is your view. They are not wilful mistakes.

The question was put and carried.

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

The Traders Licensing (Amendment) Bill was considered clause by clause.

The Prisons (Amendment) Bill was considered clause by clause.

The Tea Cess Bill was considered clause by clause.

The Native Hut and Poll Tax (Amendment) Bill was considered clause by clause.

Clause 3.

SIR ROBERT SHAW: Your Excellency, I apologize that in speaking to this matter yesterday I took rather too much for granted in supposing that hon. members understood what I was aiming at better than they did.

I suggested a proviso to clause 6B (1) to meet a point that was raised, but since that suggestion has not been accepted I find myself compelled to vote against the Bill. The reason is this. I can most readily describe it by describing the procedure when attempting to collect the tax from employees for Government.

Every year I get a polite note handed me from the District Commissioner asking me to collect the tax from my employees. I reply, equally politely, that I will do so. The next thing is that a gentleman called the head hunter or hut counter comes round and makes a list of the boys on my farm who wish me to collect their tax for them. And that is the whole point. I will not collect the tax from any boy who does not wish me to do so. If he agrees, I can and do do it, and do it in a quite arbitrary manner. I mention that because the hon. and learned Attorney General said yesterday this was legislation to permit an existing practice.

The point is that if I try to insist that a boy should pay his tax when he does not wish to do so, he is quite entitled to tell me to mind my own business. That is what I would insist on for myself, and what any white employer would insist on, and I cannot see that it is right to deprive a native of that right, as we shall do if we pass this clause as it is now.

All that will happen if the Bill goes through is that I shall not be able to collect tax from any of my natives, because if I agree to do so the District Commissioner will say that I must collect from all. A number of the boys do not let me because, for family reasons, it does not suit them.

You can get over the difficulty, and I suggest that after the proviso to clause 6B (1) you add:—

"And provided that the native shall agree that his employer shall collect and pay his tax for him."

If you put that in I can carry on and support the Bill; if you do not, then I oppose it.

MAJOR CAVENDISH-BENTINCK: I would like to support the suggestion of the hon. Member for Ukamba (Sir R. Shaw), that either something be put in after the word "may" on the second line of page 2, to the effect "with the agreement of the native," or that the proviso is altered as has been suggested by him.

I do press Government, with all sincerity, to accept this amendment. I consider that the Hansard of yesterday's debate will be an indictment for all time on Government, and will justify the most severe condemnation of those gentlemen who represent native interests who yesterday spoke against this but voted for it. This innovation will be made use of in a way we do not want, and I do hope and trust that Government will see its way to treating the native as fairly as the white man.

ARCHDEACON BURNS: I did not know, Sir, that the hon. Member for Ukamba was bringing up this matter, but I had written something out with regard to this very clause 6B (1). These are the words I had thought might be brought in at the end, where it says that an employer pays to such native an agreed rate of wages in cash less Sh. 2 which he shall pay in kodi stamps. I wanted these words put in: "Provided that the employer at the request of the employee may pay his full wages in cash during any three of the first nine months of the year."

COL. FITZGERALD: I should like to second that. At the same time, I should like to say that I did not oppose this measure yesterday, as suggested by the hon. Member for Nairobi North (Major Cavendish-Bentinck).

MR. MONTGOMERY: I very much hope that the clause will be allowed to go through as it is. I could not understand the amendment moved by the hon. Member for Ukamba, because it is permissive now. The hon. member need not collect or pay stamps to any native if he does not want it.

ARCHDEACON BURNS: I wish to put this amendment, because in the clause it definitely says that he shall pay in kodi stamps.

SIR ROBERT SHAW: I just rise to say that I cannot withdraw my amendment in favour of that one, because it does not meet my point. Therefore, with all due respect, I oppose it and prefer my own.

ARCHDEACON BURNS: I, of course, voted for the Bill yesterday, and had the pleasure of seeing the people in the Council laugh at me. But that does not matter in the slightest. What I feel is that, instead of the native having to pay for the first six months, each month having Sh. 2 deducted from his wages, it should be permissible, with the concurrence of the employer, for him to have three months in which he could have his full wages given to him at his own request.

HIS EXCELLENCY: Possibly your point is covered by the first amendment put up.

ARCHDEACON BURNS: If it is covered, and as long as the native is not compelled to pay his tax for the first six months of the year by having these Sh. 2 deducted, if that is what is meant by the amendment of the hon. Member for Ukamba, I am quite willing to withdraw my amendment.

MR. WILLAN: Of course it would not meet the case, because according to the amendment proposed by the hon. Member for Ukamba it is entirely at the wish of the native.

ARCHDEACON BURNS: I am quite willing to withdraw my amendment then in favour of the hon. member's.

MR. MONTGOMERY: Your Excellency, I should like to oppose this amendment, and I very much hope the Bill will go through as it is.

I meant to make it quite plain yesterday that it was the intention of Government that the employer should be permitted to pay, if he wished, part of the wages in kodi stamps, but the employee, if the employer wishes to do that, must accept these stamps until one tax receipt has been paid.

I do not know what hon. members generally do, but all these people will not insist on a highly paid chauffeur receiving two stamps, but I do hope, for the sake of the natives themselves and tax collectors in general, that they will insist on the casual labour which goes around the farms dodging the tax altogether contributing Sh. 2 to buy stamps each month until their tax is paid.

I think hon. members forget that for non-payment of the tax a native can be prosecuted, made to pay the costs, and get imprisonment up to three months, and it is in the interests of the natives dodging the tax that they should be made to pay. I think hon. members are aware that during the last two or three years the detention camps have been overflowing with people who should pay but do not take the trouble. That will be obviated if employers agree to pay two kodi stamps in substitution for Sh. 2 in each month's wages. We must make these people perform their duties, and it is no use saying there are not hard cases which must be met. There may be, but every employer is a reasonable man, and if the employee says, "I don't want to pay this month," it is up to the employer to say, "All right, I won't make you take the stamps."

I do hope this section will be allowed to pass as it is or as amended by the hon. the Attorney General on one small point.

SIR ROBERT SHAW: Your Excellency, I quite understand everything the hon. the Chief Native Commissioner (Mr. Montgomery) has said. I agree with

[Sir R. Shaw]
everything, but it does not meet my point.

My point is, I am not a Government official and I cannot collect tax from a boy unless he agrees that I shall do so. When the tax list is made out, I have a list of every boy in my employ who agrees that I shall collect his tax by having his name entered thereon. In my case, three or four do not have their names there, because they do not want me to do it.

If that is provided for, that on my hut and poll tax list are only the names of boys who agree that I should collect their tax, I will collect it, but I cannot agree to anybody being able to insist that every boy's name should go on the list, whether that boy likes it or not.

I am not a Government official, but I enter into an agreement with the district commissioner and the native that I will collect a certain tax; then I can act. I have the authority, although unless this Bill gives it to me I shall not in fact act even in respect of a boy who does agree that I shall pay it for him. I have no authority, I am not a Government official, and even if I have the agreement between me and the native must be there.

MR. MONTGOMERY: I agree, but already this is permissive; you need not do anything at all.

SIR ROBERT SHAW: I am not worrying about myself, I can look after myself; I am looking after the native. It is not permissive for a native. He has to accept me as the tax collector. If I were the District Commissioner I would conclude that the native has to accept me as his tax collector, whether he likes it or not, but I will not agree with this.

MR. HARVEY: Your Excellency, I did not speak yesterday, but I wish emphatically now to support the hon. Member for Ukamba. I think a most obnoxious principle is set up for the first time in this Bill that any employer shall be given the right to deprive a native of the remuneration he is entitled to under the contract entered into for work.

I consider that a native, in common with all other taxpayers, should be a perfectly free agent to do what he likes to do with his own. This is obnoxious in principle, and I believe it will work badly in practice.

We have heard a lot from the hon. the Chief Native Commissioner about tax-dodgers. For thirty years, as he knows quite well, in the district in which I live we have co-operated with Government to the maximum extent in assisting in the collection of native hut and poll tax, so successfully that last year, 1936, was a record year, and I do suggest in all seriousness that there are fewer tax-dodgers in the settled areas of Kenya than in the native reserves.

SIR ARMIGEL WADE: Your Excellency, we have to admit quite openly that in introducing this Bill we did accept the principle of a certain amount of compulsion as being good for two classes of natives.

First of all, the bad citizen trying to evade paying anything at all, as the hon. the Chief Native Commissioner has pointed out. If this principle of compulsion is accepted to the extent of a compulsory payment of Sh. 2 a month, a native may go from one farmer to another and do a month's work at each, and for each month the State will get Sh. 2, and it is quite right that the native should pay his contribution.

Secondly, compulsion is good for the good native. The best of them are not thrifty. When a native gets a lot of money in his pocket his first idea is to spend it. It is to his interest that he should spread the tax gradually over the year, unless he wants to pay it at once, and there is nothing to prevent him doing that. But if a certain amount is deducted each month he does not feel it badly, and it helps him to pay the tax.

You may say it is interfering with the rights of the individual, but in the principle of this compulsion there is nothing very new or revolutionary. I believe, Your Excellency will confirm, that officers of the Royal Navy, Army, and Royal Air Force, when getting their pensions or pay, have automatically deducted from it at its source the amount to be paid in income tax, whether they like it or not. Servants in England have,

[Sir A. Wade]

I believe, to contribute 4d. per week in insurance. I know there was a lot of argument about that when it was brought in, and that it was said to be interfering with the liberty of the subject, but servants go on paying, whether they like it or not, and it is generally speaking in their own interests.

We believe this measure of mild compulsion will be in the interests of the good native. The hon. the Chief Native Commissioner has pointed out that our detention camps are full of people towards the end of the year who have not paid their taxes. That is a scandal, and we are trying to do away with it, and we believe, we can to some extent, by a little, if you like, grandmotherly legislation or even autocratic legislation, by making these people contribute a certain amount every month towards their due obligation. Not making them pay anything more, but only more easily.

Employers for years have helped Government to collect the tax; they were not bound to, but they have. We say that if employers are prepared to go on and help Government as in the past, then they may, if they think right and proper, pay Sh. 2 in kodi stamps, and if they do it the native has got to accept it. That is the Government position, and I do not think we are really doing any harm to the good native but have brought compulsion to bear on the bad native and make him meet some part of his admitted obligation.

MAJOR CAVENDISH-BENTINCK: Sir, I was very glad at last to hear Government come out into the open and tell us what their intention is, because a careful attempt was made not to disclose it yesterday.

I submit that the "Objects and Reasons" as printed with the Bill are misleading. They say "permissive for an employer," but do not stress that it is made "compulsory for the native," which is the real object of the Bill.

I beg Government, in their own interests, not to force it through. If they are going to apply it to a native, they may as well attempt to apply it to an employer of white labour and suggest that I, for instance, should deduct certain moneys from the salaries of the people I employ and hand it over to Government, a thing I would never agree to, nor would my employees agree to my doing it.

So far, Government have had a great deal of help from the white community in collecting taxes, but I believe if this goes through not one white employer in the country will undertake the deduction and the collection of tax in this way.

I make a final appeal to Government's sense of humour because, in the next sub-clause, one is not allowed even to give a native a kodi stamp if he wants to buy one to send to his friend!

SIR ARMIGEL WADE: I realize that most hon. members are deeply interested in this, and that there is a genuine difference of opinion. I propose that the Bill be sent to a select committee, and I hope that the hon. Members for Ukamba and Nairobi North will be on that committee, or such other members as they like to choose.

SIR ROBERT SHAW: I would withdraw my amendment in favour of that, if Your Excellency sees fit to accept it.

MAJOR CAVENDISH-BENTINCK: So would I.

COL. KIRKWOOD: Before that is done, I think I am right in saying that if the Bill goes to select committee the question then will be the adoption of that committee's report, and it will handicap the debate if any point occurs which we have not discussed at the moment. The hon. and learned Attorney General gave notice yesterday to move an amendment to this section 6B (1), and I also wanted to move in committee of the whole Council that 6B (2) be deleted.

SIR ARMIGEL WADE: I suggest again that that is a different point. It is now agreed the Bill should go to a select committee instead of the committee of the whole Council, and when the report comes to Council the report can be debated.

SIR ROBERT SHAW: I think the hon. member is entitled to go before the select committee and make his point there, if he likes to do that.

MR. WILLAN: Certainly.

MAJOR CAVENDISH-BENTINCK: No doubt the committee would consider the point raised by the hon. Member for Trans Nzoia (Col. Kirkwood).

MR. WILLAN: That will be considered in select committee when the committee has been appointed. I think the motion now before Council is that the select committee be appointed, the names to be announced later.

The amendments were by leave withdrawn.

SIR ARMIGEL WADE moved that the Bill be referred to a select committee, the names of which would be announced later.

The question was put and carried.

SIR WILLAN moved that the Chairman do now vacate the Chair.

The question was put and carried.

The Chairman vacated the Chair.

Council adjourned.

ADJOURNMENT

Council adjourned to 10 a.m. on Wednesday, the 28th July, 1937.

Wednesday, 28th July, 1937

Council assembled at the Memorial Hall, Nairobi, at 11 a.m. on Wednesday, 28th July, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 27th July, 1937, were confirmed subject to an amendment moved by Mr. Willan, seconded by Mr. Wallace, and carried, that the words—

"The Hon. the Acting Attorney General moved that the Chairman do now vacate the Chair.

The question was put and carried.

The Chairman vacated the Chair."

be deleted.

PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

BY THE COLONIAL SECRETARY (SIR ARMIGEL WADE):

Report of the Standing Finance Committee on Schedule of Additional Provision No. 5 of 1936.

Report of the Standing Finance Committee on Schedule of Additional Provision No. 1 of 1937.

NOTICE OF MOTION

COL. KIRKWOOD gave notice of the following motion:—

"In the opinion of this Council an inquiry into the alleged overcrowding of the Kitale Native Hospital is advisable."

ORAL ANSWERS TO QUESTIONS

No. 39.—CONSERVATION OF LAND LEGISLATION

MAJOR CAVENDISH-BENTINCK asked:—

Is Government contemplating the introduction of legislation to provide for the better conservation of land?

SIR ARMIGEL WADE: The introduction of such legislation has been

[Sir A. Wade]
recommended by the Standing Board of Economic Development and a draft is being prepared. The matter is one of some difficulty and careful consideration will be necessary before any such legislation is introduced.

BILLS

IN COMMITTEE

MR. WILLAN moved that the Council do resolve itself into committee of the whole Council to consider, clause by clause, the following Bills:—

The Medical Practitioners and Dentists (Amendment) Bill.

The Local Government (District Councils) (Amendment) Bill.

The Plant Protection Bill.

The Mombasa Shop Assistants Employment Bill.

MR. WALLACE seconded.

The question was put and carried.

Council went into Committee.

His Excellency moved into the Chair.

The Medical Practitioners and Dentists (Amendment) Bill was considered clause by clause.

Clause 2.

DR. PATERSON moved that clause 2 be amended by the deletion of the words "inserts or attempts to insert any" and the substitution therefor of the following words: "gives any treatment, advice or attendance on, or to any person as preparatory to, or for the purpose of, or in connexion with the fitting, insertion or fixing of".

DR. DE SOUSA: I have a further amendment to move at a later stage. Meanwhile, I am opposing this amendment.

MR. WILLAN: Your Excellency, the amendments should be taken in order. First of all, that proposed by the hon. the Director of Medical Services.

MR. SHAMSUD-DEEN: May I ask, Your Excellency, if there is anything in Standing Rules and Orders according to which members could have an opportunity of giving more serious thought to amendments of this nature? I have not quite heard every word of what the hon. the Director of Medical Services has said, and I should like more time to think over the amendment. I think there is something in our Standing Rules and Orders that a member can move an amendment but that some time should be given to consider it. I am not, however, quite certain about it.

MR. WILLAN: There is Standing Rule and Order No. 27:—

"If it is proposed to move any amendments to a clause when called, the Chairman shall put them in their proper order."

I do not know whether the hon. member Dr. de Sousa wishes to move an amendment to the amendment proposed by the hon. the Director of Medical Services, or one of his own?

DR. DE SOUSA: This is one of my own.

MR. WILLAN: In that case the proper procedure should be that the amendments should be taken in their proper order: first of all, that proposed by the hon. the Director of Medical Services.

MR. SHAMSUD-DEEN: My point is that the amendment suggested by the hon. the Director should be circularized to enable members to study it properly.

MAJOR CAVENDISH-BENTINCK: Surely Council is entitled to hear all the amendments one after the other and judge the relative merits of each and that they should then be put to Council one after the other in the order in which they were put up?

MR. SHAMSUD-DEEN: I would ask the Clerk of Council to read the amendment more clearly and loudly.

HIS EXCELLENCY: I will ask the Clerk to read the amendment slowly so that every member can see whether there is anything new in the amendment or whether it is purely verbal.

THE CLERK read the amendment.

MR. HARVEY: Another suggestion I should like to make from the point of view of procedure is that when any mem-

[Mr. Harvey]
ber, official or unofficial, proposes to produce something fairly voluminous and long which requires careful consideration, if possible, an arrangement should be made by which this draft amendment could be furnished to members in writing before we reassemble. (Hear, hear.)

DR. PATERSON: Your Excellency, as the clause stands there will be nothing, in the view of the hon. and learned Attorney General, to prevent a dental mechanic or other person from seeing a person, taking an impression, and making a set of artificial teeth. All that he would be prevented from doing would be the insertion of those teeth after they were made. The law in England is as follows, under the Dentists Act, 1921:—

"For the purposes of this Act the practice of dentistry shall be deemed to include the performance of any such operation and the giving of any such treatment, advice, or attendance as is usually performed or given by dentists, and any person who performs any operation or gives any treatment, advice, or attendance on or to any person as preparatory to or for the purpose of or in connexion with the fitting, insertion, or fixing of artificial teeth shall be deemed to have practised dentistry within the meaning of this Act."

The amendment I propose merely brings our definition of dentistry clearly to mean the same thing as the definition of dentistry in the English Act.

DR. DE SOUSA: Your Excellency, I oppose this amendment, mainly on the ground first, that whatever laws of dentistry obtain in England they cannot reasonably be expected to apply to a country like this, where there are at least two races in such a state of civilization that such application is not possible.

I mentioned yesterday that it is necessary for some sort of consideration to be given to a large section of the community which is composed of poor people who cannot afford the charges of the registered dentists, and all that I have been asking is—and I do earnestly press this on members of the Council—that people may be allowed to go and get a set of teeth for, say, £4 or £5, whereas if they go to a licensed dentist they would have to pay £15 and £20.

As I said yesterday, legislation is all right, but legislation must have some conception of the realities of the situation obtaining in countries where it is to be enacted.

HIS EXCELLENCY: I would ask the hon. member to remember that at the moment we are discussing the amendment to clause 2.

DR. DE SOUSA: I submit that the addition of these words to the text of the Bill is a substantial change, and if we consider the amendment word by word we shall probably find there are no loopholes at all, that not even an ordinary individual will be able to use a drop of clove oil on his neighbour's teeth to prevent pain!

That is why I say this has become a n[illegible] Bill, which ought to be considered very seriously. I oppose this amendment, and still appeal to you, Sir, to use your prerogative in advising your executive officers to have some sort of conception of what obtains in these towns.

MR. WILLAN: Your Excellency, the hon. member, of course, is debating the principle of the Bill, which passed its second reading yesterday.

The only object of the amendment is to tighten up the clause to prevent a dental mechanic from seeing a patient, taking an impression of his mouth, and so making a set of artificial teeth for that patient.

As the clause stands at present, the phrase "or inserts or attempts to insert any artificial teeth" does not quite cover what is the intention of this Bill, because if it stands without any amendment it would mean that I should be able to go to a dental mechanic, who could take an impression of my mouth, be able to make a set of teeth, and hand them to me and say "Put them in yourself." And that is the only object of this amendment.

DR. DE SOUSA: At this stage, I think I should move an amendment to the amendment.

HIS EXCELLENCY: Are you moving an amendment to the amendment?

DR. DE SOUSA: Yes, I will read it if you will allow me:

"Provided that the taking of impressions and making of dental sets will not be held to contravene the provisions of this Ordinance."

SIR ARMIGEL WADE: I would ask the hon. member to make it quite clear whether he is proposing that this proviso should be added to the amendment proposed by the hon. the Director of Medical Services, that the amendment should be amended by the addition of that proviso.

DR. DE SOUSA: Yes, it is to add this proviso to the new section 7A.

MR. WILLAN: You are proposing a substantive amendment, not an amendment to that proposed by the hon. the Director of Medical Services.

DR. DE SOUSA: I was bound to do this because just now you elucidated the implications of that amendment and finally anticipated what I was going to state. I thought this was the proper stage, but if I am allowed to move my amendment independently I would rather see the amendment of the Director of Medical Services disposed of first and then move mine.

HIS EXCELLENCY: It is really a separate amendment and should be moved later.

DR. DE SOUSA: Thank you.

The question of the amendment moved by the Director of Medical Services was put and carried by 19 votes to 17:

Ayes—Messrs. Bale, Boulderson, Daubney, Gardner, Hayes-Sadler, Hebden, Hosking, La Fontaine, Logan, Montgomery, Morris, Dr. Paterson, Sir Godfrey Rhodes, Mr. Stooke, Sir Armigel Wade, Messrs. Wallace, Walmsley, Willan, Wolfe.

Noes—Mr. Bemister, Archdeacon Burns, Major Cavendish-Bentinck, Col. FitzGerald, Mr. Harvey, Mr. Hoey, Dr. Karve, Col. Kirkwood, Messrs. Long, Mainl, Mangat, Maxwell, Major Riddell, Mr. Shamsud-Deen, Sir Robert Shaw, Dr. de Sousa, Mr. Wright.

MR. SHAMSUD-DEEN: Your Excellency, at this stage may I make a suggestion most respectfully?

In view of the fact that, during the last 10 or 12 years, there has never been one single occasion when the Government votes have not been given in one block, I respectfully suggest that in future divisions there is no need to call out the names of the official members but only of the unofficial members, because the officials always vote in one block—(laughter)—never a free vote!

DR. DE SOUSA: Your Excellency, I move that clause 2 be amended by the addition to the proposed new section 7A of the following words:—

"provided that the taking of impressions and the making of dental sets will not be held to contravene the provisions of this Ordinance."

I submit that this does not prevent Government from having legislation which will prohibit unqualified people doing dental work. All I want in here is that the taking of impressions and making of sets be allowed—there is no medicine used, or instruments, there is no alleviation of pain, there is nothing, in fact, it is just an ordinary mechanical process which should not be included in dental science.

I am asking this on behalf of the poorer sections of all communities, Europeans included.

Now, Sir, I will give you an instance why I particularly ask exemption for dental sets to be made. There is a large number of people in town who avail themselves of the cheapness of dental sets in India, and anybody acquainted with Indians will tell you that Indians wait 3, 4, 5, or 6 years without teeth, for they are unable to pay the heavy charges here. So they wait until they go on holiday to India and get them there.

Many people in Nairobi even take a trip to Mombasa to get their sets down there at about quarter of the price they would be charged here. What happens is that generally people suffer from pyorrhaea, and they go to an ordinary medical practitioner who removes the teeth. They wait two or three months for

[Dr. de Sousa]
the gums to set, and then go to the cheapest man who, at the moment, is I think in Mombasa.

The least Government can do is to agree to this amendment. This is really a social measure, and people should be entitled to have artificial teeth in the interests of their health, and Government should encourage these mechanics. I hope the very heartless and bureaucratic Government will be moved by this appeal of mine.

DR. PATERSON: Your Excellency, I cannot advise Government to accept the amendment, which cuts right across the whole principle of the Bill. You will observe that even in England such practice is not allowed, it has been considered undesirable, and I presume it has been considered undesirable for very sound reasons indeed.

The reason, I think, is this. If you allow a practice of that kind, you cannot limit it to the one matter to which the hon. member Dr. de Sousa refers. If you allow these people to establish themselves they will undoubtedly establish themselves as dentists. It may be a very small matter at the present time, but if allowed to go on it would become a very large matter indeed, and we should have the country full of all sorts of people with no qualifications of any kind whatsoever practising dentistry, and practising it in ignorance of how dentistry ought to be practised.

I do not think it is in the interests of the poor people of this country in the very slightest degree to allow this type of practice to continue. There are, I entirely agree, the difficulties mentioned by the hon. member Dr. de Sousa. It must be obvious to all, but the suggestion he makes is not to my mind the correct answer. There are obvious ways out of the difficulty.

One, I should think, might be this: that if these people were not allowed to practise in the profession they do at present, the regular dentists would be in a position to work with them, and the fees for dentists, as one knows, are various. The other method of meeting the difficulty is by making some arrangement by which poor people can get their sets at a very small cost. People are poor in England as here, and I imagine they are in exactly the same position, and I do not think it would be in the interests of the people to accept this amendment which the hon. member has proposed.

MAJOR CAVENDISH-BENTINCK: Your Excellency, speaking to this amendment of the hon. member's, I rather gather that what we have just been asked to pass prevents anybody from giving any advice or attendance with regard to dental sets. I do not know where the high class dental mechanic comes in.

If we base everything on English practice it is rather ridiculous in the middle of Africa. I should like to add to the suggested proviso of the hon. member Dr. de Sousa a further proviso that the sharpening of teeth be allowed by non-licensed persons in order to cover the practice of the Wakamba!

DR. KARVE: Your Excellency, the hon. the Director of Medical Services has not given the reasons or that there are any medical objections to having sets made in this way.

I think he will agree with me that no damage is likely to be done to anybody's jaw or mouth by a mechanic taking an impression for a set. The only thing that he is afraid of is when such liberty is given these mechanics they will overstep their powers and begin to treat people. That is what he is afraid of. But to make a law simply because of a particular thing that is wanted which will perhaps at a later date be contravened by these dental mechanics is, I think, wrong.

If a law is made preventing dental mechanics from practising dentistry, it is up to the police to prosecute anybody contravening any section of the law, but to stop them working altogether simply because there is a fear they will overstep their work and start treating people, is very wrong.

Secondly, the hon. member Dr. Paterson says this is English practice, but in England there are dentists charging different fees, and while a fashionable dentist will charge £30 to £40 there are others willing to make a set for £5. Owing to the standard of living in this country, a professional man unfortu-

[Dr. Karve]
nately, such as a dentist, is unwilling to take less than £15, and because of this the poor people, at great inconvenience to themselves, have to wait two or three years for sets. Meanwhile, their jaws shrink, so that when they get their sets the latter will not fit.

Before these mechanics came into the country I know of people who waited for their next leave to get their teeth, and when the sets, made by dentists in India, came they did not fit properly so that they had to suffer all their lives.

From my own experience no dentist in this country is willing to make a set for anybody under £15, whatever the circumstances may be, and this will be definitely a hardship on these poor people. Even a dentist rarely makes a set himself. What he does is to keep a mechanic who makes them, so that actually the work is done by a mechanic when a man goes to a dentist. I therefore see no harm in allowing anyone outside to make a set.

SIR ROBERT SHAW: Your Excellency, the hon. the Director of Medical Services pointed out just now that this was, in this country at the present time, a small matter. For the sake of the small matter admitted by him, you propose now to pass a piece of legislation which condemns a considerable number of the people of the country to conditions in which they cannot obtain the necessary service which is being discussed.

I consider that you should accept the amendment of the hon. member Dr. de Sousa, and if the thing becomes a large matter and the privileges are abused, it is easy to introduce increased restrictions later on to put the matter right.

MR. HARVEY: Your Excellency, I rather gather that the hon. the Director of Medical Services is apprehensive of a potential danger to public health if this type of dentistry is practised by laymen without any special qualifications. But, if you are going to do that, having regard to the special circumstances of Africa and Africans, why not go the whole hog and introduce legislation making it an offence to cut hair with a bit of broken bottle, which is a common form of barbarism practised in the majority of the native reserves? (Laughter.) And why not introduce legislation making it a serious offence to eradicate a septic sore with a bit of sharpened hoop-iron if a Government pruning knife is not easily obtainable? (Laughter.)

DR. PATERSON: I can only repeat what I said before . . .

DR. DE SOUSA: I want to say something. I hope the hon. member is not going to reply now?

HIS EXCELLENCY: No. Hon. members, in committee of the whole Council, can get up as often as they like.

DR. PATERSON: . . . this is the law in England and I have stated reason.

COL. KIRKWOOD: I would ask the hon. member to speak up. It is most difficult to hear him.

DR. PATERSON: I beg your pardon. This is the law in England, this is the law in some other colonies.

With regard to the point made by the hon. Member for Ukamba (Sir Robert Shaw), the time to deal with these things is before very great damage has been done. If you allow this thing to grow there will be a large influx of these mechanics, and we shall not be able to deal with the matter.

Personally, I have no doubt on the matter at all. The approach to the point raised by the hon. member Dr. de Sousa is by another method.

MR. HOEY: Your Excellency, I have got into very deep water over this, and it is due entirely to the amendments which have come forward. One is from the hon. the Director of Medical Services, who is the person responsible for this Bill. At the last minute he comes along in Council and puts up a most important amendment that alters the present status of the dentist mechanic up to a point.

I have been in the hands of the dentist, indeed yesterday, and a mechanic came in and mixed up the plaster. Under this Bill he will not be allowed to be in attendance at all.

It is nonsense to go on in this way, and I move that progress be reported and

[Mr. Hoey]
the Bill referred back for further consideration. (Hear, hear.)

SIR ARMIGEL WADE: I am authorized by Your Excellency to say that Government will accept that proposal and will report progress.

The question was put and carried.

The Local Government (District Councils) (Amendment) Bill was considered clause by clause.

The Plant Protection Bill was considered clause by clause.

Clause 3.

MAJOR CAVENDISH-BENTINCK moved that clause 3 be amended by the insertion of the words "in Council" after the word "Governor" on the first line thereof.

The question was put and carried.

Clause 3.

MR. WILLAN moved that clause 3 be amended by deleting the full stop at the end of sub-clause (l) and substituting therefor a semi-colon, and that a new sub-clause (m) be added as follows: "(m) The imposition and provision of fines for any inspection, disinfection or treatment carried out in compliance with, or under any power conferred by, any order made under section 8."

The question was put and carried.

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

Clause 4.

MR. WOLFE moved that clause 4 be amended by adding at the end of proviso (a) after the word "Agriculture" the words "Deputy Director of Agriculture".

The question was put and carried.

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

Clause 8.

MAJOR CAVENDISH-BENTINCK moved that clause 8 be amended by inserting after the word "Governor" on the first line the words "in Council".

MR. WOLFE: I am afraid that I must oppose the amendment.

It is quite understandable that where the operations of a farm are not being covered by legislation, the consulting body, Executive Council, should have an opportunity of expressing its opinions on the legislation proposed. But this is a different matter altogether.

It deals with the importation and exportation of plants, and it is conceivable that the country might be threatened with some serious pest or diseases in some neighbouring territory. I suggest that the same reason for requiring the submission to Executive Council under clause 3 does not apply to clause 8.

SIR ARMIGEL WADE: I support the hon. the Director of Agriculture. It is quite different. Clause 3 is a legislative clause, and it is quite right the Executive Council should see the proposed legislation. Clause 8 is a matter for executive action, and executive action over and over again would be prejudiced by delay. If you look at paragraphs (f) and (g), action would have to be taken on the spur of the moment, and it would be dangerous if the Director had to refer to Executive Council before taking action.

MAJOR CAVENDISH-BENTINCK: I cannot see any difference between the two clauses. One refers to the prohibition, control and destruction, and the other is very much the same, in the case of imports and exports, and also destruction.

My attention has been called to paragraph (f). What about (g)?—

> "Impose and provide for the recovery of fees for any inspection, disinfection or treatment carried out in compliance with, or under any power conferred by, any such order."

We not only give the Governor power to disinfect and destroy, but to collect fees and all that without the knowledge of the people affected. As regards Executive Council, it meets frequently, and I do not think an odd day or two would make much difference.

MR. WILLAN: Executive Council meets once a fortnight. It is not a question of an odd day or two. What are you going to do if, on the day following a Council meeting, there occurred a case of some plants at Mombasa infected with a

[Mr. Willan]

certain disease? Wait until a week the following Friday, when the damage would be done? You must take, as the hon. the Colonial Secretary and the hon. the Director of Agriculture have said, immediate action. It is in the interests of the Colony, but what the hon. Member for Nairobi North (Major Cavendish-Bentinck) has proposed is strictly against the interests of the Colony. You must take action at once. I do not agree that the arguments adduced by the hon. the Colonial Secretary are that clause 8 does differ very widely from clause 3.

MR. WOLFE: I should like again to emphasize the essential distinction between clauses 3 and 8. Clause 3 is really a farming operation; clause 8 relates purely to the importation and exportation of plants and materials.

The hon. the Commissioner of Customs has drawn attention to a section of the Customs Ordinance which gives the Governor the same power without referring the matter to Executive Council at all.

MAJOR CAVENDISH-BENTINCK: Does not that cover the case cited by the hon. the Attorney General?

MR. WOLFE: Only prohibiting importations.

MR. BEMISTER: Your Excellency, I happen to be connected with this sort of work, and it has always been my experience that the agricultural officer at the coast, even to-day without this Bill, does and can forbid the importation of seeds or plants or anything which he considers diseased.

We have the celebrated case some years ago of some little trees which were imported, and they had earth on them and were forbidden. The gentleman importing them took the trees, shook the earth off over the wharf, and they were passed!

If that power is in their hands now, what is the object of extending it? They already have the power and use it, and what is the object of putting it in again?

MR. WOLFE: The answer is a simple one. They have power under existing legislation, which will be repealed when this Bill comes into force.

MR. BEMISTER: It is legalizing something already done.

SIR ARMIGEL WADE: That is quite wrong. This is not retrospective and will legalize nothing done. The hon. member is quite right, agricultural officers have power, but this Bill will repeal the Ordinance which confers that power. If you repeal the Ordinance which confers that power, in the new one you must retain the power, and the Bill does that.

I would again draw Your Excellency's attention to the necessity for immediate action, which is the main point. Under clause 8 (2) (*c*) is authorized "the immediate destruction" of plants, and under (*d*) to "direct or authorize the disinfection or fumigation of any vehicle, vessel, or aircraft" suspected of harbouring disease that may infect plants. We should have to wait a fortnight before taking action, under the amendment, and if hon. members consider the matter important they should consider the need for immediate action.

MAJOR RIDDELL: Whatever may be the arguments of Government for the retention of this power, surely they do not apply to clause 8 (*g*)? How can they possibly apply to (*g*)?

MAJOR CAVENDISH-BENTINCK: If means could be found to dispose of (*g*), I am prepared to withdraw my amendment.

MR. HARVEY: Could not (*g*) be transposed to a new (*m*) of clause 3? Would not that meet the views of everyone?

The amendment was by leave withdrawn.

MR. WOLFE: It would meet my views, or it could even be done in a schedule.

I would make a final remark, that the Department of Agriculture has no purpose of its own to serve in enforcing this legislation, only the protection of the country's crop industries from infection by pests and diseases.

MR. HARVEY: My suggestion is that we delete (*g*) from clause 8 (2) and add the same paragraph after (*l*) to clause 3 and make the new one (*m*).

MR. HOSKING: Does not clause 3 (*b*) cover the point: "the payment and recovery of fees for any disinfection or treatment carried out by any inspector"?

MR. WILLAN: The answer is in the negative.

I am authorized by Your Excellency to state that there will be no objection to adding paragraph (*m*) to clause 3 and I move that at the end of paragraph (*l*) after the word "description" the full stop be deleted and there be substituted a semi-colon; that new paragraph (*m*) be added to clause 3 as follows:—

"(*m*) the imposition and provision for the recovery of fees for any inspection, disinfection, or treatment carried out in compliance with, or under any power conferred by, any order made under section 8;"

that paragraph (*g*) of sub-clause (2) of clause 8 be deleted; that at the end of paragraph (*f*) of sub-clause (2) of clause 8 the semi-colon and the word "and" be deleted, and there be substituted therefor a full stop after the word "detention".

The question of the amendment was put and carried.

The question of clauses 3 and 8 as amended was put and carried.

The Mombasa Shop Assistants Employment Bill was considered clause by clause.

Clause 4.

MR. WALLACE moved that clause 4 be amended (*a*) by substituting the words "in or about" for the words "about the business of" which occur in the second line of sub-clause (1) thereof, and (*b*) by deleting therefrom sub-clause (4) thereof and substituting therefor the following sub-clause:—

"(4) No shop assistant shall on any full working day be employed in or about a shop for more than one period before the interval referred to in sub-section (3) of this section or for more than one period after such interval, and no such period shall in any case exceed five hours whether before or after such daily interval."

The question was put and carried.

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

Clause 7.

MR. WALLACE moved that sub-clause (2) of clause 7 be amended by deleting therefrom the word "Inspector" which occurs in the second line thereof and by substituting therefor the word "Sub-Inspector".

The question was put and carried.

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

Clause 8.

MR. WALLACE moved that clause 8 be amended by inserting therein immediately after the word "labour" which occurs in the last line thereof the words "for a period".

The question was put and carried.

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

Clause 10.

MR. WALLACE moved that clause 10 be amended by deleting therefrom the words "classes of persons" which occur in the second line thereof and by substituting therefor the words "class of persons".

MR. HARVEY: One interesting point arises, Your Excellency, rather generally, in connexion with this clause, and I am quite sure my hon. and learned friend can answer immediately.

Would it be possible for an employer and employee mutually to agree to some arrangement which would necessitate working for three shifts during the day or for a period longer than that laid down under this Bill? Could they mutually agree to contract out of the provisions of the Ordinance?

MR. WALLACE: The answer is in the negative.

MR. HARVEY: Thank you.

The question of the amendment was put and carried.

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

MR. WILLAN moved that the following Bills be reported to Council without amendment:—

The Trustee (Amendment) Bill,

[Mr. Willan]

The Girl Guides (Amendment) Bill,
The Evidence (Bankers' Books) Bill,
The Tribal Police (Amendment) Bill,
The Traders Licensing (Amendment) Bill,
The Prisons (Amendment) Bill,
The Tea Cess Bill,
The Local Government (District Councils) (Amendment) Bill;

that the following Bills be reported to Council with amendment:—

The Public Trustee's (Amendment) Bill;
The Traffic (Amendment No. 2) Bill,
The Stamp (Amendment No. 2) Bill,
The Plant Protection Bill,
The Mombasa Shop Assistants Employment Bill;

that the Native Hut and Poll Tax (Amendment) Bill be committed to select committee; and that progress be reported on the Medical Practitioners and Dentists (Amendment) Bill.

The question was put and carried.

His Excellency vacated the Chair.

Council resumed its sitting.

HIS EXCELLENCY informed Council that the above-named Bills had been considered clause by clause in committee of the whole Council; that the following Bills had been reported without amendment:—

The Trustee (Amendment) Bill,
The Girl Guides (Amendment) Bill,
The Evidence (Bankers' Books) Bill,
The Tribal Police (Amendment) Bill,
The Traders Licensing (Amendment) Bill,
The Prisons (Amendment) Bill,
The Tea Cess Bill,
The Local Government (District Councils) (Amendment) Bill;

that the following Bills had been reported with amendment:—

The Public Trustee's (Amendment) Bill,
The Traffic (Amendment No. 2) Bill,
The Stamp (Amendment No. 2) Bill,
The Plant Protection Bill,
The Mombasa Shop Assistants Employment Bill;

that the Native Hut and Poll Tax (Amendment) Bill had been committed to select committee; and that progress was reported on the Medical Practitioners and Dentists (Amendment) Bill.

Third Readings

MR. WILLAN moved that the following Bills be read a third time and passed:—

The Trustee (Amendment) Bill,
The Girl Guides (Amendment) Bill,
The Evidence (Bankers' Books) Bill,
The Tribal Police (Amendment) Bill,
The Traders Licensing (Amendment) Bill,
The Prisons (Amendment) Bill,
The Tea Cess Bill,
The Local Government (District Councils) (Amendment) Bill,
The Public Trustee's (Amendment) Bill,
The Traffic (Amendment No. 2) Bill,
The Stamp (Amendment No. 2) Bill,
The Plant Protection Bill,
The Mombasa Shop Assistants Employment Bill.

MR. WALLACE seconded.

The question was put and carried.

The Bills were each read a third time and passed.

Council adjourned for the usual interval

On resuming:

THE RESIDENT LABOURERS BILL

Second Reading

MR. WILLAN: Your Excellency, I beg to move the second reading of the Resident Labourers Bill.

This is the third Bill of its kind which has come before Council during the last nineteen years. The first Bill became law in 1918, and that was replaced by the 1925 Ordinance, which is still in force at the present day.

In 1933 a committee was appointed by the Governor to review the working of that 1925 Ordinance, and to make a report. That committee was largely composed of unofficial members, and was representative of the whole of this Colony.

Owing to illness and to other unforeseen circumstances, the committee did not finish its deliberations until October,

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1934; and its report was presented to Government in February, 1935. Attached to that report was a draft Bill, which was approved unanimously by that committee, and is substantially the Bill now before Council to-day. That draft Bill was forwarded to the Secretary of State, together with the draft Employment of Servants Bill and with the amending Bill to the Native Registration Ordinance. These three Bills were very carefully considered by the Secretary of State, and they were returned by him in due course with a few minor amendments. These minor amendments have been incorporated into all three Bills.

This Bill, and the Employment of Servants Bill, are the two most important Bills which come before Council this session. For my own part, I would have preferred that this Bill and the Employment of Servants Bill should have been referred to the one select committee at one time, but I am authorized by Your Excellency to state that, in view of the fact that the Employment of Servants Bill and the Native Registration (Amendment) Bill were not published until the 6th of this month for introduction into this Council, there will be no objection, on the second reading of the two latter Bills, to them being referred to a committee, and that that committee should meet some time in September, and that the Bills be brought forward again to this Council at the budget session.

Before dealing with the various clauses in this Bill, I wish to make the position of Government very clear at the outset.

The first is that this Bill, apart from the local option clauses, is largely a consolidating Bill.

The second point, which refers solely to the local option clauses, is this. That Government has followed the advice, the unanimous advice, of that committee (which I have stated was largely unofficial and was entirely representative of the whole of this Colony). In that report the committee stated as follows:—

"One fact emerged, however, and that was the general desire for local option in matters relating to the employment of squatters, although the Kenya Land Commision, in paragraph 2039 of their report, considered that the question of squatter stock 'is not one which should be left entirely to local opinion'.

"In view of this general desire, we recommend the acceptance of the principle of local option in matters relating to the employment or non-employment of squatters in the different farming areas and we have made provision in the Bill to that effect.

"We realize that by so doing we are vesting wide powers in local authorities but these bodies now occupy a position of considerable responsibility and are unlikely to abuse such power; while the proposed procedure will ensure fullest publicity being given to an order of the local authority, and the order will not come into force until it has been approved by Your Excellency in Council."

So it was on that unanimous and very largely unofficial recommendation that Government decided to include the local option clauses in this Bill.

This Bill was published for criticism in the Gazette in March of this year, and for introduction to this Council on the 1st July of this year. Between the Gazette in which this Bill was published for criticism in March and the Gazette in which this Bill was published for introduction, Government has received one criticism of the local option clauses, and that was from the Soy-Hoey's Bridge Farmers Association, who discussed the matter on the 6th May of this year.

There is one other matter which I wish to mention before I deal with the Bill clause by clause.

In the draft Bill attached to the committee's report the word "squatter" was included, and the word "squatter" was defined. If hon. members will turn to this Bill they will not find the word "squatter" mentioned once. That is deliberate, in order to emphasize that the status of a resident labourer is that of a servant and not a tenant. (Hear, hear.) It should be kept clearly in mind that the Bill is intended to deal not with natives living on their own land but with natives who come to reside from time to time on land which has been alienated with a view to offering themselves to the occupiers as

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labourers in return for payment and the right to graze certain stock on those farms.

Now I come to consider the Bill in detail.

In clause 3, the definition of "occupier" has been extended to include the General Manager of the Railways and Harbours, as well as the Conservator of Forests. You will also notice in that definition that "unalienated Crown land" appears. When this Bill goes to select committee I shall propose in that committee that all reference to unalienated Crown land be deleted. The reason is this. Under the Crown Lands Ordinance the Commissioner for Local Government has power to deal with the unlawful occupation of Crown land, and under section 12 of the Native Authority Ordinance, 1937, the Provincial Commissioners have similar powers. There is this to be borne in mind: that the person occupying Crown land under a temporary occupation licence, he it is who is the occupier and not the Commissioner for Local Government.

There is one other point I wish to mention with reference to the word "occupier". You will notice that words have been inserted in brackets "includes any manager or agent". Then we come to the bracket "(other than a native or a Somali except with the approval of the district officer)". Those words in brackets have been added in order to prevent a farmer designating all his natives or Somalis as managers or agents and thus escaping his liabilities under this Bill.

Clause 4 is practically equivalent to the present section 3 of the 1925 Ordinance, with these few following minor amendments:

First, lines one and two: "No native or Somali shall reside on or remain for a longer continuous period than forty-eight hours on any farm." Those words "longer continuous period than forty-eight hours" are new. Under the present law there is no restriction, and the result is that you get the difficult position that a native or Somali who may pay a visit to a farm and stay there, not residing there, merely paying a visit. This amendment will do away with that, and if these people remain for a longer period than forty-eight hours they are liable to the penalties imposed under the Bill.

Now I come to paragraph (*d*) of clause 4 (1):—

"a native or Somali who, from age or infirmity, is incapable of continuous employment and is closely related to a family lawfully residing on such farm, and who has obtained written permision from a magistrate or attesting officer by endorsement on a resident labourer's contract or otherwise."

In my view, that paragraph is probably drafted too widely, because as it is drafted at present it would mean this: that an aged native or Somali who had never resided on a particular farm but had relatives on that farm would be able to come and reside with them, although he had never worked for the occupier. I think that in select committee it will probably happen that that clause will be re-drafted to confine it to resident labourers who have worked on the farm for a considerable period and have had their families residing on that farm.

But there is this problem which should engage the earnest attention of all members of this Council, and particularly of those who are to constitute the select committee: What are you going to do with regard to the resident labourer who has no family? He is there on his own, he has worked for that particular farm for twenty or thirty years, he has given the best of his work, and when he comes to old age or becomes infirm he is no longer capable of working. What are you going to do with him? He has nowhere to go; the only home he knows is the farm where he has worked for that considerable period, and that is a problem which must, as I say, engage the earnest attention of every member of the Council, and particularly of every member of the select committee.

Clause 5 is more or less the equivalent of section 4 of the present Ordinance. There are no amendments of real importance, except that whereas under the present law the head of the family is the contract party, under this Bill the actual resident labourer himself is the contracting party. The only additional changes apart from that proposed in this clause are first, in paragraph (*a*) of sub-clause (2), that the maximum period of the contract has been extended from three to five years; paragraph (*b*) is new, and this permits a contract being renewed or cancelled; in paragraph (*k*) the notice of termination of the contract has been reduced from six to three months.

Sub-clause (4) has been amended. Under the present law the contract is filed in the magistrate's office. This Bill provides for its being filed in the office of the district commissioner, with copies both for the employer and the resident labourer.

Sub-clause (7) is new, and that empowers a magistrate "for any good and sufficient reason" to order the removal of stock from any farm. This provision is necessary in order to deal effectively with cases which arise from time to time of individuals who are unlawfully residing on unoccupied farms or who are found on outlying parts of occupied farms residing there without permission.

Clauses 6 and 7 are the present section 5. With one alteration, which, I submit, is of benefit to the farmer. At the present time, if a farmer wishes to employ natives from a native reserve, he must first obtain the permission of the magistrate of the district in which the farm is situated. That is not so under the present Bill. Provided the farmer has obtained the permission of the district commissioner in the area in which the natives are residing, then there is no need to obtain the permission of the magistrate or district commissioner in the area in which the farm is situated.

The reason for that is this: that if we kept in the provision for obtaining the permission of the district commissioner or magistrate in the area in which the farm is situated, that would give dual control both to the district commissioner or magistrate and local authority. That has been deleted on account of the local option clauses.

Clauses 8, 9 and 10 apply certain provisions of the Native Registration Ordinance both to the occupier and resident labourer, and particularly in respect of the endorsement by the occupier of a registration certificate, and the consequential maintenance of records and submission of labour returns. I am sure that all hon. members will agree with me with regard to resident native labourers, that it is essential that there should be a greater measure of control and that there should be available for inspection by properly appointed officers reliable records which will fix beyond all doubt the identity of all natives on farms and also the cattle which belong to those natives.

Clauses 13, 14 and 16 reproduce the present law with no variation of any consequence.

Clause 15 is new, and provides for labour tickets to be given to every resident labourer.

Clause 17 embodies section 10 of the present Ordinance, but it extends the provisions of that section and generally tightens up the regulations for controlling the cattle of resident labourers on farms. It sets out specifically when a resident labourer can keep stock on any farm, and sub-clause (4) deals with stock on a farm by virtue of contracts under the present law. Generally, it clarifies the position as regards stock, so that both occupier and resident labourer know exactly what are their rights and what are their liabilities.

Clause 18 reproduces section 9 of the present Ordinance.

Clause 19 is new, and provides machinery whereby resident labourers can be removed from areas which are not under proper control.

Clause 20 reproduces section 11 of the 1925 Ordinance, with one alteration and one addition. The alteration is in respect of demanding or taking payment from resident labourers for the right to reside on farms. Under the law as it stands to-day, this prohibition is confined to resident labourers who are actually residing on farms; the law is now extended, prohibiting the taking or demanding of payment from a native or Somali for the right to reside on a farm. The addition to be effected by this clause, the only addition, is the disposal of manure produced by stock belonging to the resident labour.

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Clause 21 reproduces the corresponding section of the present law, which is section 12.

Now I come to the local option clauses, 22 and 23.

As I said in my opening speech, these clauses were put in at the unanimous request of that largely unofficial committee.

Sub-clause (1) of clause 22 gives certain powers to the local authority, which is defined in clause 3 of the Bill as a municipality or district council, or a district commissioner where there is no municipality or district council. I might mention here that a district commissioner, when acting under this Bill, will obtain the advice of that non-statutory body, the committee.

Under the powers given by clause 22, a local authority can prohibit the engagement of resident labourers, can limit the number of resident labourers who may be engaged, it can prohibit and limit the number of stock which may be kept on any farm or group of farms by resident labourers, and can prescribe the number of days on which resident labourers may be called upon to work. These are the powers of a local authority and, as stated in the committee's report, they are very wide. But, considering the remaining subclauses of this clause 22 and the provisions of clause 23, hon. members will find there are no less than five safeguards restricting these powers.

The first safeguard is contained in clause 22 (2), paragraphs (a) and (b), that in making any order under the clause a local authority "shall have regard to the wishes of the occupiers of farms within the areas of its jurisdiction so far as such wishes can be reasonably and conveniently ascertained." That is one. The second one is that they must have "regard to the reasonable labour requirements of farms." That is the first safeguard on the powers now being vested in a local authority.

The second safeguard is contained in sub-clause (4) of the same clause, which gives the Governor in Council full power over any local authority where the Governor in Council is satisfied that that local authority is acting contrary to the wishes of the majority of the occupiers in any area. That is the second safeguard.

Then I come to clause 23, and the third safeguard is contained in sub-clause (1). By the provision of that sub-clause a local authority, before it makes any order, must give fourteen days notice. That notice must set forth the general purport of the order which the authority proposes to make. That notice must be published in the Gazette, it must be published in the public Press, it must also be exhibited at a conspicuous place at or near the public entrance to the local authority's offices where it is proposed to hold a meeting to make that order. That is the third safeguard on the powers proposed to be vested in local authorities. By means of that sub-clause that will give notice to the occupiers of the farms in that area of the order which it is proposed to make.

Then, when the order has been made, it must be sent up for confirmation to the Standing Committee. That is contained in sub-clause (3) of the same clause. So we get the fourth safeguard, that that order cannot have any effect until it has been confirmed by the Standing Committee.

If hon. members will turn to sub-clause (8) of clause 23 they will see that the expression "Standing Committee" means:

"(a) in the case of an order made by a local authority which is a municipality, the Standing Departmental Committee for Local Government established under the Local Government (Municipalities) Ordinance, 1928;

"(b) in the case of an order made by any other local authority, the Standing Departmental Committee for Rural Areas established under the Local Government (District Councils) Ordinance, 1928."

We have not finished yet. Under clause 23 (5) it says:—

"Any person aggrieved by such order may within one month from the date of publication under sub-section (4) of this section submit to the Governor in Council a written objection to the order."

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Under sub-clause (6):—

"... the Governor in Council shall, after considering such written objections, if any, as may have been made under the last preceding sub-section, confirm, vary, or reject such order."

So you see that, although these wide powers are proposed to be vested in local authorities, there are no less than five safeguards on the exercise of those powers.

Clause 24 vests in the Governor in Council power to make rules similar to those which can be made by local authorities. That power is vested in the Governor in Council with regard to forest areas, unalienated Crown land (which I propose in select committee to delete), and Railway land. In exercising those powers the Governor in Council, under paragraph (c), must take into account the terms of any order made on land which is adjacent to those forest areas or Railway land.

Clauses 25, 26 and 27 reproduce the corresponding sections of the present law, with the addition of two sub-clauses, (8) and (9) in clause 26, which impose penalties on a resident labourer if he grows upon any farm any crop which according to his contract he is prohibited from growing and if, after the termination of the contract, he fails within a reasonable and specified time to leave the farm and to remove his family and his stock therefrom.

The remaining clauses, 28, 29, 30, 31, 32, 33, and 34, are formal.

There is only one addition to the present law, and that is sub-clause (2) of clause 28. That provides for arbitration by magistrates in the case of disputes between employers of resident labourers, in the same way that provision is made for settling disputes between masters and servants under the Employment of Servants Bill.

Those, Sir, are the only additions and alterations to the present 1925 Ordinance. There is only one point I wish to mention before I sit down, and it is this.

Before this Bill can come into operation, it is essential that there should be land available for any resident labourers who are turned off farms. Government is actively engaged in getting that land, and I do not think there will be much delay in bringing the Bill into operation on account of that. I would emphasize this in conclusion, and here I am sure all hon. members will agree with me, that it is only by the closest co-operation of all members of the community that a Bill such as this can function satisfactorily. (Hear, hear.)

MR. WALLACE seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I should like to begin by congratulating the hon. and learned Attorney General on the very clear way in which he has expounded what is, in fact, a rather complicated measure. (Hear, hear.)

He started his remarks by general comments on Government's attitude. I also would like to start with some general comments on our attitude.

He started by saying that the measures he alluded to, this and two others, were more or less consolidating Ordinances, and a great deal of what was contained in those Bills was the law to-day. That may be so, but our experience of what are termed consolidating Ordinances is that they always contain a great deal more, and that they are very much more strengthening and tightening-up Ordinances, or tend to become so, than really Ordinances which embody existing law or merge everything into one measure.

We think that, generally speaking, all that is required is one comprehensive measure, dealing as suitably as possible, in view of the development of the development of the country at the present stage, with the question of the employment of servants. We think that when you come to legally enforce a long and complicated memorandum of agreement beginning with "Be it known unto all men by these presents" and "made this day by and between" every person who wishes to employ a gentleman who cannot read and write, and to whom a pair of shorts and a blanket are quite new things, possibly one is going a little too far.

[Major Cavendish-Bentinck]

However, we did ask for one amending Bill to regulate resident labourers on farms, and at last we have got it, and we welcome that part of it.

I want particularly to congratulate Government on the very clear and concise statement made, I think for the first time here so clearly, that this Bill refers to persons who are "servants" and nothing more than "servants". We want to stress that particularly, because I have reason to believe that outside this Colony there is still an idea that people who have hitherto been known as squatters may have some vague rights to land or to tenancy of land. They have no such rights whatever, and for that reason we are very pleased indeed to see that the term "squatters" has been omitted entirely from this Bill.

One is inclined to feel that, really, to have put things in their logical sequence, in view of the difficulties that have arisen over the employment of what are known as "squatters" in the past and in view of one of the last remarks made by the hon. the Attorney General, the first thing that should have been done was to have the Orders in Council which we were promised four years ago implemented, and then to have dealt with the question of how resident labour was to be employed in the various areas. (Hear, hear.)

That should have been the logical sequence. We are now told that even this Bill cannot come into force until land has been found for persons whom it is pleased to call "dispossessed squatters". What that means I do not know, because resident native labourers never had or never will have any inherent rights to land outside the native reserves.

I should like, before going on to the details of the Bill, to thank Government for the assurance that they are not going to hurry through the other two Bills mentioned. We must be accorded reasonable time to consider them before they come up.

This Bill has been produced, as pointed out, as the result of a very long inquiry made by a committee on which there was a majority of unofficial members, and it was stressed by the hon. the Attorney General that that committee stated that local option was suggested wherever they went. Well, I think that is true, but the precise manner in which local option is to be worked as described in clause 22 of the Bill is the rock on which this measure may be shipwrecked. I want to stress that, although people may say, quite rightly, "We want local option," it must not be forgotten that there are all sorts and kinds of interests that have to be considered in any one locality, and that there are great variations in the conditions, labour conditions, etc., in different parts of the country. Therefore, Sir, I hope that, after having heard the arguments put forward as to the degree of local option and the powers to be conferred on local authorities which will be put forward by different hon. members who represent different districts and different interests, the select committee will be able to find some *modus vivendi* whereby clause 22 can be so changed or amended as to meet everybody. From discussions among elected members during the last two days, I believe that will be done.

In order to save time, I am going to run through a number of points, some of which have been alluded to by the hon. and learned Attorney General, in order that they may not have to be repeated by all members afterwards.

My first point is, the interpretation clause on page 2, and concerns the definition of "resident labourer". This is only a suggestion to make clear what it is we think, that it is he who enters into a labour contract under clause 5; in other words, to put the word "labour" before the word "contract".

My next point is under clause 4, but refers also to the definition clause, in connexion with the word "occupier". We do not think that the word "occupier" should be used in the case of a native or Somali residing on a farm or on land within the White Highlands. It says in clause 4 (1):—

"No native or Somali shall reside or remain for a longer continuous period than forty-eight hours on any farm or in any forest area, or on any unalienated Crown land, or on any Railway land, unless he is the occupier thereof."

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"Occupier" is explained in the definition, but we think it might be clarified if in clause 4 it was changed to some word which could not be misinterpreted.

Under clause 4 (1) (*d*) we heard that the object of putting in a provision whereby apparently a district officer can use any farm in the country as an almshouse is in order to permit farmers who have aged gentlemen, who had worked for them for many years and had no family left to support them, to reside on the farm for the remainder of their lives. That, of course, is done now and will continue to be done, but I must absolutely refute the argument that that must always be done because there is nowhere else for them to go, which was the argument suggested by the hon. mover of the Bill!

You have got to be hard and logical if you are really going to establish what are the rights of people in law. And the rights of the people who have a leasehold or freehold of farms are these: that they can do what they like on their own land, and they cannot have people imposed on them whom they do not wish to have, nor could we ever for one minute at this or any other stage agree to the argument that there is no room for these natives in the native reserves and, therefore, for all time they have got to live in the White Highlands.

All we feel is required there is that it should be made perfectly clear that any such person who is going to live, who through old age or infirmity is incapable of continuous employment, on a farm, must do so with the agreement of the occupier. By occupier, I mean the person who has the leasehold or freehold of the farm.

On the same clause I should like to ask for an explanation of why it was provided that the provisions of all the sub-clauses "shall not apply to a native residing by right in the Lembus and Mt. Elgon forest areas"? There is some explanation, but I trust and sincerely hope that before the end of the year is out there will be no native residing "by right" anywhere outside the reserves unless we know precisely what those rights are and why he is residing there. And we do not like nebulous rights mentioned in any Bill. That, however, we will deal with under another motion.

Under clause 5, which refers to much the same thing, we suggest that the first paragraph should read as follows:—

"When a native or Somali has entered into a labour contract, as in this section provided, the members of his family may temporarily, and for the period of such contract, also reside on the farm."

In other words, to make it again abundantly clear—perhaps you think we are over-zealous in this—that they have only a right to reside there as long as they are labouring there, unless for some very special reason it is with the agreement of the occupier that they can remain there for the rest of their lives.

My next point occurs on page 5 of the Bill, under sub-clauses (5), (6) and (7) of clause 5. It has been pointed out that "a magistrate or an attesting officer may, in his discretion, refuse to attest any contract entered into by a native or Somali whom he considers to be undesirable." Consequently he may, "for any good and sufficient reason, order the removal of a native or Somali, or of a resident labourer, and/or his stock from any farm."

We think that the words "for good and sufficient reason" should be put in sub-clause (6) as well as (7), and also that sufficient reason should be given to the occupier. It is only fair, after all, if an official goes on a farm and orders off some of the labour, the occupier should be told the reason why. Equally, in (7), towards the end, we think the last sentence should be expunged: "and such magistrate may after inquiry assess the costs of such removal and determine by whom such costs shall be paid." We see no particular reason for that. After all, there are other laws which can be resorted to, and if a man comes along and turns off some of the labour on a farm why is it necessary to assess the costs of removal, more especially if no reason is going to be given?

In sub-clause (10) of clause 5 there is a point which, I venture to suggest, is of some importance. Although I believe this procedure was recommended by the com-

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mittee that sat, I feel personally they were mistaken. It is here provided that:

"On a change of occupancy of a farm the contract shall be deemed to have been assigned to the new occupier and to be a contract between the new occupier and the resident labourer."

We think that rather implies, perhaps, almost a state of serfdom: that the native goes with the land. I think it would be unwise for Government to agree to that provision, and very unwise for us to agree to it, and we think that all contracts with previous owners or occupiers should be regarded as residuary contracts that do require renewal on change of ownership of the farm.

Clause 6 provides, I think, something new, which was not pointed out by the hon. the Attorney General, so that probably it is not. But it provides:—

"No occupier shall enter into a contract under this Ordinance with a native or Somali who is residing within the jurisdiction of an official headman unless such occupier has received the permission in writing of the district commissioner of the district in which the native or Somali is so residing."

It then provides:—

"No magistrate or attesting officer shall attest any contract under this Ordinance between an occupier and any such native or Somali unless such permission in writing is produced and shown to him by the person submitting the contract for attestation."

And it provides also very heavy penalties.

It seems to us that that really means if it is the desire of any headman or magistrate or district officer that practically they can close down any district completely as to any proper arrangement which would be made between an employer and a man who wishes to bring his wife and family on to the farm and become a resident labourer. There may be some reason for it, and no doubt it will be explained, but on behalf of elected members I will say that we wish to see this clause 6 cut out altogether.

Turning to page 8, clause 11 provides:

"When a resident labourer has, within any period of twelve months, completed the number of days' work specified in such contract, the occupier shall, if so required by the resident labourer, deliver to him a certificate to that effect in the form set out in the Third Schedule to this Ordinance, specifying the date on which the resident labourer's obligation to work under such contract recommences."

That would apparently mean that if a contract was entered into for the minimum number of days, 180, and the native worked daily and performed his 180 days very early in the year, he could then come and demand the certificate, and then, even though his services were still required by his employer on whose land he was living, at whose expense he had built his house, he could go off and work next door, although his family remained on the first employer's farm and he himself would probably be living there.

We consider that the man on whose farm the native is residing should have—of course, on due payment and so on—the first call on that man's services.

We are also a little bit nervous about clause 12, because it sometimes happens that, owing to drought or locust infestation or some other disaster of that kind, one has not got work to give people. One quite agrees that adequate wages have to be paid for the work, or some proper arrangement made, but at the same time the select committee might go into that and see whether this clause cannot be more happily worded.

The next point I wish to bring up, which I think was referred to by the hon. the Attorney General, is under clause 17, which provides for the stock which a resident native labourer should keep on a farm. It has been suggested that it is very hard—I am not an expert in these matters—but it has been said by people who know these things on this side of Council that it is impossible to say when native scrub cattle have reached the age of six months. Furthermore, very often they are not weaned at six months. It is suggested that it would probably be better to classify cattle as weaned and unweaned, rather than cattle under six months and over.

There is a very small point under clause 17 (2) (*d*) on page 10: "who keeps

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on a farm any head of cattle." We suggest "who keeps on a farm any cattle" in the first line.

On the next page there is a point which I forgot to touch on at the beginning. That is, you say in the margin that a reference in a clause is to the Resident Native Labourers Ordinance, 1925. There are several references to that Ordinance in this one, and it would seem—no doubt this has not been overlooked—as if we shall get into some complications when, in clause 34, that Ordinance is repealed and this becomes law. It does make provision for something done under that Ordinance which is repealed. But possibly there is nothing in it.

The next point comes under clause 18, page 12. This gives power to a magistrate or a veterinary officer or a police officer above a certain rank to enter a farm and demand the production of registers and so on, and we want "European" put in before "police officer".

Clause 19 gives powers to a magistrate by notice served on the occupier requiring the occupier to do all sorts of things in the way of removal of natives or Somalis from undeveloped farms. It is suggested that the magistrate should exercise this power at the request of the local authority or that the word "may" be substituted for "shall". It has been suggested by several up-country associations that the magistrate should only act under this clause at the request of a local authority.

Under clause 20 there is a very important point, which deals with prohibition against payment by natives or Somalis, and lays down to whom certain things produced on a farm belong. We want added to that a sub-clause (4) "providing that a native or Somali who is serving as a resident native labourer may not sell any produce off a farm without a certificate from the owner or occupier thereof." That is a perfectly reasonable suggestion to make, as it is no doubt within the knowledge of members of the Council that a great deal of produce is stolen from farms although the natives claim to have produced it themselves.

Again I would stress that a resident native labourer is not a gentleman who is given land in the highlands to farm. He is a gentleman who, for his own convenience and the convenience of his employer, is merely an ordinary servant and, under the terms of his service, is provided with sufficient land to keep himself and his family. That is all.

Clause 21 provides for an entirely different procedure as regards "natives and Somalis employed on farms in the occupation of missions and engaged in receiving or imparting theological or technical instruction or training". We think that a native or Somali engaged on a farm belonging to a mission or to anybody else ought to be treated alike, and we see no reason for differentiation.

That brings us to clause 22, which gives the power to make orders regarding "local option". I do not propose to say anything in detail on this clause, because it has been arranged that various elected members, who feel strongly on this subject, will put forward their points of view.

There is only one thing I would say. I hope that in some way or other the question of permitting the keeping of goats will be tightened, and I believe this is the clause by which that matter can best be dealt with.

Clause 22 (4) lays stress on the real crux of the reason why members on this side of the Council do not all feel alike on this vexed question of local option, because it rather stresses the fact that the wishes of the majority, a majority by a count of heads, may on occasions overrule the wishes of what are possibly bigger and more important interests in that particular district. If that possibility can be obviated, the whole difficulty of clause 22 will be solved.

In clause 23 there are certain periods of time specified: in 23 (1), fourteen days; in 23 (2), thirteen days. We suggest that that notice is insufficient, taking all things into consideration, and that fourteen should read thirty, and thirteen should read twenty-nine or twenty-eight; in other words, give people more time.

In 23 (6) there are various powers given to the Governor in Council, and it is suggested, and recommended by various farmers associations, that the

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Governor in Council, after considering such written objections as may have been made under the last preceding sub-section, instead of having the power to "confirm, vary or reject", shall only have the right to "confirm, refer back, or reject" the orders submitted to them. Merely for this reason: that it is very difficult indeed for the Governor in Council to vary recommendations without a very precise knowledge of what was at the back of the minds of the people who originally made them. If they are referred back, the Governor in Council would probably get the necessary information.

That would mean a consequential amendment to (7) of that clause, the words "with or without amendment" coming out.

In clause 24 it is left to the Governor in Council to—

"make orders of a similar nature to those which a local authority is empowered to make under section 22 of this Ordinance in respect of forest areas, unalienated Crown land, or Railway land."

Why two authorities? Why not leave it to the local authority when such is affected? In some cases, more especially in the case of forest areas, those areas are entirely outside the purview or neighbourhood of the areas which are under the control of the district councils, but in a great many cases they are not. If you look at a map of any district council area you will see that dotted about it are little bits of unalienated Crown land and forest areas and possibly Railway land. It has been provided quite expressly at the beginning of the Bill that the Commissioner for Local Government and the General Manager of the Railways are the occupiers of this land. Therefore, why should not local authorities be given, within reasonable measure, power to deal with all those areas that come within their districts which they superintend? The thing that concerns me is that we should not leave any loopholes because of those little bits of land for them to pass out of control of local authorities.

Clause 25 (*a*) provides that when either party has been convicted of a criminal offence involving moral turpitude a magistrate may rescind a contract. We want this merely to provide that if anyone is convicted of a criminal offence the contract may be rescinded.

Under clause 27 I have one or two points to make. This provides the penalties.

In the first place, it is perhaps not a very important matter, but if you look at it the proportion of fines to imprisonment does not seem to be quite so proportionate as is laid down in other Ordinances. There may be some reason for that.

On page 19, 27 (3) (*b*), we want the words "after having received an order from the occupier" deleted, because we consider that if the employee or herdsman "fails to preserve for the use of inspection of the occupier any part or parts of an animal which such resident labourer alleges to have died" he should be considered to have committed an offence, for otherwise it is hard to prove whether he has received a specific order or not, and if an animal which is your property dies it is obviously the servant's duty to do his best to clear up how it did die.

In (*c*) is the question whether, grammatically, the word "irrevocably" should not be "irretrievably".

Under clause 28 occur the penalties for offences committed by an occupier. The first one lays down that he is liable to imprisonment for a period not exceeding two months if he fails to pay on demand wages due to his labourer. Naturally we do not want any loophole whereby possibly unscrupulous employers shall not pay wages due. On the other hand, a man may be some way from his house and not have any money with him, and it cannot be said that he has committed an offence if he is stopped on the road by some gentleman who demands his money there and then! I do not know what alteration could be made, but it should be to the effect that he either fails to pay or something of that sort which does not imply "on demand" quite so precisely as this does now.

Under (*c*) provision is made for a change in procedure. At present, I under-

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stand, resident native labourers if really ill can be sent to hospital and are provided with medical attendance free. Under this Bill employers will have to pay for it. Perhaps it could be explained why the present procedure has been altered, because several up-country associations see no reason for such alteration.

Under sub-clause (2) (*d*) of clause 28 we have quite a lot to say, as we think that both 28 (*d*) and clause 29 go a great deal too far.

Take (2) (*d*) of clause 28. When no amount of damages or compensation can be assessed, or pecuniary compensation will not meet the case, a magistrate may in addition to rescinding the contract impose a fine not exceeding £20, or in default of payment imprisonment not exceeding one month. Surely, if any such cases arise, either party already have their remedy in civil law? Why a magistrate should be given these very strong powers of imposing fines and imprisonment we really cannot see.

In clause 29 any person guilty of an offence against this Ordinance or who permits any breach of the Ordinance or its rules for which no specific penalty is provided, is liable on conviction to a fine not exceeding £100 or imprisonment not exceeding two months or to both. We feel that this provision should come out. This Bill provides for conditions of labour, etc., as between squatters—that is one word we must not use!—as between resident native labourers and their employers. The only breaches of law which it is meant to provide for are really breaches of minor contractual obligations.

I know why this penal clause was put in: to provide a substantial penalty for anybody who by allowing resident native labourers to run cattle through other people's farms, etc., may be doing grievous harm or causing risk to their neighbours. But there are remedies in the existing law for that, damages can be claimed, and so on, and we do not consider that penal clauses imposing such heavy penalties should be included in this particular Bill.

Clause 31 provides that "the Governor in Council may make rules for the better carrying out of the provisions of this Ordinance." I will refer to that again; it has already been referred to during this session, but that is giving the Governor in Council very great powers on questions which affect the ordinary life of every single person in the Colony, and we do think that the sections under which rules can be made should be carefully circumscribed.

As an example, it might happen that one day the Director of Medical Services might devise some particular form of house for labour, and we might one day find ourselves having to build a rather expensive type of housing without any consultation with the people concerned or any certainty it was even suitable housing from the point of view of the employee. I only mention that, Sir, because one has got a little bit to realize that there should be some limit to the rule making powers of the Governor in Council.

I really have nothing very much more to say, except to draw attention to the schedules. I know they are more or less what one expects, but on page 22, the first schedule, I suggest that instead of giving notice in writing to gentlemen who have no idea how to read or write it would probably be just as well to give him notice verbally before witnesses. That is much more liable to be understood by a native anyway.

I have been through, I am afraid at great length, a whole number of clauses in this Bill, because it so very often happens that if one person does the whole lot there is less that can be overlooked and comments are easier to follow. As I say, we approve of the Bill in principle, but we do want to find a way out of the conflict of various interests regarding the local option clauses, and other members are going to try to put their point of view on that aspect.

With that, Sir, I would again thank the hon. and learned Attorney General for the way in which he has expounded the Bill and the help he has given us.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, the 29th July, 1937.

Thursday, 29th July, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 29th July, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., A.F.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 28th July, 1937, were confirmed.

SCHEDULES OF ADDITIONAL PROVISION

No. 5 of 1936

SIR ARMIGEL WADE: Your Excellency, I beg to move:—

"That the Report of the Standing Finance Committee on the Schedule of Additional Provision No. 5 of 1936 be adopted."

The Standing Finance Committee has considered the items in this Schedule, one by one, and has recommended approval of such expenditure as has not already been sanctioned by this Council.

A summary of the final effect appears in the foot note to the title page. From this it will be seen that the net additional expenditure of £34,926 is made up mostly of two main items, £26,402 on account of European and Asian Provident Fund Arrears, and £5,466 on account of Central Agricultural Advances Bad Debts. These items have already been approved by motion in this Council. The balance of £3,058 is made up of a number of small items in regard to which a full explanation appears in the Remarks Column on the Schedule.

MR. STOOKE seconded.

The question was put and carried.

No. 1 of 1937

SIR ARMIGEL WADE: Your Excellency, I beg to move:—

"That the Report of the Standing Finance Committee on Schedule of Additional Provision No. 1 of 1937 be adopted."

In this case also, Schedule 5 of 1936, this Schedule has been considered item by item by the Standing Finance Committee, and that Committee recommends the expenditure detailed thereon. The gross additional provision as set out in this Schedule amounts to £25,001, but, as I explained when I moved the motion referring this Schedule to the Committee a few days ago, the net expenditure is only £2,961.

MR. STOOKE seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I should just like to ask whether, in respect of item No. 7 and, I suppose, 8, and possibly 11 (that is, items referring to the Empire air scheme), and also under item 15, Empire air mail scheme, there is any contingent liability attached to these items?

My reason for asking is that while I think everybody in this Colony is anxious to assist in any Empire scheme, whether for improved communications or defence, as for as lies in our power, I do think it only business-like to know whether there is any contingent liability or not attached to any of these undertakings.

SIR ARMIGEL WADE: The best way of answering that question is for Your Excellency to permit me to read an extract from the minutes of the Standing Finance Committee at the meeting when this particular point was raised.

The minute reads:—

"In connexion with item 8 (Equipment for Wireless Stations, £3,090) and item 15 (Empire Airmail Scheme, £5,583), Major Cavendish-Bentinck drew attention to the explanation of this expenditure in the remarks column of the Schedule and asked whether the Colony would be subject to a contingent liability in respect of the reimbursement from the Air Ministry.

The Colonial Secretary explained that there was a contingent liability but that this was very remote since the Secretary of State had merely reserved the right to re-open the question of the repayment of some portion of the reimbursement in respect of item 8 in the event of the financial condition of the Colony materially improving.

Major Cavendish-Bentinck expressed the view that it was unsatisfactory that

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the Colony should be subject to a contingent liability of this nature, the amount of which was not known and in respect of which the possibility of liquidation being demanded was not specific.

The Treasurer agreed that, from the point of view of future financial arrangements, the position was unsatisfactory and rendered the drafting of a correct balance sheet a matter of difficulty.

The Committee recommended that the question should be raised with the Secretary of State with a view to clarifying the position."

That is the position at present, Your Excellency.

MR. HARVEY: Your Excellency, it appears to me that the Secretary of State for the Colonies, without prior reference to this Government, more particularly without reference to the accredited representatives of the taxpayers of the Colony, committed us to a very heavy expenditure in connexion with this Empire air mail subsidy, with the principle of which no one will be in disagreement.

But the matter of the subsidy to Imperial Airways has on numerous occasions formed the subject of discussion in this Council. Many——

SIR ARMIGEL WADE: On a point of explanation, Your Excellency, I am sorry if I have misunderstood the position. I though I was replying to the debate on the motion which I moved, and I had no idea that other hon. members wished to speak, because I cannot be allowed to speak again.

MR. HARVEY: With respect, there was no opportunity given for comments on the motion. We were not invited before the hon. the Colonial Secretary leapt to his feet and dealt with a minor issue. May I suggest, with tremendous respect, that it will make for the convenience of the Council, and orderly conduct of business, if hon. movers of motions restrain themselves until all comments have been received and, in accordance with the recognized rules of debate, reply comprehensively to any or all of the points raised?

SIR ARMIGEL WADE: I have already apologized for misunderstanding the situation, and I am afraid I can do no more.

MR. HARVEY: I think I am in order in continuing, Your Excellency.

As I was saying, we were given a very definite assurance on numerous occasions during recent years in Council that, when the subject of the renewal of the subsidy to Imperial Airways came up for reconsideration, the numerous disadvantages that had been alluded to in detail on more than one occasion would be brought into the limelight, and questions asked and answered, with a view to the removal of those very serious disabilities, with very special reference to the iniquitous charges imposed by Imperial Airways on private aircraft landing at Juba and Malakal in the Sudan.

I must say that we are all profoundly disappointed that, under the circumstances, the manner in which this new subsidy has been granted over our heads by the Secretary of State without reference to us has entirely precluded us from making such representations as we deem desirable in the best public interests.

I do personally wish to enter the strongest possible protest, as a matter of principle, to the Secretary of State or anybody else committing this Colony to very heavy expenditure, without at least giving it an opportunity of putting up its point of view and making such comments as it may wish to make. (Hear, hear.)

The question was put and carried.

THE RESIDENT LABOURERS BILL

SECOND READING

The debate was resumed.

MR. HOEY: Your Excellency, while I do agree that it is necessary to amend the Resident Native Labourers Ordinance, 1925, on the lines of the Bill we have before us, I am unable to accept this Bill as it stands, due entirely to clause 22, which concerns local option.

Before going into detailed criticism of the local option clauses, I would like to make a few comments on the Bill in general.

This Bill is, as the hon. mover said yesterday, the result of a committee ap-

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pointed in 1933 and which reported in 1934. Just one point about that. When the hon. mover was introducing the Bill yesterday, he said that the committee appointed was entirely representative of the country. I do not blame him for making a mistake, because he has been here only a short time, and naturally does not know where every member lives. But the fact remains that the two most important districts in the country, the Trans Nzoia and the Uasin Gishu, were not represented on that committee.

I agree that every opportunity was given the people residing in those districts to make their comments and observations on the proposed measure, but the fact remains that it is some time since this committee sat, and conditions then were very different from what they are to-day. I am glad to say that to-day we can look forward to the future with a great deal more confidence than we could at the time this committee was appointed.

What is the position to-day? In every industry, or every farming industry, one thing stands out, and that is the need for skilled labour, and every single industry I think is doing its utmost to build up a supply of skilled labour. That skilled labour can really only be derived from resident labour, and when you have resident labour which is drawn from practically every tribe in the country and those tribes have entirely different habits and customs—and not only that, some of them are pastoral, and some are agricultural—their ideas of life differ very considerably.

Again, Sir, the various industries that require this resident labour differ enormously. You take the big industries such as sisal, sugar, coffee, then the smaller industries such as pyrethrum, grenadilla, and numerous other industries and, what is more, the country which requires these resident labourers differs enormously. One area may be a dry zone, another a rich agricultural zone, so it must be realized that the conditions under which these resident labourers reside differ enormously.

When you come to a Bill like this I consider that one of the first principles to be observed is that there should be a minimum of interference between the employee and the employer, or the employer and employee. This Bill, I maintain, provides for the maximum amount of interference, inasmuch as clause 22 provides compulsory power for the employer to actually dismiss his employees. If that position ever arose, it would be an impossible one. If an employer was forced to dismiss his employees by authority against both their wishes, it would be an impossible state of affairs. It would create the greatest hardship on the occupier, and would be most unfair and unjust to the natives he employed.

I would like to try and cite a case to illustrate exactly what I mean. Let us take the case of a farmer situated in the high country growing pyrethrum and wheat. It is absolutely necessary that he should have quite a considerable amount of resident native labour, and it is more than probable that the type of resident native labour which he will have will be of a pastoral type and will naturally have cattle with them. There is a lot of vacant country surrounding him. It may be privately owned or unalienated Crown land.

There comes a time when that land is probably sold and is cut up into small dairy farms. The man who is growing, we will say, pyrethrum and wheat, suddenly finds himself surrounded by about a dozen small dairy farmers, who turn round and say, "We object to this native cattle of yours, they are really becoming a menace to us," and in due course they make application to the local authority.

I admit that the local authority has to observe sub-clause (2) of clause 22, which reads:—

"In making any order the local authority shall have regard to the wishes of the occupiers of farms within the area of its jurisdiction, so far as such wishes can be reasonably and conveniently ascertained;"

(Undoubtedly the wishes of that majority would be very forcibly expressed.)

"to the reasonable labour requirements of farms; and to the reasonable needs of resident labourers on such farms."

There is room there for great divergence of opinion between the occupier and the local authority.

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While I agree that a further method of appeal is provided in clause 23, the fact remains that the provisions of this Bill under certain circumstances may be applied to that grower of pyrethrum to force him to dismiss the whole of his resident labour force with their cattle, because the Bill clearly visualizes that this Bill shall apply to the wishes of the majority. That is contained in sub-clause (4) of clause 22.

If that is so, what is going to be the position? You have this cumbersome method of appeal, and suppose for one moment the appeal goes against the minority and the minority is forced by an order which is made by the local authority to terminate the agreements of his resident labourers? It would be an impossible position, and I do maintain that this Bill definitely provides that, under certain circumstances, a perfectly good contract existing between employer and employee can be compulsorily broken. I disagree absolutely and entirely with that. If that principle ever comes about, there will be no faith left with the native of this country and no security of any sort for the resident native labourer.

I shall probably be accused of putting up an extreme case, but I am putting up this case because I believe it is a definite possibility under this Bill. I suppose I shall be told, "You have asked for this, and yet you cannot trust your own people." That is not the question; it is a question of principle, and I maintain that this Bill gives far too great power to any authority up to the extent of unlimited interference.

When I say that, I may be accused of not trusting my own people. That is not the case at all. I frankly think, as I have said, that the powers are going too far. I believe the district authority is the right and proper authority to administer such a Bill as this, because they are possessed of local knowledge which probably puts them in a position to make a far better judgment than anyone else, but the power is too wide under clause 22.

But when you come to clause 23, it is quite obvious that that provides that a local authority can be overruled. I agree that it is necessary to have some sort of appeal in this Bill, but clause 23, although it reads extraordinarily well, and seems to cover the position more fully, I do not think for one moment it is going to be effective.

My reason for thinking so is this. If you give to the local authority the power envisaged under this Bill, it will be given it completely if the Bill is to work in practice because, if not, and the local authority make an order and there is an appeal against it, do you mean to tell me the local authority is going to sit down and be overriden by a body such as the Standing Committee of Local Government? I am perfectly certain it will lead to strained relations with Government, and the district authority will turn round and say, "Under these circumstances, Government consider us quite incapable of administering it; let somebody else administer it," and this Bill will fall to the ground.

If you give this authority you have got to give it completely in practice, as I am perfectly certain that no district or local authority will stand it if overriden by such bodies, as set out in this Bill, in a very light manner.

I maintain that this Bill really allows one industry to penalize all other industries, because presumably, if there was an order made such as this Bill provides for, to remove resident labourers and their cattle, it would probably emanate from the adjoining stockowners. When we come to talk of adjoining stockowners, I maintain that for them to merely turn round and say, "Your native stock is a menace to our interests here," is an insufficient ground entirely to institute an order being made for the removal of those resident native labourers and their stock.

I think if that is to be one of the main provisions of the Bill, and that is the only ground I can see for requesting such an order, then I believe the title of the Bill is entirely wrong. I believe the title of the Bill should be "A Bill to regulate and control native labourers and their stock and to provide for their removal when so requested by stockowners of the district in which they reside."

I cannot see that it is at all right that the stockowners who, after all, form one industry, one of the numerous industries in this country, should be in a position

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to enforce such a compulsory measure. People may say, "This is all nonsense; you have no faith in your local authority, and they are the proper body to regulate this Ordinance; but you are really trying to take away from them power which they should rightly have."

Well, Sir, I do not agree with that, and I do maintain that, to go as far as you have done in this Bill by giving that unlimited authority to the local authority, you are opening the door, I believe, to penalizing the minority with very very disastrous results, and I hope very much that when this Bill goes into select committee, as I am sure it will, we shall be able to find a way out, because I feel sure we can, probably by providing for some system of fencing which would meet this position and so escape from from a very dangerous situation which you have created for the minority by the provisions of this Bill.

I have tried, probably not very well, to concentrate on what I think is the most controversial part of this Bill, and I do hope very much that members of this Council will support me when I point out the dangers which may occur to the minority under the provisions of clause 22.

There are numerous amendments necessary, and these have already been dealt with by the hon. Member for Nairobi North (Major Cavendish-Bentinck), so I will not take up any more time on them. I hope very much that Council will see its way to supporting me in some of the remarks I have made concerning the minority point of view.

MR. LONG: Your Excellency, I wish to support this Bill, and I very much hope that everybody in this Council will also support it.

I do not propose to go into any details of the Bill, for they have already been dealt with most ably by my hon. and learned friend opposite and the hon. Member for Nairobi North (Major Cavendish-Bentinck). All I propose to do is to confine my remarks almost completely and entirely to this question of local option, which I regard as the warp and woof of the Bill, the principle, the essence of the whole thing.

As far as this Bill is concerned, comparing it with the old one, with the exception of very minute details, I can see no difference at all between the two, with the exception of the question of local option. As has already been said on two occasions in this Council, but I repeat it, there was a committee formed to go into this matter, a committee which represented the whole country. It might have been that there were certain districts not represented on the committee, but every district in the country had an opportunity of giving evidence before them, so that I cannot see that the non-representation was an objection.

It has been said and suggested this morning that this Bill is really put up by the stockowning community of the country. To a certain extent that is true, but later on I should like to put another point of view altogether, that it is not a question of the stockowning community but the whole white community of the country that it affects.

Anyhow, taking it from the stockowner's point of view, I cannot see any reason why a community of stock people in any area in this country should not be allowed to get together and agree that squatters are not in their interests—I should not call them squatters; I beg your pardon: resident native labourers—are not in the interests of the stock industry of this country, particularly with their cattle, sheep and goats and so on, and that it is much better to get rid of them.

It has also been suggested that the stock community in this country have never made a case, or put up a sound case for getting rid of these resident native labourers. Well, in dealing with this matter, I can only take two points of it, two essential points of view.

The first is the question of disease, which has had a most deleterious effect on the stock industry. It has been suggested that even with resident native labourers in the past the dairy industry has gone ahead very well indeed. Personally, I agree that the dairy industry has made a certain advance—I wish it had made a much further advance—but to say it is because we have had these labourers is, to my mind, entirely incorrect. It is despite the fact that we have had these

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people that the industry has gone ahead. If we had not had them, it would have gone ahead very much further.

Take a district like Gilgil, which I knew twenty-five years ago. There was a little disease, no East Coast fever; it was an entirely clean area. Through the introduction of resident native labourers East Coast fever is all over the country, there are quarantines all over the place, and heartwater is rife. Where are the numbers and herds that used to be at Gilgil? Where are the Friesians and Herefords that used to be there? They have gone. And why? Because they could not stand the East Coast fever and heartwater, and these are two of the diseases introduced by these resident native labourers' cattle and sheep.

I will refer to West Kenya, Nyeri and Nanyuki. I do not represent the district, I am well aware, but in the old days I knew the country very well from a stock point of view. The whole country at that time, twenty years ago, was divided into two areas, and the division was made by a river called the Amboni. On the north side there was no disease at all. On the other side the place was rife with East Coast fever, Nairobi sheep disease, and every other disease that you could think of. It was practically a native reserve. Then came these plans of getting these resident native labourers out of their reserve and putting them on to the land which had been alienated for white settlement.

At first sight it looked a fairly good plan. Personally, I did not agree. However, with the Kikuyu came cattle, sheep and goats, and all sorts of diseases, and anybody who knows the Nanyuki country to-day will admit that the whole place is riddled with East Coast fever, heartwater and every sort of disease. The veterinary officer in charge there has a nightmare of a life trying to deal with East Coast fever and other diseases, which is entirely and absolutely due to the fact that these native sheep and cattle have been allowed out of their endemic reserve.

So much for disease. I should now like to go on to another rather more difficult question, but equally important, if not more important, the question of soil erosion. You referred to it in your opening speech, Sir, and there has been a great deal said about soil erosion and what measures we ought to take against it and what money we ought to be spend on it.

I am the first to admit that there are certain native reserves in this country which, either through overstocking or the wrong sort of cultivation, have been practically done in. I would suggest that under this system of resident native labourers exactly the same thing is going to happen to our White Highlands, and instead of waiting ten years and then talking about it let us stop it now and get these people back where they belong, to the reserves which have been apportioned to them. You may think that I am exaggerating this point. I am not, and I should like to give you some instances.

If you take, for example, some of the most lovely country I have ever seen, the slopes of the Aberdares, and a place like Ndaragwa, beautiful country, at one time covered with thick cedar forests, beautiful cattle country, and free from disease incidentally. To-day the cedar trees are burnt, and there is soil erosion going on as fast as it possibly can.

Another good example is Eburru, both on the Naivasha and Elmenteita side. In the old days Eburru had thick forest on the top, good rains, and consequently plenty of water below. To-day the place is completely done in: there is no forest left. To my mind, it is the most criminal thing that this should have been allowed to happen, that natives should have been allowed to go outside the Kikuyu reserves to another district where they are now as thick on the ground as ants.

The next place is Elburgon. That was one of the richest and best mixed farming districts in this Colony. I will not hesitate to say that as a mixed farming proposition it was probably the best of all. It astounds me absolutely—I do not know the place very well, but I occasionally go through it—to see that with the exception of one or two very diligent farmers who have pure-bred cattle at great risk, the whole place is littered with goats, Kikuyu, and sheep.

I cannot reconcile such a state of affairs with the fact that the white community

[Mr. Long]

of the country have for a very long time, and I include myself, squealed for more land on the one hand and have given it away to the Kikuyu on the other. It absolutely defeats me!

Speaking as a stock man, I feel sure that I shall probably upset the people who are interested in sisal, pyrethrum, and various other industries, but I cannot see why I should have done so. This Bill, although some people try to make out it does not, provides for local option. It is not a Bill compelling all squatters to go back to their reserves. If the pyrethrum growers want to keep squatters—I hope they do not—and they are essential for the industry, they can get them; if the sisal people want to do the same thing they can.

I think there are innumerable arguments to bring against it. I think these resident native labourers with their sheep, cattle and goats are very much more trouble than they are worth. People say they are very much cheaper, but if you count in the fact, first of all, that they do in a very large number of cattle owing to disease; secondly, that they do in your land, and thirdly that they are most frightfully difficult people to manage, actually they are the most expensive form of labour that you can possibly imagine, certainly as far as this country is concerned.

With regard to a remark made by the hon. Member for Uasin Gishu (Mr. Hoey) about skilled labour and that you must have these resident native labourers in order to be able to get your skilled labour, I am sorry to have to join issue. I have been farming in the country for twenty-five years, fifteen years for somebody else and ten years for myself. I have no squatters, and have never had any, except for a fortnight. I got rid of them and their sheep and goats and everything. I have the same boys to-day looking after my thoroughbred stallions as I did ten years ago, and some have looked after the imported bulls for ten years, and all my herders are the same.

It is perfectly easy to keep your labour without necessarily allowing him to bring stock with him on to the farm. You must give him a good house and good conditions, which he will get in the ordinary way, but the question of stock is to my mind an entirely and absolutely separate thing.

It has also been suggested that there is no need whatever for the Bill, as the stock industry can quite easily protect itself by dipping and fencing. I admit that were the Dipping and Fencing Ordinances brought in throughout the country it would make the position easier but, as the Director of Veterinary Services will tell you, there are lots of diseases in Kenya which cannot be dealt with by dipping and in some cases not by fencing, so that that argument does not really hold water.

Before I sit down, I should like to impress on this Council that, under the past system, which has been in existence now, I suppose, roughly twenty-five years, whatever way you look at it, whether from the sisal planter's point of view or the stock farmer's point of view, or any other point of view, looking at it from the point of view of the white community and their country, the birthright of our children in fact, you can only come to one conclusion, and that is that under this system the community is slowly and surely giving back the White Highlands to the natives.

It has also been suggested to me that this Bill is very much a parallel to the feudal or manor system which existed in England for years. To my mind there is no parallel whatsoever. You do not allow a cowman at home to bring in any diseased stock and kill all your valuable animals. You certainly do give him a house, and you let him keep a pig in the back garden if he wants to, and you give him what is called in Wiltshire an allotment, wherein he can grow potatoes and various vegetables to keep his wife and family.

In this country you first of all feed a particular man who works for you, you pay him and house him, and you also give him a country estate to live in. The man in England is entirely dependent on his garden allotment, but in this country the Kikuyu has a country estate to retire to. In fact, he has a foot in both territories.

That is all I have to say, Sir.

COL. KIRKWOOD: Your Excellency, in opening, I should like to state that I accept the general principles of the Bill under discussion, and I also accept the principle of local option.

I agree with the hon. Member for Uasin Gishu (Mr. Hoey) in a great deal of what he has stated, and I go a long way with him, and believe that in select committee we can satisfy most, if not all, of his points and implement the points he has made. I believe myself in the protection of the minority, and that is not yet done in this Bill, and I cannot see why a bare majority, say 250, can overrule 249, for that is a majority.

But I do think there is a way out. My way may not be foolproof, but still, in my own district, we have put up a great number of points which are really select committee points, and I understand my name will go forward to sit on that committee, so that there is no occasion for me to weary the Council with this lengthy document with which I have been supplied.

One way suggested is by the addition of this proviso to clause 22:—

"Provided that the defendant occupiers have the right to fence their farms to retain their resident labourers and the group farmers benefiting from the fence will share *pro rata* the cost of the fencing."

That, in principle, has been agreed to in Trans Nzoia, which, notwithstanding what was said by the hon. Member for Rift Valley (Mr. Long), is I maintain the finest mixed farming district not only in this country but in the world! (Laughter.) We can grow everything, and there is nothing in the world that will not grow in the Trans Nzoia. No, coco-nuts do not grow there—(laughter)—but, strange to say, the only definition I have had of the name "Kitale" is "a young coco-nut in the second stage of development," which I got from a Swahili dictionary!

The hon. and learned Attorney General in his opening remarks said that he had had only one criticism of the Bill, from the Soy-Hoey's Bridge Farmers Association. I have a few points here from four other bodies from my own district which are affected, obtained from witnesses who gave evidence, and from the district council of the district. I should like to draw the attention of the hon. member to these facts.

MR. WILLAN: On a point of explanation, Your Excellency, I said that Government had only received one criticism between the date on which the Bill was published for criticism and the date on which it was published for introduction into this Council.

COL. KIRKWOOD: I am also aware that the Uasin Gishu District Council have also gone into the Bill pretty thoroughly, and I think I am safe in saying that a large majority of associations throughout the Colony in the rural areas have also had a number of criticisms of the Bill. But most of that criticism has been forwarded to their members on this Council.

Most of my points have already been mentioned by the hon. member Major Cavendish-Bentinck, and I am not going to weary the Council by going into them again, but I will do my best to see that minorities are protected before the Bill becomes law. I do not think there is any difficulty about it. I have given one constructive instance of how to get protection for minorities, and I have no doubt other suggestions will be put up, probably better than mine; then I am prepared to accept them, but that will still have to be proved.

I give the Bill my blessing, and hope that when it comes back from the select committee it will be acceptable to all parties.

MR. MAXWELL: Your Excellency, I have been studying the Bill from the point of view of district councils. It is quite obvious that there are differing opinions as regards local option, and, of course, to-day one cannot say in what form this will come back to Council from the select committee, but in whatever form it does come back I am perfectly satisfied that where district councils exist they are the authority to administer local option. They are reasonable people, and will act sensibly and fairly.

But I do wish to put up one suggestion. I do suggest that authority be given district councils to delegate their authority

[Mr Maxwell]
for administering to committees of their members in certain areas which can be defined. The reason why I say this is that when district councils were formed they took over portions of many administrative districts. In some cases as many as four administrative districts contributed to a council area. In those days each district had made its own arrangements as regards squatters, and had come to an agreement among themselves and carried on quite satisfactorily.

Since district councils have been formed, those same districts have carried on with their native labourers on lines which laid down the best way to suit themselves. I can see no reason why to-day they should not be allowed to continue where they have reached such agreement, where they know what they want themselves and where, if there are any details to be fixed up, they are capable of doing it themselves. I can see no reason why it should be necessary for them to refer their small problems back to a district council, who then have to consider the wishes of the occupiers of all farms in the district council area.

I do not suggest in any way that a district council should try to get out of its responsibilities. It is, I submit, merely a logical extension of the question of local option.

Another point arises here. In at least one case that I know, it is hoped that a district not now in a district council area will agree to come in, but I am told that the stumbling-block is this, or at least one of the stumbling-blocks: that for some considerable period they have had their own arrangement for dealing with native labour and they wish to carry on with it, and see no reason why districts outside should have any authority over them in what is to them a parochial matter.

I think they have realized that district councils act reasonably, but in this case they should continue on the lines on which they have carried on.

You may ask why I am raising this point under this Bill, as many hon. members may think that a district council would be in a position to deal with the matter of delegation itself. Under the law as it now stands, a district council cannot delegate its authority when administering an Ordinance unless specific authority is given in the Ordinance. In other words, before a district council can delegate such authority to administer local option it must be given in this Bill the right to do so.

I may say that if this power of delegation is given to district councils, it will not in any way, as I see it, affect the procedure laid down in clause 23, which is one of the clauses which gives safeguards to the individual.

You will notice that I have suggested that only such delegation will be used in connexion with areas within district councils where agreement has already been come to and the system as regards resident native labourers has worked quite satisfactorily. Should there be any area where serious friction is likely to occur, I feel that the district council should not delegate such authority but should face the responsibility itself.

This Council may feel that such authority to delegate should not be given to district councils unless the approval of some higher authority as to the areas and so on is first obtained. I have an open mind on that point, I think it can be argued either way.

As a member of a district council, there are certain points which have been already mentioned by the hon. Member for Nairobi North in connexion with clause 23, and which I do not think are very happy. I do not believe that when an order made by a district council has been sent up to the Governor in Council that it should be possible for the latter body to vary that order and then publish it. The Governor in Council should, if not satisfied with the order, send it back to the district council with their comments.

I am also not altogether happy about sub-clause (4) of clause 22, whereby if a district council does not do one of the acts it is entitled to do under sub-clause (1) the Governor in Council, on the wishes of the majority, may step in and do so. I think this sub-clause should be further considered.

[Mr Maxwell]
There is one other small point, with regard to forest areas in district council areas. In certain district council areas, if you look at the map, you will find very small forest areas excised, of the size of perhaps one, two or three farms. These may easily become points which will be extremely difficult to administer and may affect the surrounding farms.

These areas are so small that it will be extremely difficult perhaps for the forest authoriites to administer them, and in such a case I submit that it would, perhaps, be advisable to have some arrangement come to between the forest authority and district councils whereby the latter can take over the administration, for the purposes of this Ordinance, of these small forest areas.

I had not intended as a member representing a town constituency to be drawn into this argument on local option, but the sisal industry has been mentioned by several speakers. I do not want to say more than this, that I think this Council must be very careful before it does anything which will stop the supply of skilled labour to any business, including the sisal industry. I think one of the greatest difficulties in this country is to be able to obtain skilled native labour in carrying out any complicated processes.

COL. FITZGERALD: Your Excellency, it is with a certain amount of trepidation that I get up to speak on this Bill, as it is obviously a Bill more connected with the bucolic section of the community than any other. However, having recently discarded the sword for the ploughshare, I feel that I should have a certain say in this matter, not only from the point of view of the people I represent on this Council but also from the settler's point of view as well.

In this Bill, like all other Bills, there is a principle involved, and that principle appears to be whether resident native labourers and their stock should be controlled on these occupiers' farms or not. I think everyone, or at least most people, will agree that there is a necessity for this control, particularly in a country of this nature where so many cattle diseases are rife. How that control is to be carried out seems to be the problem that we are up against in this particular Bill.

There are many solutions to a problem, and I must say that the persons or committee who were responsible for framing the Bill have gone very thoroughly into the matter. But I cannot help thinking that there are several sections in this Bill which are open to criticism.

For instance, this very much discussed clause 22. This seems to me to be a little bit hard both on the occupier and on the native labourer as well. Having complied with the numerous and, I may say, exacting clauses from 1 to 21, there appears in the picture then, in 22, a body called a local authority. Apparently this local authority can take a sudden dislike to an occupier and prevent him having any resident native labour on his farm at all. This seems to be an interference with the liberty of the farmer, and savours to me more of a local Soviet or an O.G.P.U. than anything else.

In this connexion I should like to call attention to the remarks of the hon. and learned Attorney General when discussing the Trade Unions Bill, that some rule or other at home—I am not quite sure what it was—had been declared illegal because it destroyed individual liberty. I would suggest that this same rule would apply to a local authority. On the other hand, this local authority may consist of reasonable and sympathetic men who may refuse to take action, in which case a majority of occupiers in any particular area may appeal to the Governor in Council to have these dreadful denizens of the farm removed.

Here, Sir, if I may say so, is the makings of a most extraordinarily fine dog-fight between a local authority, the occupier, and the resident native labourer, and therefore I submit that this statement on page 28 of the Bill, in which it says that "no additional expenditure of public moneys will be involved if the provisions of this Bill become law," will have to be altered, because I can foresee a horde of clerks, police officials, and possibly military as well, being employed to compete with the various difficulties which will arise if this clause 22 is retained in the Bill.

[Col. FitzGerald]

I am afraid that I do not like this local authority at all, and I am not alone in disliking it. There is a lovely big book of the Kenya Land Commission, in which you will find a lot of things, and that commission does not like it either. To be perfectly frank, I should like to stamp on this thing and kill it straight away before it arises to do a considerable amount of damage in the future to this country! (Laughter.)

It would also appear from the powers given this local authority that a considerable number of natives now more or less detribalized will be set loose on the country and, like the Israelites of old, will be wandering about in the wilderness looking for the promised land but, in this case, without anybody to lead them.

As regards this, I was pleased to hear from the hon. the Attorney General the other day that there is land available for these detribalized natives which will be permanently allotted to them. Otherwise, I am afraid the latter state of the farmer will be worse than the first, in that these people will be moving about from place to place with their cattle, spreading disease wherever they go.

As far as I can see, if this clause 22 of the Bill is deleted, the powers given to these local authorities are adequately provided for in other clauses of the Bill, chiefly in clauses 5, 6, and 7, and probably other clauses as well.

Another matter in this Bill that I should like to call attention to is the excessive amount of branding of native cattle which appears to be necessary under this Bill. First of all, apparently the cattle will have to be branded with the occupier's brand (incidentally at his own expense), and then the letter "S" add to the brand.

I am, from the remarks made by the hon. Member for Nairobi North, a little bit suspicious about this letter "S". I think that perhaps it is not the right letter to use, because it sounds something like this squatter business which everybody objects to, so possibly another letter might be used. On the other hand, it may mean "servant". (A MEMBER: Or soldier!)

That is the first brand that goes on the cattle. If a native wishes to move his cattle, say after one or two months of the first branding, the cattle will have to be branded again, this time with the occupier's brand upside down. Then it is quite on the cards that the cattle will be moved on to some new occupier's land, in which case they will naturally have to be branded again with the new occupier's brand. But in this Bill I cannot see that it is laid down anywhere how this particular brand is to be applied; possibly inside out or some way of that sort!

I submit that the hides of these animals when slaughtered will be of very little use for shoe-leather or any other kind of leather for that matter. Surely some means can be devised whereby a little less branding of native cattle can take place? I mention this matter because I have a friend at home engaged in the leather trade, and I asked him on one occasion if he ever got hides from this country. He replied that he had tried them, but they were so frightfully pitted with holes from over-branding and branding in the wrong places that they were practically useless for his particular kind of business. I admit that is a few years ago, and possibly the present method of branding is carried out in a better way that it was formerly.

There is one other small point in this Bill which seems to me a little bit vague. In sub-clauses of clause 26 there appears to be a considerable amount of chat about the days on which an occupier may lawfully require his labour to work. As far as I am aware, there are no laws in this Bill governing this matter, so that these sub-clauses should be deleted.

In conclusion, I would like to suggest that in a Bill of this kind, where so many interests are concerned, and in view of the fact that nowadays so many farmers are going in for what is known as mixed farming, there will be a necessity for all sections of the farming community to contribute towards the general welfare of all the interests concerned and not towards any one particular interest. In other words, in this Bill there should be a certain amount of give and take policy.

Council adjourned for the usual interval

On resuming:

THE DIRECTOR OF VETERINARY SERVICES (MR. DAUBNEY): Your Excellency, I think it hardly necessary to say at the outset that I support this Bill, and I regard it as particularly opportune that a Bill of this kind should be introduced at a moment when Government and the farming community themselves are both trying to do something to ensure the progress of the live stock industry.

As hon. members of this Council are aware, the Cattle Cleansing Ordinance has recently been put into force, and one district, Thomson's Falls, has indicated unmistakably its intention to apply to be brought under the provisions of that Ordinance as a proclaimed district. I think I can say, from my own contact with farmers in that district, that they would never have contemplated that step had they not realized that some measure of this kind was likely to be introduced in the near future. In fact, when the Cattle Cleansing Ordinance was first under discussion in that district, a draft Resident Labourers Bill had already been published for information and had been debated by the Board of Agriculture.

The clauses of particular interest to my department are clauses 16, 17 and 18, 19, and 22.

Clauses 16, 17 and 18 provide a measure of control of squatter stock in those areas where stock is permitted. The only difficult one of those provisions, as I foresee the position, is the one which relates to the keeping of a register of squatter stock, and we shall learn, I hope, by experience whether that is going to be an adequate and workable measure of control.

No reference has been made so far in the debate to clause 19. This provides for the removal of natives, and presumably their stock also, from unoccupied farms. At the same time it does provide a safeguard. It safeguards the right of those planters who in the past have made a practice of retaining certain farms for the grazing of the stock belonging to their resident labourers. Whether that is a desirable practice at all or not, I do not propose to discuss.

I would, however, say that I frequently receive representations from farmers, who allege that they are exposed to grave risk of disease from the presence of uncontrolled squatter stock on unoccupied farms. It is nice to see that the Bill includes a clause of this kind which will enable us in the future to deal with that particular danger.

With regard to clause 22, the hon. Member for Uasin Gishu (Mr. Hoey) cited a hypothetical case of the wheat and pyrethrum grower who, at a later stage of the development of his system of agriculture, became surrounded by a group of small dairy farms. He considered it would be a hardship if, as a result of representations from this small group of dairy farmers, he should be forced to get rid of his resident native labour or to get rid of their stock, and I suppose in the latter case he was assuming he would lose a large proportion of his resident labour.

Although in some districts the opinion is very strongly held that if you do not permit resident native labour to have stock they will leave you or not come for work at all, yet there are districts in the Colony that have, of their own volition, got rid of stock belonging to resident labourers and still have labour. I have not heard that they experience any undue difficulty in obtaining labour supplies to run their farms.

The hon. Member for Trans Nzoia (Col. Kirkwood) also stated that the existence of danger from the resident labourers' stock on the wheat and pyrethrum farm was not fully proved, and he suggested or seemed to imply that it was up to the people who asked for the removal of such stock to prove the existence of danger. I do not think that is quite fair——

COL. KIRKWOOD: On a point of explanation, the hon. member is referring to the wrong member on this side of Council. I am not responsible for that statement!

MR. DAUBNEY: I beg the hon. member's pardon. I should have said the hon. Member for Uasin Gishu (Mr. Hoey). The only point I wished to make there was that we have sufficient experience to

[Mr. Daubney]
know that such danger exists, that uncontrolled squatter stock, or stock under the minimum of control as they are to-day, are a source of danger to stock-farmers who attempt to carry on with high-grade stock.

MR. HOEY: On a point of explanation, I do not know that I actually said that. What I actually said was that I thought that could be overcome by fencing. I do not consider them such a danger, because incidentally I happen to be a stockowner myself and have a number of squatters.

MR. DAUBNEY: I rather thought it was implied, but I may be doing the hon. member an injustice there. But, with regard to his suggestion of fencing to meet the case, I am afraid that I agree with the remarks of another hon. member on that side of Council that fencing, while it will effect the control of tick-borne diseases to some extent, will not control the directly transmissible contagious diseases. I would also point out that fencing is no bar to the movement of squatter stock. If you have resident natives owning stock on farms in settled areas they will move them; they must, otherwise the purpose of the stock is reduced to a very limited one.

One other point, about local option.

The position to-day is that in certain areas agreement has been reached to remove squatter stock—I am sorry to keep on using this word, but I am so accustomed to it!—to remove squatter stock from European farms in certain areas. That has been done in the case of Molo and, to some extent, at Thomson's Falls, but there is no power legally to enforce a decision arrived at by a representative meeting of farmers in the district.

To quote a hypothetical case, and not a very far-fetched one. It is conceivable that all the stock of resident labourers might be removed from a particular area by general consent of the farming community, but a new farmer occupier coming into that area can go to the district commissioner and ask for permission to introduce so many resident labourers with so many head of stock. Although the district commissioner can endeavour to discourage him, to dissuade him, from his intentions, yet he has no power to refuse to give him a permit for that purpose to-day.

As for the method by which local option should be exercised, I am not quite clear what advantages the machinery proposed in this Bill has to offer over the machinery which is used in the Cattle Cleansing Ordinance and in the Fencing Ordinance. In the two cases I have mentioned the Ordinances provide for a two-thirds majority and a method of ascertaining the wishes of the community is laid down. I do not know whether any amendment ensuring that a two-thirds majority would be needed to put into force these provisions would meet the wishes of the hon. Member for Trans Nzoia in this instance.

Finally, Sir, indications are not lacking to show that the farming community of this country to-day is realizing that it must change over to mixed farming. It is realizing that the farmer who has a dairy herd, a herd of beef steers, a flock of ewes and a range of pigs is, to some extent, secured against any sudden and disastrous fall in grain prices, and equally, if a good farmer, he is secure against the effects of drought seasons.

Government has shown that it appreciates this position in the steps it has already taken to help the stock industry, and in the steps that are now under consideration with reference to improvements in the live stock industry. I refer to such things as the Cattle Cleansing Ordinance and the various measures that have been proposed and implemented with reference to the meat industry.

I think Government knows that in future spells of drought or when the grain markets of the world are unusually depressed, if they have genuine mixed farmers on the land they will not find they have to subsidize a very large group of farmers who have made the mistake of putting all their eggs into one basket. For these reasons, Sir, I hope that hon. members will support this Bill, even though it is favouring the interests of one section of the agricultural industry—not one section of the farming industry, but one section of the agricultural industry—possibly to some slight inconvenience of other sections.

ARCHDEACON BURNS: Your Excellency, I should first of all like to say, and to say very emphatically, that in my opinion a native of Africa cannot do without the settler and the settler cannot do without the native of Africa. (Hear, hear.) I think that is a principle that must stand if progress is to be made.

I should like, secondly, to say that I believe myself that the less interference there is between men who have lived in this country for a fair number of years and have got their resident labour round about them with their few stock, whatever that may be, the less interference with those people the better for the country, the better for both European and African. (Hear, hear.)

There are two or three points which I wish to refer to with regard to the Bill itself. Yesterday, the hon. Member for Nairobi North emphasized, with very strong emphasis, perhaps justified from him point of view, the fact that it must be borne in on the minds of the natives who are living on European farms that they have no actual right to any land that may be given to them there.

I have talked with natives very widely, and I do not think there is any native who is working on any European's farm who thinks for a moment that the land that has been allocated to him for his use during his term of service really, in any sense of the word, belongs to him. I think he simply knows it has been given to him while he is in the employment of that European, and therefore he does not look upon it in any way as belonging to him. There may be some, of course, who would like to have land now occupied by Europeans returned to them, and all that sort of thing, but I for one certainly, on every possible occasion when such a question comes up, tell them that they are wishing for the moon, or something of the kind!

There was another point made yesterday by the same hon. member, and I would like to try and excite the sympathy of the Council with regard to it: that natives who have been living on a farm for a long number of years and who have become infirm or unable through infirmity to do the work they did some years ago, what was to be done with them? I have no hesitation in saying that these old and infirm people who have been working and living on these estates, many of them, perhaps the majortiy of them, were there—I am speaking of the older people—before the Europeans came and took up their residence on that land. They entered into amicable agreement with the European when he came there to take up that land, and have lived there and worked for him until they can no longer do work that would satisfy such a European.

I would like to appeal to this Council that such infirm people be given every consideration. They know no other place, they have no other place to go to, no place in the Colony which they can look upon as their home. They have lived on this land perhaps all their lives, and I think it would be a very great hardship on these old people to turn them out from the place where they have lived all their lives and set them wandering about looking for some place to finish their few remaining years. I do hope, Sir, that consideration will be given to these infirm people who can no longer do the work they did some years ago.

The next point I should like to make has already been mentioned by my colleague in his splendid address this morning. He spoke about land being ready for these people. I should like the hon. and learned Attorney General, when answering this debate, to say whether that is so or not, or whether he said Government were trying to arrange for land for such people when they have to move from the farms?

MR. WILLAN: On a point of explanation, that is exactly what I did say, Your Excellency.

ARCHDEACON BURNS: I thought it was, thank you.

There are, I understand, 150,000 of these people living on European farms, many living very happily with their employers, looking on their employers as their *babas* and *mamas*, as the case may be, and if they are turned off it is the duty of Government to say to them, "There is a tract of land ready for you, we will give you a place there where you can grow your little crops and keep your few cattle or goats." The first thing before this Bill is put into operation is for

[Archdeacon Burns]
Government to take such steps that the people will have a place to turn to and settle when they have to leave the places where they have been for so long.

The next point I should like to make is this, the age at which a boy who has lived on a farm for any given time can, according to this measure, be either compelled to make a contract with his master or turned off the farm; that is, the age of 16. Just recently we have brough in legislation where the age of paying poll tax is 18. A boy at 16 may be at school, he may be trying to fit himself for some position in life, and if he is then turned off that farm, if he refuses, that is, to enter into a contract with his employer or to enter into a contract with his employer or to enter into a contract with another employer or estate, in this measure he has perhaps no place in the reserve where he can go. The next thing is you find him in Nairobi or some such other centre, and in a very short period of time we find him either in prison or the detention camp.

I do hope that that point of the age at which a boy can be turned off if he does not wish to enter into a contract will be taken into consideration.

The next point is with regard to the keeping of cattle.

It must not be forgotten, I think, that the very foundations of the social system of the people in this country, so far, until they are changed, rest in their sheep, goats and cattle: they are their banking account. I hate the goat, I absolutely do; there is no question at all about it, they are nuisances to the whole country. But whether that be so or not matters not in the slightest. They are the bedrocks of the social system of these people as they are at the present time, and Liebig's has not yet come into force when they can dispose of their stock at a reasonable price and perhaps reduce their stock and get a better class stock than they had before.

I hope therefore that it will be borne in mind that if these people are turned off we must not think they can do without their cattle, sheep or goats at the present time.

One other point I want to make. We have been trying for years to teach the parents to nourish their children better than they have done in the past by giving the children milk and such foods as that. If the squatters are retained on a farm and the cattle are turned off the farm because, it may be, of the menace of danger to the European stock if allowed to remain, then you deprive the young people, and especially the children, of those people living on the farm of the means of nutrition that is so necessary for their future welfare and development.

We must not forget that there is a need for these people, even if they remain on the farms, to have a certain number of stock allotted to them. I think that can be done by agreement, so that the children can have proper nourishment given to them.

With regard to the question of the branding of stock, I happened to be a member of a committee which dealt with this thing a good many years ago, and this was one of the vexed questions that came up, and long, long discussions took place about the methods of branding stock. We have already heard about it to-day, and have heard of a man in England who said he could not take Kenya hides because of the branding having been done in the wrong places so that their value was destroyed.

This is one of the things that the select committee will, I fear, again have to consider, as to how cattle had best be branded without doing very much harm to the hides, for I look on the hide industry of the country as one of the coming industries, one that will be of great benefit to the natives.

I do not think that I had better enter into the vexed question of clause 22, local option. I would allow my friends and hon. members who are involved in this to work out their own salvation! I think it will be wiser for me not to attempt, in my own ignorance, to enter into such a vexed question.

It was said yesterday that a man working on a farm, when he reaps or gathers his produce, should not be allowed to take that produce off the farm to sell it without first of all receiving a certificate

[Archdeacon Burns]
from the owner of the farm. That may not seem a great hardship to him, although I do not, for the life of me, see what difference it will make. If a man is given his little bit of land and he works on it and gets some produce, potatoes or whatever it may be, off that tract of land which has been given him, I think the liberty of the subject should be so recognized that he should be allowed to sell his surplus produce and get money to help pay his tax, or whatever it may be, without having to wait for a certificate before he can dispose of his produce that he has got from his little bit of land.

I think, Your Excellency, these are the only points I want to mention with regard to this Bill. I think the hon. and learned Attorney General has done a very fine piece of work in bringing this legislation before this Council, and when the select committee has torn it to shreds and brought it back here it may be, in its revised form, I hope it will be, useful to all the people, black and white, residing in the Colony.

MR. HARVEY: Your Excellency, as one of the members of the committee of inquiry which sat some years ago and went most carefully into this subject, I not unnaturally welcome the general approbation that has been accorded this measure. I should like, quite briefly, to refer to one or two items which have been introduced into the discussion and mention one which has not yet been mentioned at all.

The committee after, as I said, most careful deliberation and intensive inquiry and consultation with everyone likely to be helpful, who knew anything about the subject officially and unofficially, did its utmost to produce a Bill which assimilated the views of conflicting interests which have been so eloquently expressed here this morning.

But I should like to make it quite clear that the committee does not claim the monopoly of all wisdom, and I personally have no doubt whatever that, when this Bill is considered once again in select committee, improvements may be introduced.

It was stated that certain areas were not represented on the committee of inquiry. I would submit, with all respect, that it is quite impossible to turn every committee of inquiry into a mass meeting and provide representation for every area and every interest in the Colony. The Trans Nzoia and Uasin Gishu districts were mentioned specially in this connexion. But I would ask hon. members whether our old friend, Hugh Welby, the Provincial Commissioner of those areas concerned, was not an experienced and worthy representative of those particular districts? Whether or not he was, he certainly put up the case of people in those areas with force and vigour and some degree of determination.

I should like to support the constructive suggestion made by the hon. and gallant Member for Nairobi South (Mr. Maxwell), and sincerely trust that members of the select committee will find it possible to arrange for some degree of delegation of authority by a local authority to some of its members who may have special knowledge of the circumstances in certain areas of very large districts.

The hon. Member for Uasin Gishu objected to some extent to the cumbersome nature of the appeal which has been drafted in this Bill. Again, with respect, I suggest that almost any form of appeal to be effective must inevitably be rather cumbersome. I do suggest that there is not the slightest danger of local authorities walking out if their recommendation in this or any other matter are not accepted *in toto*. It happens every month that some rejection or variation of recommendations of a local authority is made by those higher in authority over them. They are men imbued with some sense of responsibility, and always take criticism in the right spirit provided a reasonable case is put up to show why their recommendations are not acceptable.

The hon. and gallant member representing native interests (Col. FitzGerald) objects strongly to curtailment of individual liberty. Well, Sir, I suggest that the liberty of a mad dog should be curtailed and I suggest that nearly all legislation must inevitably to some extent be repressive. Only a day or two ago the hon. member spoke of the advantages of

[Mr. Harvey]

discipline. I suggest that this is a case in which, in the interests of society as a whole, individuals guilty of acts inimical to the general interest might very well be subject to some measure of discipline that he advocates so warmly.

He also mentioned some of the possible dangers and difficulties of branding being carried out in the terms of this Bill. I should like to point out that there is no change whatever. These proposals are in every respect identical with those which have obtained for the last twelve years, and without any disastrous results to hides. It is the easiest thing in the world, speaking as a stock farmer, to fulfil one's branding obligations under this Bill without damaging the hide to any extent whatever.

There is just one small point to which I would invite the attention of my learned friend.

Clause 4 (1) (*b*) enables a man to reside on a farm if he has entered into a contract under the Resident Native Labourers Ordinance, 1925, but on reference to clause 34 you will notice that that Ordinance is repealed. The question I would ask, and it is of very great interest to many hundreds of people all over the country, is whether contracts at present existing under the Resident Native Labourers Ordinance, 1925, will continue until the date on which they terminate in the terms of the contract is reached, or whether it is necessary, in view of the repeal mentioned in clause 34, for everyone to go to the fuss, bother and trouble of entering into a new contract?

MR. WRIGHT: Your Excellency, speaking for the bucolic section of the community, I wish to make a few brief remarks in respect of that section of the Bill which, more than any other, has aroused criticism both inside and outside this Council, and which was submitted in a marvellous exposition by the hon. and learned Attorney General yesterday when he correctly stated that one clause in particular, No. 22, was expressly put in at the wish of the settler community generally.

While personally a supporter of the option clause, I think it only fair to remark, even briefly in this Council, that some of the apprehensions shared by quite a considerable number of people in the Colony were voiced by, I believe, the hon. Member for Uasin Gishu (Mr. Hoey), and I feel it incumbent upon me to express on behalf of some of my own constituents their very real fears that, under this system of local option, the dominating interests of what they call the stock community will act to the detriment of such of them as are coffee planters, pyrethrum growers, and so on.

Personally, I feel their fears are overstated, and I like to believe that under some such system as that outlined by the hon. Member for Nairobi South (Mr. Maxwell) some fair means will be devised whereby such people will suffer the minimum interference. On the other hand, I am bound to agree with the case submitted by the hon. Member for Rift Valley (Mr. Long), and personally I have strong views as he has about squatters.

To me, they represent three distinct and separate evils, the first being the squatter goat, the second being squatter stock generally, and the third and last the squatter himself.

I hope, Sir, you will forgive the use of the word "squatter", but it is more expressive.

The hon. Member for Rift Valley has cited well-known illustrations showing the appalling damage done by this system all over the country. One could add to these *ad infinitum*. Most of this happened during the war period, when the settlers were busily engaged elsewhere, and their farms were abandoned and left to the depredations of the particular tribe specially well qualified in the art of forest destruction who, with other activities, have done incalculable harm to the watersheds and headwaters of the rivers. I think the activities of the Arbor Society should be stimulated, and even then it will take a long time before it is possible to restore the normal which we of pre-war days knew.

I want to say generally that while, personally, I am an opponent of the squatter or resident labour system, it is recognized

[Mr. Wright]

and will continue to be for a very long time to come, because they are of real use on many farms. In time, progressive farmers will discover that it does not pay to have them, but while present conditions prevail they are of real use to us.

I want to say a word about squatter stock in opposition to my hon. friend on my right (Mr. Hoey), who speaks as a stock farmer, and is one of those who can tolerate squatters. I venture to say that he cannot keep his squatter cattle nor that fine pedigree herd of Carnations together, for I suspect that the latter are a mile or two up the mountain. I hope they are, but knowing him to be a good judge I feel he is well able to eliminate risks from squatter stock, and that his sole purpose in allowing the latter is to secure the permanency of his sisal labour below.

The whole trend of modern farming was well described by the hon. the Director of Veterinary Services. More and more mixed farming will prevail in Kenya. More arable land will inevitably come into pasture, and the rotational system of many crops now exported overseas will inevitably as time goes on be interwoven with beef sold on the hoof. To such activities as these squatter stock must be inimical. Selling on the hoof is likely to be the best and most lucrative market as time goes on, and we have no less an authority than the prophet Isaiah for saying "All flesh is grass." For over a century the farmer had recognized that the best basis of good farming practice was pasture land, and to encourage a system whereby squatter goats in particular so decimated the areas we call our White Highlands over any long period of time seems to me rank stupidity.

I have generalized enough, and I want to make a note of appreciation to the hon. and learned Attorney General for one remark in his excellent exposition yesterday.

He spoke of resident labourers emphatically as servants, not tenants. That is a very good point as coming from one speaking so authoritatively and one which elected members on this Council will be grateful to him for. We have known of the vain attempts made from time to time to identify these so-called squatters as in fact tenants, and we are grateful indeed to the hon. and learned mover that he has for the particular purposes of this Bill given us a definition which brings with it some measure of assurance.

Your Excellency, in closing I just want to express my very strong feeling that this Bill should have followed, rather than preceded, the definition of our White Highlands. (Hear, hear.) It is a constant source of worry, while this whittling away process goes on and while we are discussing an inoffensive, innocent Bill of this nature, to hear it postulated that those to be dispossessed as squatters must have more land given them in our White Highlands.

It will come up on later occasion, but I do feel that Government is not quite playing square in putting a Bill like this through postulating concessions of more of our land to natives while not giving that long-promised definition of our White Highlands. In any case, and I put it up as a suggestion to the select committee, I do not see why a clause should not be inserted stating that when a native resident labourer under this Ordinance is allowed the use of land, or where he takes possession without authority—and I fear there are a great many of such about—that in no case shall it give him a prescriptive right to the land occupied under this Ordinance.

Now, and this is my last point, in fairness to the native, I feel that when such a native comes out of the reserve to work under the terms of such an Ordinance as this, before doing so he ought to get a certificate stating that the nature of the land tenure held is secure for him if and when he, or alternatively the employer, terminates his engagement under this Ordinance.

MR. MONTGOMERY: Your Excellency, I am very grateful to hon. members for the way the debate has gone, because it seems to me that there is complete agreement with the principle of the Bill and, what I think is even more important, that there must be control, control of the resident labourers and control of the way in which they are treated when they get to the farms. We all agree on that, and the object of the Bill is to see that control is carried out.

[Mr. Montgomery]

I should like to say how cordially Government agrees with the remarks of the hon. Members for Nairobi South and Aberdare (Mr. Wright) as to the status of the resident labourer. Personally, I have always been in favour of their being resident labourers, but I was always against them being treated as tenants, whereas they will now be employees.

Resident labour is necessary on most farms. There are many types of farms, and it is absolutely necessary to have resident labour on many of them, and under the safeguards provided in this Bill I think there could be resident labourers. But the impostant principle in this Bill is to see that no employer has on his farm a number of labourers in excess of what he can reasonably employ for a reasonable period of the year. We have to have legislation to that effect because some people unfortunately do not play the game, and without the goodwill of the occupiers there will have to be a tremendous lot of supervision; this obviously is very expensive.

I entirely agree with the hon. Member for Nairobi North when he said that natives should not be allowed on farms in order to farm, but he would agree, of course, that they would have to have sufficient land to cultivate crops for their own food and in their spare time, to get money for their wants.

One of the chief points of discussion has been on the local option, and I am sure that in the select committee we can come to a workable arrangement. I think it quite right to say that, as drafted, the clause may not work, but I am quite aware that hon. members have suggested improvements, and in committee I believe we can get a workable scheme.

The hon. Member for Nairobi North had several points, and all of these will be considered in select committee, but I am going to refer to one or two now, not to prejudice further discussion but to possibly clear up some points.

Under clause 4, he asked for information about the proviso dealing with the natives who have rights in the Lembus and Mt. Elgon forest areas. There are a few Wandorobo who have rights there and some Elgeyo on Mt. Elgon. They have definite rights which have been recognized by the Land Commission. They are under strict supervision by the Forest Department, and their numbers are limited to those who have rights, and no stock in excess of what the Department considers should be there is allowed. I am quite certain that no other people will be allowed to create rights in those areas.

Under clause 11 the hon. member, if I heard him aright, suggested that the occupier had first claim on the services of the resident labourer after he had completed his prescribed number of days' work. I do not think he is right there. The contract is made between the occupier and the resident labourer, but in consideration of a certain number of days' work the native and his family have a right to live on the farm. He can make that number of days not less than 180 and not more than 270, except by agreement with the native, when he could, of course, work the whole 365 days. At the end of the prescribed period, say 200 days, the Bill lays down that he gets a certificate that he has completed this number of days' work and the registration certificate is endorsed to that effect. That, in my view, leaves the native a completely free agent to go anywhere he likes to work for the remainder of the year so long as he returns on the date laid down and starts work again for the occupier. During his absence, if he has left the farm, his wife and family will be allowed to remain there.

In clause 12 the hon. member asked what would happen if, through unforeseen circumstances, the occupier was not able to provide the minimum number of days' work laid down in the contract. The answer, I think, is given in the proviso to the clause, that for good and sufficient reason a Provincial Commissioner may reduce the minimum number of days which has been laid down.

Another point raised was in connexion with clause 21 concerning resident natives on mission farms. I will just say that any natives on mission farms who are not there for purposes of theological instruction or training would be considered as resident native labourers and be registered accordingly.

[Mr. Montgomery]

The point was raised, in connexion with clause 24, that a local authority should have power to make orders in respect of forest areas, unalienated Crown land, and Railway land. The hon. mover said that any reference to Crown lands will be taken out of the Bill, so that that point does not arise.

In connexion with forest areas, this will be discussed in the select committee, but my view is that as the Forest Department has full control under the Forest Ordinance it will be better to leave the matter where it is. Regarding the Railway land, the area is very small, and a great deal of the railway is not in any area controlled by any district council.

The last point was in connexion with clause 28 (1) (c), dealing with medical attendance for resident native labour. It is an innovation. Under the old 1925 Ordinance they were treated as tenants, and the employer was not liable for medical attendance. Under this Bill, they are employees, and this legislation is brought into line with the Employment of Servants Bill.

I should just like to say, in reference to what the hon. Member for the Rift Valley and the hon. member Mr. Daubney stated, that my experience entirely agrees with theirs. I know lots of areas where the resident labourer is quite happy without the cattle.

The hon. and venerable member (Archdeacon Burns) was rather perturbed that 150,000 natives were going to be turned off the European farms. I am not sure about how many there are, probably not as many as that, but I hope very few will be turned off at all, though there must be some areas—one particular area was mentioned by the hon. member Mr. Long, Elburgon—where there may be more people than can reasonably be employed. Some will have to go, and, as stated, Government is actively engaged in finding an area of land to which they can go if they have lost any rights they ever had in native reserves.

MAJOR GROGAN: Sir, my apology for intervening in the debate is based on two factors: one, I am engaged in nearly all the different industries of the country and therefore can take a proportionate view; secondly, I have already taken effective steps to turn out every squatter from any land over which I have any control, because I realize from experience and observation that the effect of a large number of uncontrolled gentlemen with stock and so forth is disastrous to the country and enormous damage is done.

That does not prevent me from being entirely opposed to what I may describe as the atmospherics of this Bill. This Bill appears to me a typical example of these legislative cancerous growths from which we may easily expire if the X-ray treatment is not applied at the proper time. I suggest we are in session which is going to deal with the whole question of servants and the relationship between employer and employee, and it is almost unbelievable that a gigantic document like this is necessary to deal with an issue when the only apparent differentiation in the factors involved in the group of legislation is whether or not these particular people can keep some cattle or goats.

As far as I can make out, that is the only possible factor. The ostensible purpose of this Bill, as distinct from the Employment of Servants Bill, is perfectly simple. A coloured gentleman comes along to me and says, "I am a victim of bonification in my reserve. A large number of gentlemen with the best of intentions are doing all sorts of things to make life unpleasant for me. They ask me to live in a house in which my goats cannot, and so on, but I will work for you and, incidentally, bring my family and live on your land." That is the only issue with which this Bill has got to deal, and why require verbiage like this to cover such a simple issue I am entirely unable to understand.

One would have imagined that it was a very simple issue, a question very simply asked, and, involving small sums of money, very easily dealt with as a servants' problem. Listening to this debate as distinct from the ostensible purpose of the Bill, it has emerged as a multifarious Bill. It appears to be not a Servants Bill at all, but a Stock Bill; it also appears to be an Erosion Bill, and according to the attitude of some citizens it is also suggested to be

[Major Grogan]
an Old Age Pension Bill! It will probably be suggested also that it will emerge as a General Dog Fight Bill which, in my humble opinion, will be the only result!

What disturbs me is that in dealing legislatively with what should be a simple issue, we see the evolutionary process going on where, under the intention of providing facilities for initiating and regulating very very simple contracts involving very small sums of money, there is emerging a vast extension of our criminal law. It seems to me utterly unbelievable that I may find myself liable to two months' imprisonment and/or a £50 fine because I have omitted, by accident or otherwise, to provide one shilling's worth of employment for some old gentleman living on my land who is not particularly anxious to be employed at all.

If I read this thing correctly, I am liable to colossal penalties for having happened to provide only 170 days' work because of wet weather or something of that sort, whereas under the contract I agreed to 180 days.

It seems to me the whole thing has got so grossly exaggerated.

I feel very strongly that the whole of these issues ought to be comprised in a simple omnibus measure which everybody could have in their study, and to which they could easily refer when occasion arises. This suggestion that these simple contracts are something in the nature of quasi-criminal procedure and therefore can only be dealt with in a sort of criminal law, seems to be an extravagant extension of a very simple happening.

I do not propose to waste much time—I hope none at all—in dealing with the clauses of the Bill in detail. I have only one or two things to draw attention to.

I want to draw the attention of the hon. the Chief Native Commissioner to clause 4 (1), where I think there is probably an omission, and I hope the Provincial Commissioner of the province will agree that it should read, "No unauthorized native or Somali." The clause should also include after "any forest" the words "native reserves", because it does happen continually that entirely unauthorized people go and dump themselves down in native reserves. May be under some other highly complicated legislative enactment there are means whereby that can be dealt with, but it is utterly impossible to keep pace with the spate of legislation. I am throwing this out as a suggestion, that unauthorized persons in native reserves should be subject to control.

I was rather startled when I read this book—I beg your pardon, Bill—to find this special exemption of the Lembus area, of which I am the unfortunate proprietor, but I am relieved to hear that it only refers, as I understand it, to Wandorobo. The last time I went to that part of the world I saw an enormous number of people living on that land, and if all were the progeny of the only person who ever had rights in that land, my late Wandorobo guide, he must have been a very prolific person!

Clause 6 seems to me very undesirable, because it means that the whole of this happening—the tendency of labourers to move on to a farm and take up permanent quarters—can be easily stopped or interfered with by the Administration.

It is the practice undoubtedly still in some parts of these territories to try and retain as many of these people as possible working in reserves, because it facilitates the tax collection and adds to the general appearance of the reports of that particular district. It has been done before, it will happen in future, and it is entirely improper that these extensive powers checking this very proper move should be provided for here. Not so long ago one of your predecessors, Sir, used to, in conversation, refer to the natives as a taxable commodity. That he is regarded as such is quite obvious, even in some of our legislation, and it seems to me quite wrong that if a few gentlemen come and take up permanent quarters on your land and you omit to get any special authority from someone 300 or 400 miles away you should be liable to these terribly heavy penalties.

I think, Sir, that that is all I have to say on the matter, but I do really think we are drifting into the most awful complication of complications because we simply go on piecemeal, bit by bit, like some sort of growth, instead of taking

[Major Grogan]
the whole problem and dealing with it in one measure.

SIR ROBERT SHAW: Your Excellency, I feel that my position in this debate can be described as a sort of scavenger or camp follower following in the wake of the marching armies to take up any pieces they leave behind! But the march has been so well conducted, and I especially refer to the speech of the hon. Member for Nairobi North, that there is not a fearful lot left for me to do. But there are a few points to take up which I think ought to be discussed a little further before the Bill goes to select committee, and there are a few points on clauses of the Bill which I should like to refer to the hon. and learned Attorney General to which he may reply in closing the debate or in select committee.

If we consider the speeches made by hon. members who spoke first on the subject of local option, it quite obviously is a matter which requires careful working out. It am not going to enter into the argument or controversy in any way; quite enough has been said, but the salient point is that in considering the speeches of the hon. Members for Uasin Gishu, the hon Member for Rift Valley, the hon. Member for Nairobi South and the hon. Member for Trans Nzoia, in short, an effective innings, it will be found that fundamentally they are all batting on the same side, all in support of local option, all in support of district authorities in various districts having effective control over squatters on farms.

Some will go further than this, but fundamentally, I think I may say, they are in agreement on that point. Therefore I am almost certain that with a little more time spent in select committee they will inevitably find a solution of that point.

Actually, I go no further into the argument on this clause of the Bill other than to give my very strong support to that part of the matter taken up by the hon. Member for Nairobi South. He happens to be chairman of a district council in whose area of jurisdiction the greater part of my constituency is included, and I look at many of the points of view in the same way, he from one end and I from the other.

I do think it will be necessary to find some means whereby powers now vested in the whole district council can, for the purposes of this Bill, be delegated to some smaller and more local body. The hon. member, I think, himself made one suggestion, but not because I think it necessarily the solution but to say there are ways, I think, by which the select committee can approach the matter, that I put it to him that the authority for the purposes of this Bill in district council areas should be an authority not less local than the local committee of the district council, with the district commissioner as a member. I do not think that at all a bad idea, and is worth discussing, and on these lines I feel sure we shall arrive at a solution of the problems.

There is one small point. I would not dare for one moment to enter into a controversy with the hon. Member for Rift Valley on the subject of stock and stock diseases, but it is only fair that, in considering this matter, the select committee should bear in mind that, where you have people so placed that they have to engage in the stock industry in areas where almost every known African cattle disease is endemic, practical and effective steps have been taken on all cattle farms and with the enormous assistance of the Veterinary Department to defeat nearly all those diseases.

I would very much question any sweeping statement to the effect that these diseases cannot be effectively met by fencing and dipping and other forms of control. I agree with the hon. the Director of Veterinary Services that dipping alone does not deal with every disease and that other precautions have to be taken, but East Coast fever is a tick-borne disease, and that it can be dealt with by fencing and dipping is a point to be carefully considered.

To take up a few other points made, I should like to refer to the speech made by the hon. and gallant member representing native interests (Col. FitzGerald) on this subject, and as far as I can make out he is not in favour of local option in any form. Of course, I disagree with him, and personally think the arguments put forward defeat themselves. He complained of possible detribalized natives

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wandering all over the country. But the point is, having realized and all being in agreement that this is a measure of local control, this is the first time that we have ever tried to bring in anything which may really be effective in controlling the very thing which the hon. member complains of. Resident labourers on farms and their stock will be controlled under this local option clause, so that the very evil of which he complains, most particularly the detribalization evil, will be greatly curtailed in a few years time, I hope. I was therefore amazed to find that he does not in effect support that clause.

As regards the "S" brand, I think that can be passed over in a word, because all squatter stock already have that brand and it does not matter much about the letter.

Of course, if the clause of the Bill regarding the contract did not in fact lay down what is a lawful amount of work that may be required of a labourer and consequently paid for, if we left that out as the hon. member suggested, I do not know where we would be at all.

As regards some of the comments in the very useful contribution to the debate made by the hon. the Director of Veterinary Services, there is one point I would like to take up. It is on clause 19 of the Bill on which I think he said it had not been mentioned before he spoke. He is not quite accurate. The hon. Member for Nairobi North mentioned it, and he suggested that the word "may" in the first line should be altered to the word "shall, on the recommendation of the local authority". Personally, I believe if something like that were put in, the point of the Director would be met.

Beyond that, I may say in regard to his remarks that I noticed, when he was describing the many ways in which Government was assisting the stock industry, he was unable to make any useful reference to a thing which is known as the Dairy Bill. However, let that point pass!

As regards the speech of the hon. and venerable member Archdeacon Burns, there is one point on which I must join issue with him, and I think if he thinks again he will agree with me that we cannot surely, ever again, raise the question of the possibility of the prior right of natives to these lands. It has been an inconceivable labour during the past few years to get it cleared up with the aid of the Carter Commission's recommendations. I do believe it is cleared up, and I believe this Bill greatly assists us——

ARCHDEACON BURNS: On a point of explanation, I thought I made it clear that there should not be any idea in the native mind of a prior right to any land on which he was a servant.

SIR ROBERT SHAW: If I misquoted the hon. member, I apologize, and I am extremely glad to hear the explanation he has just given.

Beyond that, he referred to the position of the poor old gentlemen who had been on farms for a long time who had never done any work in their lives and that kind of thing! I am quite sure that a very small amount of amendment to that clause of the Bill, which is 4 (1) (*d*) and (*e*), already mentioned by the hon. Member for Nairobi North, will meet us both. The hon. Member for Nairobi North wished it to be made clear that farmers cannot be compelled to turn their farms into local almshouses (I think that was the expression used by someone) which I think would happen if the clause were left as it is at present. On the other hand, once the thing is arranged on a satisfactory basis I am sure the mere fact of goodwill and mutual understanding will surely meet the point brought forward by the hon. and venerable member.

As regards the question of age, there is only one thing to be said about that by people such as myself. In the taxation Bill to which he referred, 18 is the wrong age, the age of 16 in this Bill is the right age. Let us forget about the lamentable age of 18 in the taxation Bill and stick to the proper age of 16 in this Bill.

Just one or two points in clauses of the Bill which I want to refer to the hon. mover. Whether he will take them now or in select committee I cannot say, but I shall not be very long. If I jump a little bit from clause to clause I hope I shall be forgiven, for I shall have to put them as they came up in debate.

In clause 5, which covers what a contract shall provide for, the hon. and

[Sir Robert Shaw]
learned Attorney General gave us the most welcome assurance that the thing we have been fighting for we have now got, that this shall be a labour contract only, and that no question of squatting rights shall ever arise again under this system of employing labour. That has been emphasized strongly by one or two members, and there is no need for me to say any more about it, but it involves a small change in procedure which the hon. member can possibly explain. In the old days, when the term squatter or native was used, it was customary in many cases for an old gentleman, who was probably a cripple but was the head of the family—and he did own the cattle—to enter into the contract on behalf of the able-bodied members of the family who proposed to work. It seems pretty clear under this Bill that that will no longer be possible; the contract must be made with the resident native labourer, and I think that is not only in clause 5 but in the schedule at the end of the Bill to which this refers.

It appears now that one will be compelled to enter into a separate contract with every single able-bodied native labourer, unless he is the son of a working labourer. That is to say, supposing what very often happens, that three or four brothers of one family come forward and offer service as resident labourers, will it be possible to allow one brother to enter into a contract on behalf of the rest? Or will one have to make separate contracts with each one? It is a point which requires making perfectly clear, because it will affect the validity of our contracts if we do not get it right.

Jumping to clause 17, there is a small point that I should like the hon. and learned Attorney General to deal with for me. This clause covers the penalties for having extra stock. If you take sub-paragraphs (*b*) and (*c*) and read them together, I am not sure in fact that it does cover the case of a resident labourer himself having more stock on the farm than is allowed for in his contract.

Clause 17 (2) (*b*) refers to natives residing under clause 4 (1) (*e*), and these are the men who reside under special terms, old men and that sort of thing, and I am not sure whether (*c*) only refers to them or the whole lot.

It is most important that there should be definite penalties inflicted on resident native labourers who keep more stock on a farm than the contract allows for, and possibly the Bill does that effectively, but I am not quite satisfied.

Again, in clause 5 (7), which has been referred to by the hon. Member for Nairobi North, who suggests that the last words of that sub-clause should be taken out. It seems to me that the question of the methods which may be employed to remove resident labourers from a farm, either by termination of contract or notice given or for any offence whatever, is sufficiently provided for and that this is merely a sort of final covering which allows a magistrate to step in if he thinks fit. In that case the responsibility must lie on Government, and it should be no reason to include this business about assessing costs and damages of that sort in that particular case.

In clause 12, I must express my agreement with the hon. Member for the Coast (Major Grogan) about the heavy penalties. This lays down that you shall give the amount of work provided in the contract, and there is a proviso that you shall be liable to a fine of £50 and/or two months' imprisonment if you do not. That seems to me to be out of proportion, and, moreover, the point arises whether that clause is really necessary in so far as the matter is so effectively controlled under the local option powers. There, if the thing is properly operated, the local authority should not allow any squatters to remain on a farm who cannot be properly employed, and the inference is that if a man has a lot and is not using them the local authority comes down on him and kicks the whole, or half of them, off. That is the proper penalty, so that the penalty in this clause should be reduced to a small one as it is rather too onerous.

I now refer to clause 20 (3). I think the hon. Member for Nairobi North suggested a separate sub-clause (4) should be added that resident native labourers should not sell produce off a farm without a permit from the occupier.

I think that is a fair request, because in the first place you are not under any

[Sir Robert Shaw]

obligation to give him more land than is necessary to grow sufficient food for himself and his family, and consequently it allows every possibility of serious pilfering. I think this is a fair request, but as far as I am concerned I must say that that provision cannot be extended to the produce of his stock, for the simple reason if it does it immediately opens up the opportunity of kaffir farming.

I have know the case where a person who wished to have some contracts attested endorsed to the effect that a resident labourer was not allowed to sell any milk. I knew who the person was, and the object of it was only too obvious, and the magistrate did not endorse them. I do not think he could, and while it gives opportunity for pilfering yet milk products are perishable and cannot be stored for a very long time in a hut until one night the man can go off and sell them. I wanted to make that point clear.

One more point. In clause 28 we refer to the question of payment of wages on demand, which was mentioned by the hon. Member for Nairobi North. Whereas we do not in the least wish this Bill to be weakened in any way so that the authorities cannot impose proper penalties on a man withholding wages, it is just this business of "on demand".

What one wants is that wages should be fully and punctually paid, and if a man refuses to pay he should be liable. I am not sure that the whole thing cannot be covered by simply saying that if he withholds wages due to the resident labourer, that is to say, wages that are due then, the point would not be covered.

Those are all the points I have to make, and I need not say I am strongly in support of the Bill and strongly support the local option clauses, which I hope will be made effective. If we sort the thing out carefully we shall be able to provide the local authorities with a workable measure which, I am quite sure, they will do everything in their power to administer in the best interests of the Colony as a whole.

The debate was adjourned.

BON VOYAGE

HIS EXCELLENCY: Before we adjourn, I should like to remind hon. members of Council that this afternoon the hon. the Colonial Secretary and Lady Wade leave by air for England. I am sure you wish to join me in wishing them a safe journey and a very pleasant and happy leave. (Applause.)

SIR ARMIGEL WADE: Thank you very much indeed, Your Excellency, and with your permission I should like to thank hon. members for the kind way in which they have endorsed your good wishes.

ADJOURNMENT

Council adjourned till 10 a.m. on Friday, the 30th July, 1937.

Friday, 30th July, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Friday, 30th July, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

ADMINISTRATION OF OATH

The Oath was administered to:—

Nominated Official Member:

S. O. V. Hodge, Esq., Acting Provincial Commissioner, Rift Valley Province.

MINUTES

The minutes of the meeting of the 29th July, 1937, were confirmed.

PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

BY THE HON. THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. HOSKING):—

Return of Land Grants under the Crown Lands Ordinance, 1st April to 30th June, 1937.

BY THE HON. G. B. HEBDEN:—

Annual Report of the Posts and Telegraphs Department, 1936.

NOTICE OF MOTION

COL. KIRKWOOD gave notice of the following motion:—

"In the opinion of this Council an amendment to the Shops in Rural Areas Ordinance, 1933, and the Local Government (District Councils) Ordinance, 1928, respectively, is desirable in order that the Trans Nzoia District Council may be appointed the Licensing Authority for shops on farms in the Trans Nzoia District."

ORAL ANSWERS TO QUESTIONS

No. 44—DAIRY CONTROL BILL

MR. BONG asked:—

Will Government state, with reference to the Dairy Control Bill, whether it has received the Secretary of State's comments on the Bill and what further steps it intends to take to introduce the Bill?

ACTING COLONIAL SECRETARY (MR. LOGAN): The comments of the Secretary of State on the Dairy Control Bill have not yet been received. It is proposed to await his comments before any further action is taken.

MAJOR CAVENDISH-BENTINCK: Is it known whether any comments are coming or not?

MR. LOGAN: There is no additional information to that effect.

MAJOR CAVENDISH-BENTINCK: Are we being held up by comments which are possibly not in existence?

MR. LOGAN: The despatch has been forwarded to the Secretary of State and no doubt a despatch in reply will come at the first opportunity.

COL. KIRKWOOD: May I ask when the last information with reference to this Bill was sent to the Secretary of State?

MR. LOGAN: The despatch was dated the 31st March.

MAJOR CAVENDISH-BENTINCK: On a point of order, regarding questions generally, I have been asked by elected members to request that where it is possible we are given answers to questions as soon as possible, because very often a subsequent motion depends on an answer. If we could get all the questions answered together we should be very grateful to have them at the earliest opportunity.

MR. LOGAN: I will undertake to have all the answers to questions given when the Council resumes next week.

RESIDENT LABOURERS BILL

SECOND READING

The debate was continued.

MAJOR RIDDELL: Your Excellency, I find myself, I believe, the last of the elected members to speak, and the remarks I am about to address to Council will necessarily be short because most of the ground has been adequately covered. There are one or two points, however, that I wish to make.

[Major Riddell]

Speaking generally to the Bill and its objects, my own standard as regards resident labourers or squatters or kaffir farming is that I should like to see all these categories disappear. In that regard it is interesting to note, and I think it should be specially noted, that of the elected members no less than three have got up and said that, as far as they were concerned, they did not intend to have and had not for some time had, resident labourers on their farms. It was all the more impressive to me, inasmuch as these three members represent very large interests in practically all the premier industries of Kenya.

There seems in the minds of a good many of us some doubt as to the definition of the people who are concerned in this Bill, whether they are resident labourers, whether they are squatters, or whether they are gentlemen brought on to the farms for the purpose of kaffir farming. As these three categories are very clear cut in my mind, I propose to try and define them.

I will first of all deal with the resident labourer on farms. The meaning of that term has been ably demonstrated and described by the hon. the Attorney General. His explanation of what is meant by a resident labourer on a farm is thoroughly satisfactory to me, and I do not mean to add one scrap or iota to what he has said. That does not, in my opinion, remove the squatter who is still among us.

A squatter, to me, is also clear cut, and I propose to give two instances of what I mean by a squatter, because I do not think that in respect of squatters Government's hands are clean.

The first instance I want to give concerns the Forest Department. Throughout my constituency and a good many other constituencies there are small areas under control of the Forest Department. Some of those areas are notoriously the "home-from-home" of habitual criminals, stock thieves, and people shirking their obligations as taxpayers in the reserves, Augean stables which I hope will be cleaned up.

The second instance of what I mean by squatters concerns Nairobi Commonage. For many years this has been used by Somalis who have been limited to a prescribed number of stock authorized to graze there; I think the number is eight. It is notorious that for many years past Somalis have in fact been ranching on that area, and in respect of the stock they carry on that area it is in excess of the amount laid down. This is squatter stock.

The third category which requires a definition is these resident natives on farms, who are held there by the owner or occupier for purposes of his own private gain. In this respect, of course, Government's hands are clean. It is unnecessary for me to say that no Government department keeps resident natives on the areas in their control for purposes of gain, but unfortunately a small—I hope small—minority of settlers do.

In my opinion, the demand for this Bill throughout the up-country farmers associations is largely caused by their dislike and resentment that such a state of affairs should exist in our midst, because undoubtedly we all agree that kaffir farming is a real evil which, again, I hope this Bill will eradicate.

If Council accept my definition of resident labour, squatter, and kaffir farming, I will go on to the only contentious clauses in this Bill, the local option clauses contained in 22 and 23.

With regard to them, we have had two statements which are, more or less, in opposition to one another. First of all, there is the statement from the hon. Member for Uasin Gishu (Mr. Hoey), and secondly the statement on the other side from the hon. Member for Rift Valley (Mr. Long). As regards the two statements, I find myself in considerable agreement with the hon. Member for Uasin Gishu, because I think that the minority requires more safeguarding than it is receiving at the moment under this option clause.

I should like to make one point which I think the hon. Member for Uasin Gishu omitted, and that is that the majority is a two-thirds majority arrived at by count of heads; it is not arrived at by a majority of interests. It is conceivable in the hypothetical case put forward by the hon. member that the minority he instanced

[Major Riddell]

may, in actual point of value, have a considerably larger stake in the country than the 10 or 11 small dairy farmers around him. I think that point will be considered in select committee, and I am only putting these points on record.

If we are to have local option, I thoroughly agree with the hon. Member for Nairobi South (Mr. Maxwell) that the right and proper body to do that is the district council, and I should like to see an extension of the powers of the council in the terms he visualized in his speech. I cannot conceive any chairman or member of a district council wishing to be given arbitrary powers of extinguishing a minority, such as that visualized by the hon. Member for Uasin Gishu.

Therefore I hope, and in fact believe, that in select committee that will be straightened out and adjusted.

I listened to the speech made by the hon. Member for Rift Valley with the greatest interest and with a very considerable measure of sympathy. It was a candid speech and came straight from the shoulder, but I could not help thinking, as he was delivering it, that if he had had the definition clearer in his mind of what constitutes a resident labourer under the Bill and the safeguards, and what constitutes a squatter and kaffir farmer, a good deal of the sting of his attack would have been removed.

I should like to agree with what was said, and stress the fact that I agree, by the hon. Member for Aberdare (Mr. Wright). It is a matter of very great regret to me that we are not holding this debate with the White Highlands properly and fully defined, since a great deal of the value of this debate has thereby been lost. The demarcation of the White Highlands was recommended by the Carter Commission in 1933, and we still await it. This question is coming up later under a motion, so that I shall not labour it now, but I wish to record my opinion.

There is another matter of regret to me in the course of this debate. There is a great lagging behind in the stock industry in respect of their organization in comparison with other industries. It seems to me a great pity that in this debate, which centres largely around the control of stock, the stock industry does not speak as the coffee industry can or even a new industry like pyrethrum, with a united voice. It is a deprivation to us.

Now, Sir, although at first glance there may seem to be a considerable divergence of opinion as between one or two of us elected members which I have briefly touched on this morning, I am a full and whole hearted supporter of the Bill, for I believe it will do a tremendous amount of good and, so far as I am concerned, I believe the apparent divergencies can and will be straightened out in select committee. At any rate, so far as I am concerned I am perfectly prepared to leave myself entirely in the hands of the select committee which I hope you will appoint, Sir.

DR. DE SOUSA: Your Excellency, I do not think I can profitably intervene in the debate on this Bill, the principles of which appear acceptable to the two parties concerned; that is, the nominated unofficial members representing native interests in this Council and the settlers. But, as the Bill to some extent refers to the findings of the Kenya Land Commission, and as I have not been very happy about the explanations given by the hon. mover in connexion with the implications of two paragraphs in the recommendations of the report, I should very much like, with due apologies to the members representing native interests, to read the two paragraphs from the report.

The first is paragraph 1864, page 467:

"We consider it a better solution at this stage of the country's progress that Government should accept the obligation of finding land to which time-expired squatters can go, either in their own reserve, or, if they prefer it, in C Areas, and that care should be taken to arrange the move as cheaply as possible."

Again, on page 468, paragraph 1867:

"When one reflects that the three Kikuyu districts are only 1,931 square miles in extent, even with the addition of Mwea, it is apparent that the possible return of 110,000 squatters would augment by 57 to the square mile a population which is already dense enough to cause embarrassment. While

[Dr. de Souza]

such a contingency as the return of all the squatters and their stock need not be considered, there seem to us to be good grounds for taking precautions."

I have only intervened in the debate to have an assurance from Government as to whether these precautions have already been taken by Government. It is needless for me to assure Government that I am not opposing the Bill; I am supporting it.

MR. WILLAN: Your Excellency, I am very grateful to members on the other side of Council for their wholehearted support of this Bill, and it is abundantly clear now that the only serious difficulty which will be before the select committee are these two clauses 22 and 23, the local option clauses.

I thank the hon. Member for Nyanza (Mr. Harvey) for supporting my statement that the committee, which was appointed in 1933, was representative of the whole Colony in spite of the arguments adduced to the contrary by my hon. friend the Member for Uasin Gishu, and that there was an accredited representative both of the Trans Nzoia and Uasin Gishu districts on that committee.

As I stressed in my opening speech, that committee unanimously proposed local option and that these extensive powers should be given to the local authorities. It has been stated time and time again in this debate by hon. members on the other side of Council that district councils are reasonable bodies. Unfortunately, after having prefaced their remarks with that statement, one by one the hon. members retreated. I do not say they did not retreat in good order, but the fact remains that they did retreat from that statement.

Some hon. members suggested that they were frightened that the minority would be at the mercy of the majority; others because they did not consider that members of district councils in one area should have any jurisdiction over farms in other areas in the same district council jurisdiction. That brings me to the suggestion which was put forward by the hon. Member for Nairobi South, which was also supported by the hon. Members for Nyanza, Ukamba, and Kiambu: this question of delegation.

I listened very carefully indeed to the speech made by the hon. Member for Nairobi South on this question that there should be powers of delegation. I had hoped that he would put up some concrete proposal, but I was disappointed. So far as I am concerned, I cannot see any solution on the lines of delegation at the present time. I do not say that that means there is no solution, because it may be that the hon. member will be able to put up some solution before the select committee. But, if you delegate, how are you going to delegate? to what members of your district council are you going to delegate? and for what areas?

If you really follow the suggestion to its logical conclusion, you get down to a single member of the council, and the individual farmer—I am sorry to be pessimistic at the present time regarding the suggestion but we must face up to it now, and I see no solution on these lines.

The hon. Member for Nairobi South was perfectly correct in saying that the Bill as drafted contains no power for a district council to delegate, but there is nothing in clause 22 or clause 23 which would forbid a district council taking the advice of its members who are resident in any particular area under the jurisdiction of the council. They are reasonable bodies, you have said so, and I agree with you. Then, if they are reasonable bodies, what is to prevent them, for any particular area in their district, taking the advice of the members in that particular district?

They would take that advice, and make a decision on that advice, but the decision would rest with the whole council. That, I think, is the solution, that these district councils being reasonable bodies would be perfectly able and would be willing to take the advice of their representatives in each particular area and would then make their decision accordingly.

Now I come to one of the comments made by the hon. Member for Uasin Gishu on clause 22.

He suggested that this clause was to safeguard the stockowners, and that stockowners should not be in a position to impose their wishes on a majority of other people. I must confess that I was

[Mr. Willan]

surprised at that comment, and I was surprised for this reason: that the hon. member, on the 4th March of this year, during the debate on the second reading of the Income Tax Bill, stressed most emphatically the importance of pedigree stock to this Colony. The hon. member is reported in column 73 of the last edition of Hansard as making the following remarks in that debate:—

"But one of the most important points I wish to touch on—and the hon. member (for Nairobi North) did briefly mention it—is the question of including in the exemptions imported pedigree stock. . . Anyone interested must realize that the one thing this country is crying out for is imported pedigree stock. Take anyone who is engaged in the stock industry, the moment they get any sort of profit at all the first thing they want to do is to import new blood into their herds, and the benefit to this country is very great indeed. I do hope that under this exemption clause will be included pedigree stock."

I believe that "anyone engaged in stock industry" includes my hon. friend.

Hon. members will remember that that stock was included in the exemption clause in the Income Tax Bill but apparently, although the hon. member stressed so emphatically the importance of safeguarding pedigree stock from being taxed under the Income Tax Ordinance, he now turns round and does not stress their importance in dealing with a Bill now before Council.

MR. HOEY: On a point of explanation, Your Excellency. Of course I have the greatest sympathy with the stock industry and consider it extremely important. But, during this debate, the point I tried to make was that the stock industry should not be in a position to penalize other industries which could claim, perhaps, an equal degree of importance. That was actually the point of my speech.

I have every sympathy with the stock industry, but never for one moment have I said it should be in a position to force sacrifices on other industries.

MR. WILLAN: Now I come to the comments of the hon. and gallant Member for the Coast (Major Grogan).

As I understood him, he sees no reason for this legislation at all—

MAJOR GROGAN: On a point of explanation, I did not say "no reason"—very limited.

MR. WILLAN: If I understood him correctly, he thinks that everything should be left perfectly well to a contractual obligation between employer and employee. He suggested that this Bill is in the interests of the stockowners, that it is to prevent soil erosion, and is to provide old age pensions.

MAJOR GROGAN: I never suggested anything of the kind. I said that apparently during the debate it was transpiring that this Bill was not a Bill to deal with the services of people who wanted live on the place where they served but was rapidly being apologised for on entirely extrinsic grounds which had nothing to do with the Bill.

MR. WILLAN: I am obliged to the hon. member for his remarks. But I would stress this, that the Bill is in the interests of the whole community of this Colony.

All hon. members of the Council are aware, the public is aware, that this resident native labour problem is a very great problem, and this Bill has been put up to solve that problem, and I do stress that it is in the interests of the whole community of this Colony and, in particular, it is in the interests of the natives.

You take a native and you take his family away from his reserve, he is then placed down in surroundings which are strange to him, and it is very vital that there must be proper control, the rights and liabilities of the natives safeguarded, the rights and liabilities of the employer defined, and that is what I submit this Bill does. It defines the rights and liabilities of the employer, it also safeguards the rights of the natives, and also defines what his liabilities are.

The hon. Member for the Coast also suggested that clause 4 (1) should be extended to cover control in native reserves, I hope I am right?

MAJOR GROGAN: It has already been explained that the point is quite unnecessary.

MR. WILLAN: The hon. the Chief Native Commissioner did explain that it is unnecessary, because it is covered by section 12 of the Native Authority Ordinance, 1937.

I am indebted to the hon. Members for Nyanza and Ukamba for raising this question of what would happen with regard to contracts under the present Ordinance. That has not been forgotten. As a matter of fact, on my copy of the Bill I have already made a note of that in blue pencil at the bottom of the last clause.

There is this further point to consider, that important point raised by the hon. Member for Ukamba, that contractual relationship at the present time is between the head of the family and the employer, whereas under the new Bill it will be between each individual resident labourer and employer. That is a point we shall have to consider very carefully indeed in select committee.

My friend the hon. Member for Aberdare (Mr. Wright) raised the question of including a clause dealing with the prohibition of prescriptive rights. I am surprised at that, because I had hoped that during my opening speech I had stressed sufficiently that this is a Bill dealing with the employment of labour, that the position of the resident labourer is not a tenant, he is a servant. Therefore, in my submission, it would be a grave mistake and entirely irrelevant to consider the question of prescriptive rights in a Bill such as this.

Lastly, but not the least, I come to the speech made by the hon. Member for Nairobi North (Major Cavendish-Bentinck). Sir, I wish to pay a tribute to the very lucid criticisms which have been put forward by my hon. friend. As all hon. members know, in this Council it is so easy to put up destructive criticisms, but it is very hard to put up criticisms which build up and construct a Bill.

That is what he has done. Every criticism he put up was one of constructive policy and also most helpful to the select committee. I propose to go through the points which were raised by him.

First of all, clause 2, the definition of a resident labourer on page 2 of the Bill. My hon. friend suggested that in that definition there should be inserted before the word "contract" the word "labour," and he also suggested the same insertion in clause 5 (2). My answer to that is that the contract which is set out in the first schedule to this Bill and as provided for in clause 5, contains many more essential points than labour.

For instance, you have grazing, the question of the resident labourer being able to plant crops, and also the question of the supply of building material. Therefore, at the present time I am not convinced that it is necessary to include the word "labour" either in that definition or in clause 5 (2), because I think the term "labour contract" would be definitely a misnomer.

The hon. member went on to clause 4 (1) (*a*), the question of why the word "occupier" applies to the words "native or Somali". The explanation of that is quite simple. You might have a native or Somali who takes out a temporary occupation licence, and he is the occupier of that particular piece of land for which he has that temporary occupation licence, but this Bill, of course, applies to the whole Colony.

In clause 5 (1) it was suggested by my hon. friend that that sub-clause should be amended so that families may only reside on farms during the contract period. I see no objection to that proposal.

He went on to deal with clause 5 (6), that "a magistrate or attesting officer, may, in his discretion, refuse to attest any contract entered into by a native or Somali whom he considers to be an undesirable", and suggested that we should include the words "for good and sufficient reason". My own personal view is that I cannot see any objection to their inclusion.

The hon. member suggested that in clause 5 (7) the words "and such magistrate may after inquiry assess the costs of such removal and determine by whom such costs shall be paid" should be deleted. If they are deleted, in my opinion you must have a general clause dealing with costs, because you may, and will, get this situation.

[Mr. Willan]

An employer takes on more resident labourers than he is entitled to or as ordered by the local authority. That local authority may assess a farm at 50 resident labourers and the employer may take 55. If he does, he has committed an offence under this Bill. What are you going to do with the five extra labourers taken on by that employer? They have been taken from their reserve, are on the farm, possibly they may have stock, and they are perhaps 100 or 150 miles from home. They have to leave the farm because the local authority has only assessed the farm at 50. Who is going to pay for sending them back to their reserve?

Undoubtedly the employer ought to because he has committed the offence, and there ought to be some power for a magistrate to order him to pay the costs of returning the extra resident labourers and their families and stock, if any, back to the native reserve. I suggest that these costs should be recoverable as by way of a fine.

My hon. friend went on to deal with clause 5 (10), that "on a change of occupancy of a farm the contract shall be deemed to have been assigned to the new occupier and the resident labourer." He suggested that this sub-clause should be deleted, and that the new occupier should have a perfect right to make his own contract.

This has been the law for some 12 years and the solution, or rather the answer, to the hon. member's comments is contained in paragraph (*k*) of sub-clause (2) of the same clause, that if you are buying a farm you would say to the vendor "What about the resident labourers?" If you want to keep them then there is no need to take any action; if you do not want them you can say to the vendor "Give them 3 months' notice under paragraph (*k*) of sub-clause (2) of 5."

If, having taken over the farm, the sale has been completed and you go on to the farm and find the resident labourers there are unsatisfactory, equally you have the right to give all the resident labourers 3 months' notice. That I submit, is the answer to the comments put forward by my hon. friend.

It is suggested that clause 6 should be deleted altogether: this, in my opinion, is a point to be taken in select committee.

The hon. member suggested that under clause 17 (1) (*d*) it is difficult to tell whether cattle have reached the age of six months or not, and that they should be dealt with as weaned and unweaned cattle, and that in clause 17 (2) (*d*) the words "head of" should be deleted. These again are select committee points.

The hon. member went on to deal with clause 17 (4), the reference to section 5 of the present Resident Native Labourers Ordinance, 1925. That must remain in because it deals with contracts made under the present law and is merely in common form.

Clause 18, he suggested there should be inserted "European police officer". That I think can be raised in select committee but, of course, the Commissioner of Police will have to be consulted before any decision can be arrived at.

In clause 19 he suggested that the magistrate should only act at the request of the local authority. I would offer this suggestion, that it might be considered possible there to insert "district commissioner with the approval of the provincial commissioner". But there again, it is a point which will have to be dealt with in select committee.

Now I come to clause 20, where my hon. friend suggested an additional sub-clause (4), that a resident labourer should not have the right to sell any of his own crops except under a certificate issued by the occupier. There I disagree. After all, the crops belong to the resident labourer, they are his to do what he likes with, and I suggest that if you wish to include that new suggested sub-clause you are interfering with the individual's rights.

I do not propose to say anything regarding clauses 22 and 23; they are admittedly committee questions, and have been gone into very carefully by hon. members on the other side of Council.

In clause 25 (2) (*a*) the hon. member suggested that the word "him" in the sixth line should be deleted. When considering this Bill last week, I made the follow-

[Mr. Willan]
ing red ink notes on my paragraph that that paragraph might read as follows:—

"rescind any contract made under this Ordinance where it has been proved to his satisfaction that there has been a breach of the terms thereof or on the application of one party to the contract that the other party has been convicted of a criminal offence against the first mention party to the contract or a criminal offence involving serious moral turpitude."

I shall put that forward to the committee.

It was suggested, that possibly the period of imprisonment in clause 27 is not sufficient. These penalties have been law for 12 years and, in my opinion, I think it would be a mistake to increase the period of imprisonment.

In clause 27 (3) (b) it was suggested that the words "not having received" be deleted. My own personal opinion is that I agree with him. I also agree that in (c) the word "irretrievably" should be substituted for "irrevocably".

Clause 28 (1) (a) reads: that an occupier shall be liable—

"If he fails to pay, on demand, the wages due to a resident labourer."

I agree that there are difficulties in those words "on demand", and I think they can be got over by going back to clause 5 (2) (f) and possibly altering that by providing for the rates of pay and the terms of payment and then, in the first schedule, the times that wages shall be paid. Clause 28 (1) (a) can then be amended to provide if the occupier fails to pay the wages when due. That will probably meet my hon. friend's objection to the clause as drafted at present.

He also suggested that (d) of sub-clause 2 of this clause should be deleted altogether and, speaking personally for myself, I see no serious objection.

If I understood him correctly, he also wants clause 29 deleted. That, of course, is impossible. We must have a general penalty clause in any Ordinance, and this must, in my submission, remain.

The hon. member criticized clause 31 because it was drawn too widely and said that rule-making power should be given specifically in certain clauses of the Bill or set out specifically in clause 31 what power the Governor in Council has to make rules. There again is a question to be considered in select committee.

Those, Sir, are my answers to the criticisms put forward by the hon. Member for Nairobi North.

Finally, I do wish to thank all hon. members on the other side of Council for the support they have given to this Bill. I am perfectly certain that all reasonable objections will be solved in select committee.

The question of the second reading was put and carried.

MR WILLAN moved that the Bill be referred to a select committee consisting of:—

Mr. Willan, *Chairman.*
Mr. Montgomery.
Mr. Hosking.
Mr. Wallace.
Mr. Hoey.
Col. Kirkwood.
Mr. Long.
Sir Robert Shaw.
Archdeacon Burns.
Dr de Sousa.

MR. WALLACE seconded.

The question was put and carried.

NATIVE HUT AND POLL TAX (AMENDMENT) BILL

SELECT COMMITTEE

HIS EXCELLENCY informed Council that the select committee to consider the Native Hut and Poll Tax (Amendment) Bill would consist of:—

Mr. Willan, *Chairman.*
Mr. Montgomery.
Mr. La Fontaine.
Major Cavendish-Bentinck.
Sir Robert Shaw.
Archdeacon Burns.
Dr de Sousa.

Council adjourned for the usual interval.

On resuming:

EMPLOYMENT OF SERVANTS BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Employment of Servants Bill.

[Mr. Willan]
As hon. members will already be aware from the perusal of the "Objects and Reasons" given at the end of this Bill, the majority of the amendments which are proposed are necessary to give effect to the ratification by His Majesty's Government of an international convention concerning the recruitment of workers. Apart from those proposed amendments, there is very little else in the Bill which is new and, in fact, apart from those proposed amendments, it is a consolidating Bill.

It would have been open to me to have produced a Bill dealing entirely with those amendments; in other words, an amending Bill. That would have been inconvenient for the general public and Government, and therefore I thought it advisable to have one Bill incorporating the convention amendments and any other minor amendments which are necessary.

I do not propose to go through the whole Bill clause by clause. I merely wish to confine my remarks to those clauses where the law is altered.

Clause 1 of the Bill reads:—

"1. This Ordinance may be cited as the Employment of Servants Ordinance, 1937."

That is a different title to the present Ordinance, which is cited as the Employment of Natives Ordinance. The change in the word natives to the word servants has been deliberate, and the reason for it is that under the Interpretation (Definition of "Native") Ordinance, 1934, which excludes Arabs, Somalis, Baluchis born in Africa, Malagasy and Comoro Islanders, there are considerable numbers of these races employed as servants, and therefore it is necessary that they should come under this Bill. So the title has been altered to Employment of Servants instead of the present title Employment of Natives.

In clause 2 the definition of "desertion" has been defined as meaning—

"absence by a servant without lawful excuse for a period exceeding seven whole consecutive days from his place of employment."

In the present Ordinance the words are:

"If he shall without lawful cause depart from his employer's service with intent not to return."

That expression is too vague. It has been very difficult in the past to decide whether a servant under these words has or has not departed with no intention of returning. Therefore, this new definition has been inserted in order to have a clearer, a more precise definition, for this offence.

A definition of juvenile has been included, and is necessary on account of the new provisions relating to juveniles which appear in clauses 27 to 30 of this Bill.

Now I come to the three definitions of labour agent, private recruiter, and professional recruiter.

Hon. members will notice from this definition that there are three ways in which a person can be taken on as a servant. First, by offering himself of his own free will for employment to a labour agent, in which case he becomes an "engaged servant". Secondly, by being recruited by a private recruiter; that is, by a person who recruits for his own business, and that servant becomes a "recruited servant". Thirdly, by a professional recruiter, by a person who makes his living out of getting recruits for other persons, and there again that servant becomes a "recruited servant".

So we come to the definition of "recruited servant" who is a person taken on as a servant either by a professional recruiter or by a private recruiter, and the definition "to recruit" follows that up.

All these definitions are taken from this convention.

Now I come to the definition of "task". Here I realize that I must be prepared to withstand an attack from hon. members on the other side of this Council. I am certain there are blows coming to me about this definition. I am not quite certain how heavy these blows are going to be, or how many there will be, but I am perfectly certain I am going to be attacked on this definition!

I saw only in this morning's Press, that there is a suggestion that this definition has been drafted by somebody in the

[Mr. Willan]

Colonial Office. I take the liberty at once of saying that that suggestion is entirely wrong. That definition was drafted in the office to which I belong, and it was drafted at the suggestion of the Labour Department of this Colony. So, having drawn the whole of the attack for the definition on to myself, I will now endeavour to soften the blows.

In the first place, it appears to me that there is a considerable amount of misunderstanding about this definition. Why, I do not know, because in the first place that definition of "task" does not apply to all contracts, it only applies to contracts where the employer gives tasks to his servants. If an employer wishes to employ his servants on task, then the definition applies; if he does not, the definition does not apply.

I am credibly informed that it has been the practice for some years in this Colony, for a considerable number of years, to employ servants by tasks. There is nothing novel in that, it is the practice in a considerable number of other colonies. But, what is novel in this country is this, that although you have that accepted practice you have no definition in law to cover it. This Colony is not in line with legislation in other colonies where that practice is accepted and has been in force for years. If you have this practice of task work, then you must have a definition to cover it.

The definition which is proposed at the moment—I do not say it is the final definition—is:—

"'task' means such amount of piece work as can in the opinion of a labour officer be performed by a servant in six hours working diligently at such work."

How do we get the six hours? that is the point. If you accept the ordinary working day of 8 hours, if you take off an hour for meals, then if you total up the time which we all rather waste when we are doing a day's work—I mean loafing about, talking to other people, if you add up all these short periods of time, I do not think it unreasonable to say that each of us wastes an hour a day. So you get an hour for meals and the hour for what I would call loafing about. Add these two hours together and you get two hours, take those from the 8 hours, and you get 6 hours. (Laughter) (Major Grogan: Government procedure.) Despite the remarks of the hon. member, it is a simple matter—(Laughter)—a simple question of taking two hours from 8 hours, and there you get the 6 hours. (Col. Kirkwood: It sounds like daylight saving!)

The impression seems to have got about that if this definition stops as it is that all servants will only work 6 hours a day. I suggest that that is not so, it is a fallacious argument, there is no foundation for any fear of that kind. From the very definition itself it is applied to piece work but, as I pointed out a moment ago, it only applies when tasks are given by the employer and are performed by the servant.

If you do not like that definition, I suggest another one; that is, that the word "task" means that amount of piece work to be performed by a servant as equivalent to working for a day of 8 hours.

If you do not have any definition of task, what are you going to do in case of any dispute arising between an employer and his servant, and the Labour Department is called in? How are they going to assess the question of work in a dispute? Unless you have a definition, in my humble opinion it is impossible to settle that dispute. Therefore I do commend to my hon. friends opposite that it is essential to have a definition on which to work, and it is only a question of getting a workable definition suitable to everybody.

I have completed my task of dealing with this definition of "task", which appears in clause 4 (*a*) and in clause 17, and the latter simply contains a formula as to how work is to be paid, how task work is to be paid where it is not fully completed.

Proceeding, clauses 3 and 4 reproduce the existing law, with the addition of the second part of paragraph (*d*) and the whole of paragraph (*e*) and (*f*) in clause 4. These additions merely provide for tickets being supplied to servants, servants being properly attended during illness, and for the payment of his wages.

[Mr. Willan]

Clause 5 and sub-clause (1) of clause 6 reproduce existing law. Sub-clause (2) of clause 6 is new and provides for an employer giving security for the payment of wages if this is deemed necessary by a magistrate or justice of the peace.

Clauses 7 to 11 reproduce the present law, with the exception of the words in lines 2 and 3 of clause 8: "unless it is due to commence within fourteen days from the attestation thereof." These words are new. The reason for their insertion is to prevent the practice of making a forward contract with a servant to commence at long periods after the contract is executed.

Hon. members will notice that under paragraph (*a*) of clause 58 of this Bill, which merely reproduces the present law, it is an offence for a servant—

"if, after having entered into contract, he fails or refuses without lawful cause to commence the service at the stipulated time."

If you are going to make forward contracts which will not commence until weeks, possibly months, after the due execution of the contract, then, with his mentality, it is quite likely that the native will forget the date on which he is due to commence that contract, and if you make it a penal offence when he does not commence the contract on the stipulated date then equally you ought to agree to safeguard the native from a forward contract which is not going to commence weeks or possibly months after execution thereof.

Clause 12 is a redraft of the present section 10. It provides for the original and four copies of the contract instead of the original and two copies at the present time. Of the extra two copies, one will go to the Principal Labour Office and the other to the recruiter or labour agent.

Clauses 13 to 16 reproduce the present law.

Clause 17 I have already dealt with, and now I come to clause 18; from there to clause 26 is also a reproduction of the present law.

I must confess that I do not like clause 18 as it is drafted now. It is drafted in accordance with the present law, but if, and when, this Bill goes to select committee I shall suggest if I am on the committee an amendment, because this clause is obviously meant to be confined to cases where persons induce servants to leave the service of an employer under circumstances which amount to breach of contract. It is not meant to penalize a servant from being able to give his employer adequate notice and go to some other employer in order to better himself in life, either by better employment or better wages. As the clause is drafted I am not quite convinced in my own mind that it does carry out its purpose.

Clauses 27 to 30 dealing with juveniles are all new. They are included in accordance with the decision at that convention. I am sure hon. members will agree with me that it is vital there should be some check on labour agents and recruiters obtaining the services of juveniles, and so in clause 28 it is provided that in case where any juvenile recruit is recruited or engaged he can only be so recruited or engaged provided he possesses a certificate issued by the district officer.

The powers of a district officer to issue that certificate are restricted, as appears in sub-clause (3) (*a*) and (*b*).

Clause 29 empowers district officers and labour officers to cancel contracts with juveniles under certain circumstances with the right of appeal against such cancellation to the provincial commissioner.

Now I come to that part of the Bill dealing with the care of servants.

This part has been redrafted, and first of all I will deal with clause 31, which is a redraft of the present section 24. It clarifies the present law in that an employer is only bound to provide or pay for the housing of his servant, when the servant does not agree to make his own arrangements. That of course, is a matter which should be settled by the employer and the servant at the time of entering into the contract.

Clause 32, which deals with the feeding of the servant, is a redraft of the present section 25, and provides for the feeding of the servant which, again, is a matter for both parties when the contract is executed.

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Clause 33 is equivalent to section 26 of the present Ordinance, but it makes the position of the employer more clear, because he is only bound under the present Bill to provide a supply of drinking water at the place of employment.

Clause 35 is a redraft of section 29. This is a troublesome clause. The law at present is as in sub-clause (2) of that clause. Now there has been added sub-clause (1):—

"It shall be the duty of the employer to take all reasonable steps to ascertain whether the absence from duty of any servant in his employ is due to illness."

That has been inserted deliberately on account of a case which came before the courts of the Colony some little time ago. In that case, when an employer was prosecuted for not complying with the provisions of the present law, the defence was put forward that the employer did not know that the servant was ill or seriously ill.

Well, I do submit that it is a duty that the employer should take all reasonable steps to find out whether any of his servants are ill and, having done so, then it is his further duty to supply them with adequate medical remedies. That is the reason why new sub-clause (1) has been included in this Bill.

Now I come to the recruiting clauses, 38 to 48.

The general scheme of these clauses, which have been inserted in accordance with the decision of the convention, is as follows.

First, every recruiter and labour agent must possess a licence issued by a provincial commissioner under clause 39 (1) and, under the same clause, the provincial commissioner may require every applicant for such a licence to put up a bond. It is purely permissive, as you will see from sub-clause (2), it is not mandatory, and no doubt when a provincial commissioner exercises his discretion as to whether a bond shall be given or not he will have due regard to the status of each applicant. Such a licence when issued is valid for 12 months.

Secondly, every person must be recruited or engaged before being forwarded to his employer. That is sub-clause (3) of clause 38; in other words, a servant cannot be forwarded on approval. That is the object of that clause.

Passing on to clause 40, after a servant is recruited or engaged, before being forwarded to his employer he must be medically examined. If on medical examination he is found unfit, he must be returned to his home or his place of engagement at the expense of the recruiter or labour agent. That is contained in clause 40 (3).

Under clause 41, after medical examination and before being forwarded on to the employer, a recruited servant, not an engaged servant, only recruited, must be brought before a magistrate or justice of the peace in order that that magistrate or justice of the peace may make quite sure that that servant has not been recruited by misrepresentations or undue pressure. After the magistrate or justice of the peace is satisfied, the servant is sent off to his employer at the expense of the recruiter. That is contained in clause 44.

If an employer consents to the servant's family accompanying him, under clause 46 they are also forwarded at the expense of the recruiter, and the necessaries for the journey must be provided as set forth in clause 47.

Clauses 42 and 45 provided for a medical examination being delayed in certain cases and also if necessary, for a medical examination before and after arrival at the place of employment, if that is deemed necessary by a magistrate.

Clause 45 also deals with servants recruited or engaged who become sick on the journey to the place of employment and who have been found to be recruited either by misrepresentation or by mistake.

Clause 48 is the exemption clause, which exempts in certain cases recruiting operations from the provisions of clauses 37 to 47. These cases are set forth in (a), (b), and (c) of clause 48. These operations are, not to employ, more than a prescribed number of servants, operations undertaken within a prescribed radius from the place of employment (that prescribed radius will, of course, have

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to be made by rule), and operations for the engagement of personal and domestic servants.

Clause 48 and clauses 51 to 56 reproduce the present law.

Clause 50 is new, and deals with this offence of desertion, which I have already referred to in the definition of desertion in clause 2.

Clause 57 is new, and provides for a labour officer acting on behalf of a number of servants when they are endeavouring to recover their wages which are due from an employer. There is nothing novel in this, it is common form in the labour legislation in most of our colonies.

Here I am going to take a big jump, because clauses 58 to 72 reproduce the present law.

Clause 73 is new, and makes it an offence to give a promise before engagement of any advance of wages in order to induce a native to enter into a contract. There has been considerable trouble about this matter, and that trouble has been caused in the past by servants accepting advances from recruiters or labour agents and then absconding before engagement and, conversely, some employers have made large advances to servants prior to engagement and thus have been able to obtain a hold over them for a long period.

Clause 74 allows an employer to authorize the family of a servant to reside at the place of employment with that servant, but only with the permission of the employer.

Clauses 76 to 78 also reproduce existing law. So does clause 79, with the following additions: paragraphs (d) to (l). These are necessary to include in that rule-making power the recruiting provisions in clauses 37 to 48.

The proviso to clause 81 speaks of existing contracts, in that they will be deemed to be made under this Bill if and when it becomes law.

That, Your Excellency, is briefly the scope of this Bill.

MR. WALLACE seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, this is one of three Bills, the first of which was discussed yesterday, all of which deal with the employment of labour. This is a subject which vitally affects everybody in the Colony, whether they be employers or whether they are natives who are being employed. For that reason, we regard these Bills as of tremendous importance.

We are inclined to feel that, really, all this legislation should be incorporated in one Ordinance, so that we know exactly where we stand. That has been stressed already.

We also feel that this mass of legislation rather oversteps what is required at the present time, and we sometimes wonder why you cannot let well alone. We have no reason to believe that conditions are wrong in this country or call for any measure of change. One is told the reason for all this legislation is that there are bad employers of labour. Of course there are in every country in the world, but occasional hard cases do not necessarily mean that you have got to constantly alter the law nor, if you do, that it does very much good.

This particular Bill was produced at the beginning of this month with an idea that it should be passed this session. We are told that really this Bill is merely a consolidating measure, expressing the existing law in more convenient form with the addition of certain amendments which have become necessary owing to the fact that His Majesty's Government have signed an international convention concerning the regulation of certain special systems of recruiting workers.

I take it, as I said yesterday, on another Bill, that really when you talk about a Consolidating Bill you mean a tightening up, and not the reproduction of existing law in a more comprehensive and convenient form. Before I heard my hon. and learned friend opposite introduce this Bill I was going to point to the "Objects and Reasons" which appear at the end of the draft Bill and show that in many cases the law has actually been tightened. But the hon. member has in many, not in all, cases been perfectly frank and shown where the existing practice has been altered without the fact

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having in some cases been mentioned in the "Objects and Reasons".

Taking the cases first which have been mention in the "Objects and Reasons", there are 29 clauses which admittedly appear in changed form, 15 of them owing to the international convention and 14 for other reasons. I submit, even if one did go more deeply into this Bill and discover many other changes, these alone would suffice for us to request that, in common fairness, the public and people whose interests are affected by legislation of this kind should have ample opportunity of seeing what is happening.

For that reason, at the beginning of my remarks, I must say quite frankly that if it is the intention of Government to press this Bill to its second reading the European elected members will, unanimously, be obliged to oppose it. (Hear, hear.)

As I have said that, I feel I must justify why we feel that some of these changes require very careful consideration. I think that probably the best way of doing that is shortly to run through one or two clauses of the Bill.

I will not stress our objection to the interpretation of the word "task". That has been dealt with and will no doubt be raised by other members.

We feel that the inclusion of clause 6 (2) is a matter about which people should have an opportunity of expressing their views. The same applies to the alteration in clause 8.

Clause 9, although it reproduces the present law, there is a slight difference in wording, and again we come to "the Governor may by rule" do certain things. I am going to deal with that question at the end of the Bill when I am pointing out a very serious omission in it as compared to the existing legislation but, in the meantime, I should like to suggest that at any rate in clause 9 we must have "Governor in Council".

Clause 12 provides again to some extent for additional work on behalf of the employer.

Clause 17 deals with the question of "task" and payment for "task". There are very grave objections to this clause.

I think I know why some of these provisions have been incorporated in this Bill: because there are or have been bad employers who I believe on occasions have temporarily engaged boys and given them an impossible task to perform. The boys have stuck it for two or three days and never able to complete the daily task have been turned away with no pay, and the employer has thus got two or three days free labour.

I submit, Sir, that you can deal with people of that kind, with the full sympathy of everyone on this side of the Council, in another way, and that it is not necessary to cause hardship to the good employer because there are a few people of that kind.

There is a lot of new legislation with regard to juveniles. We have no particular objection at first sight to this legislation, but again I think we must point out that if you have a whole lot of new clauses put into a Bill of this kind it is not reasonable to give the public less than a month to study the effects of such new legislation.

We then come to that part of the Bill which deals with the "care of servants", and I think I am right in saying that the hon. and learned member has not referred to these innovations in the "Objects and Reasons" as changes. Actually these clauses have been, as he pointed out, reworded. I am going to point out one change, or two actual changes.

The first is in clause 35 (1), under which—

"It shall be the duty of the employer to take all reasonable steps to ascertain whether the absence from duty of any servant in his employ is due to illness."

The hon. and learned Attorney General in referring to this stated that he thought it was only reasonable to expect every employer to be able to do this. Well, Sir, as one who personally is an employer and who at one period looked after a very large labour force, I am afraid I do not agree with the hon. mover. It is quite impossible to do anything of the kind, however well intentioned one may be.

If you employ a very large number of labourers, you may have as many as 200 or more boys absent on any particular

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day, and is it suggested one has to go around 200 huts, probably spread of a large area, and find out exactly what is wrong with those people? What actually happens, of course, and what has worked very well I believe in the past, 999 cases out of 1,000, is that when a boy is seriously ill somebody comes to the occupier or manager and informs him and, in nearly an equally proportionate number of cases, steps are taken to look after that boy.

There is another innovation on page 13, that now we have got to deal with the Principal Labour Officer and the nearest district officer. I should think that in the event of a servant being accidentally injured or killed, all that is necessary is to report to the nearest district officer. However, there may be some reason for the change.

I now come to recruiting, and there are a good many changes in the provisions that deal with recruiting which must be carefully considered by the big enterprises in this country who do recruit labour on a fairly large scale. Again I would stress that for us to allow a Bill of this kind to be introduced with so little notice, we should be laying ourselves open to every criticism.

One of the first changes appears in clause 39, under which—

"No person shall act as a labour agent or professional recruiter or private recruiter unless he is in possession of a licence issued to him by a provincial commissioner."

That is new. Admittedly certain exemptions are provided for under clause 48, but such exemptions, I submit, would not be sufficient in many cases to deal with a man who is in the habit of recruiting himself or sending some private servant who has been with him for many years to recruit on his behalf.

There is a change in clause 39 (4). Under the old Ordinance, one was only required to notify before one went in, but now one has to get the permission of a provincial commissioner in writing. Provincial commissioners are not always very easy to find, they have a lot of duties, and it seems quite unnecessary to put that change in.

In (c) there is also an innovation, that a—

"labour agent, a professional recruiter or a private recruiter is responsible for any omission of an employee to comply"

with these very complicated requirements.

Under (6) on page 15, you have got to keep a written record of all servants recruited, showing the father's name of each servant and son and so forth. When you have got the labour it is possible to do that, but many people engaged in recruiting, strange to relate, cannot read or write!

In clause 40 again, according to the wording of (3), a native—

"who is rejected as physically unfit for the duties or work for which he has been recruited or engaged", it does not state where, "shall be returned at his option either to his home or, to the place at which he was recruited or engaged at the expense of the recruiter or labour agent, as the case may be."

There again one has to consider the possibility of finding a gentleman whose original home was on the borders of the Congo and he is recruited right at the other end of the country; now apparently he can demand that you send him home to where he was originally born. That most obviously requires rewording.

There is a serious objection again to clause 41. You will find in clause 42 provision to exempt every recruited labourer from medical examination at the place of recruitment on engagement provided such examination takes place after he has reached the place where he is going to be employed, but no such provision exists as regards bringing such labour before a magistrate in clause 41. It is not always easy to find a district commissioner, who may be a very long way away, and some provision for exemption will obviously have to be made under that clause.

Again in clause 47 there is a change. In the old Ordinance we have to supply reasonable comforts, quite rightly, for recruited labour during their journey. Now it is specifically laid down that we have got to give them clothing and two blankets, in addition to cooking utensils and everything else. I submit that to tie

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one down to two blankets in certain portions of the country is quite unnecessary.

There is one point, which was raised on another Bill, on page 20 of this one, clause 54 (1) (*d*). Actually this is a provision which exists under present law. Just to stress that people really have a right to consider this sort of legislation very thoroughly before it is enacted, even were this a consolidating Bill, all I say is that when you see it in its consolidated form it is very alarming, and I submit that (*d*) should come out. I believe the hon. mover is sympathetical to the suggestion from his remarks on the Bill this morning.

I do not think it is worth going into the various other small points now, but I should like, before sitting down, to refer to the powers and duties which have been given to labour officers and to medical officers.

We all agree that it is only reasonable that they should have fairly for-reaching powers. But I would point out that there have been several significant changes in the wording of these provisions. As an example, under section 68, it used to be provided that a "labour inspector could enter and inspect and examine at all reasonable times any labour encampment" and other places. That is cut out, probably not with any intention, but it still seems a pity we should not keep in some such provision.

In the same section it used to be provided that a labour inspector "at all reasonable times and without undue interference with work require" the employer to produce any servant employed by him. It is now "at all reasonable times" and the other has been cut out.

There is the same thing with the powers given the medical officers.

It used to be provided that a medical officer could order at the expense of the employer certain food for a servant if it did not cost more than the ordinary rations or was within reasonable limits. Now, apparently, a gentleman can come in and order you to give the servant caviar and champagne to put him on his feet, because he can "order at the expense of the employer such food for a servant as he may deem necessary," and there is no safeguard whatever.

Finally, I notice one very big alteration indeed. You will see that under the old Ordinance the rules made by the Governor in Council have to be submitted to the Legislative Council at the next session thereof. That, at any rate, gives people an opportunity of commenting and expressing their ideas with regard to rules, which are very severe in some cases, which can be promulgated at any time about every sort and kind of thing and which interefere with one's everyday life. That proviso has been omitted in this Bill, and I submit it should be included. (Hear, hear.)

I have left out one very small point. Under this Bill I am no longer to be permitted to give a servant during any month an advance of wages in excess of one month's wages of such servant. I am afraid I have done this, and have every intention of doing it in future, whether the Bill passes or not, even if I commit an offence under this measure, because I think it ridiculous if I have an old servant and he wants two or three months wages to buy himself something that I should not be allowed to lend him the money if I chose to.

I was going to move an amendment to ask that this Bill should be referred to a select committee, but I see that, owing to the wording—which I think necessitates an alteration—of our Standing Rules and Orders that seems to be an impossible procedure. I therefore would urge and beg Government to accept a motion that the debate on this second reading be adjourned, because I think it will be a great pity if Government should attempt to force legislation on a country on a subject of such far-reaching importance as the relations between labour and employers, against the wishes of the elected members. I am afraid that we should have no possible alternative but to oppose this legislation until we have had time to put it before our constituents.

I therefore move that the debate be now adjourned, in the hope that Your Excellency will see fit in some way, possibly through Executive Council, to appoint a committee which can go into

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these points between now and the next session of Council.

MAJOR GROGAN: I beg to second the motion moved by my hon. colleague.

It has been a very interesting proof of the propriety of some of the contentions put forward yesterday that these complicated and interwoven problems should be dealt with by an omnibus measure instead of by piecemeal legislation, and this gives me the opportunity to reply to my hon. and learned friend opposite in respect of his winding up the debate on the last issue.

I would draw his attention to the fact that he overlooked the real gravamen of my charge against the measure, which was not the trivial matters to which he did refer but my substantial objection, applying also to this measure, that this is not really and properly an elaboration of machinery to facilitate minor civil practices, but is a very material and important extension of the criminal law of the country and, as such, in many of its general principles, entirely improper.

The only trouble in these matters is that we get a very large amount of this kind of stuff forced on us, and the only safeguard we have got against very much of this extrinsic mass legislation is the fact that when these model ordinances do become the law of the land no reasonable people pay any further attention to them, and they become to all intents and purposes a dead letter, except on those rare occasions when some gentlemen have some personal altercation and the more learned can go back into the past and pick up the proper ordinance to enable him to get home on the other gentleman!

It is no intention of mine to deal with any of the details, with one exception, because it is symptomatic of the absurdity of this form of legislation, the definition of the term "task".

I was very interested to hear the hon. and learned Attorney General's conception of a proper definition of a government department task. That is to say, 10 to 4, less a quarter of an hour getting started, a quarter of an hour getting ready to go away, minus two or three hours loafing. I think I am quoting him correctly.

That may or may not be a proper description of a government department task, but I suggest that it is peculiarly unwise to insert it in any legislative ordinance! (Laughter.)

He has asked for suggestions, I understand alternative suggestions of "task" in respect of the daily efforts of the nigger. Following upon that suggestion, I venture to produce one for his consideration, that the term "task" be defined as a mild excitation of those metabolic processes currently practised on African farms which are by courtesy called labour when defined by the labourer's desire to retire to his hut to sleep rather than by the passage of the sun. (Laughter.)

It sounds foolish, but it is not, because it is exactly what is defined as task in practice on the farms and plantations in the country. If you carry this sort of legislation to fantastic extremes defining all and sundry things, I would call the hon. Attorney General's attention to the fact that where he prescribes two blankets he does not define a blanket. I suggest for his consideration that if he defines one the other that I suggest may be: any textile fabric sufficiently coherent to harbour a bed bug. (Laughter.)

What I really want to call attention to is the fundamental objection to this Bill and the whole of this complex legislation. It is not to a lot of the minor purposes, the main objective of the Bill, or a certain number of ingredients; it is to the whole atmospherics of these measures.

Anybody coming as you, Sir, have quite recently done to this country who sits listening to this debate and asks what it is all about, would probably suppose that he was back in Australia 100 years ago considering some measure brought in there to regulate relations between convicts—euphemistically described in this Ordinance as occupiers—and ticket of leave men—euphemistically described here as natives!

The whole atmosphere is that there is something quasi-criminal in this very ordinary contract as between employers and employees for the purpose of growing sisal and other very much required things, and it seems entirely wrong that

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a criminal atmosphere should be allowed to penetrate this class of legislation.

I imagined, and I think a great many of my colleagues did, that a very large amount of the objectionable features, or absurd and exaggerated features, of the Bill were emanations from the post prandial elocutionists who infest Geneva and claim the right of dictating to the people of this country, though many of them are obviously enemies of the British Empire. We are relieved to find that one of the absurd things, the definition of "task", has not come from those neurotic gentlemen but is the result of the benevolent innocence of my hon. and learned friend's department!

What is the object of the Bill? As far as I can see, it is simple to divide it into three categories: one, to facilitate contact between employer and employee, a very proper thing; two, to simplify dealings with the consequential frictions which are inevitably derived from those contracts; and thirdly, to control the theoretical bad employer.

When you look at all classes involved, so many of these obligations are induced by the supposition that there is, generally speaking, here, there, all over the place the thing known as the bad employer, and as a result we get a mass of inapplicable legislation to deal with a hypothetical menace, just as surely as England has a very large amount of mass legislation to deal with the consumption of intoxicants. Beer, at one time looked on as a proper food for infants at breakfast time, is now regarded as a poisonous form of stuff only to be imbibed by adults under the most impossible conditions. I say that legislation which was inspired by the purpose of preventing alcohol becoming a public nuisance, a menace to society, now creates enormous inconvenience to 99 per cent honest citizens, and exactly the same thing applies in respect of this class of legislation.

The purposes involved in this problem are simple of differentiation: The occupier is dependent entirely on getting any of these contracts at all upon his good name and reputation. If he once gets a bad name and a bad reputation, even if only a reputation for being a niggardly or unsympathetic person, he gets no labour. The second part is the native, who has an enormous amount of personal protection, in that if he thinks he does not like the task, the period or the other party has the option of retiring to his own ancestral estates where he can live on chickens and bananas for the rest of his life. Thirdly, there is the administration, the third party.

The administration is always regarded in this particular connexion, that is the district commissioner, the district officer, as a sort of father of the district, a kind of soldier's friend, so to speak, of the native. He also has another sort of function which I believe is developed in practice at home by those cheery old ladies who hang about the police and divorce courts trying to make peace between parties. That, I think, is a very proper and main function of administrative officers in a country of divers population such as this.

The more you leave these three people alone, the less you tie them up with a lot of complicated documents they have subscribed to, the more you leave it to the give and take commonsense of the three parties, the more easily you will maintain and continue indefinitely the good relationships which have always prevailed in this country.

It seems to me, as I ventured to suggest before, that some omnibus measure to deal with such minor features of this problem as may require legislation is the obvious solution, and that we should put a match to this thicket, this sort of prickly pear growth, which is developing, before we get any further. I suggest that three sensible citizens of experience such as the hon. the Chief Native Commissioner, the ven. and hon. member, and myself (laughter), should be put at a round table and told "For heaven's sake take this potpourri of Geneva-ese, the accumulations and complications derived from the difficult periods of the country in the past, boil it down to what it really purports to be—a simple measure for making clear to everybody on both sides, employer and employee, what the obligations of one another are, and delegate as much power as you like to administrative officers to adjudicate between parties and settle the matter amicably."

[Major Grogan]
We have always got protection against the administrative officer as the native has against the employer, because we could always make it unpleasant for the administrative officer and get rid of him if he is not a sensible fellow who understands his major function, which is to maintain the peace and goodwill of the district. The more we can defer the general issue for closer inquiries and cut out all these dreadful complications and get back to what we are driving at, the better for everybody.

I assure you that my honest opinion after 40 years experience of Africa, is that this measure and the measure we have dealt with are in fact impractical measures. They are only going to lead to an enormous amount of irritation and friction in every sort of direction by tying up and defining the power of people, whereas this power is being exercised quite improperly but with very beneficial results by give and take commonsense all the way round.

I will only conclude by laying very great emphasis on my hon. friend's objection to giving power to Government to extend this class of legislation to infinity by rules, without offering those rules for careful inspection. It applies especially in this particular case, because this particular case is one where the ordinary citizen is very much at the mercy of what I described yesterday as the fanatic.

I do not mean it in any offensive sense, but people tend to become monomaniacs —specialists I believe is the correct term —but they are usually monomaniac and one of the most dangerous type of persons in the world if you give him any executive authority. As a stimulus to inquiries he is good, but in an executive position he will wreck anything in the world. That is my experience. If you allow anybody to formulate rules and give them legislative authority in respect of how people are going to house, feed, and equip employees I do not know where we are going to go. For instance, suppose some of our wild men were let loose to define what sort of house we had got to build for these people. They have never had that executive authority fortunately, but by persuasive and minatory methods they have induced citizens to put up enormously costly barracks for employees! I was privileged two years ago in my constituency to examine one such buildng which cost £5,000, and the natives were living in their ordinary huts in the bush. This palatial residence was retained as suitable for goats, and even the goat resented it bitterly because it was covered with corrugated iron and they suffered intensely from the heat, while there was nothing to nibble!

I do not know, Sir, whether you had the privilege in the recent agricultural show to be taken over what is supposed officially to be the ultimate ideal home of the native of this country? I have been taken on several occasions by my hon. friend opposite to inspect this thing. I even had the privilege of contributing £35 worth of timber towards its construction as a present, because I thought it would serve a good many purposes, especially to see how far imagination could gallop without check, financial or otherwise. I also watched my fellow citizens thinking this building was put up as an ideal home for a gentleman on retirement after successfully farming for 20 or 30 years, or for a retired Civil Servant from India. They were considerably astonished to find that this was the conception of my hon. friend opposite of the type of house proper for the black inhabitant of this country, including the stable where he could put his donkey!

If you examined it in detail, you found under the bedroom even the pan. But when you put the question as to how that particular utensil was to be dealt with by the tribe for whom this building was primarily designed, you found that you would have to call in the members of another tribe to give it any sanitary utility! (Laughter.) You had to employ a member of a neighbouring tribe in order to co-operate in these household operations.

That is a fact, Sir, it is not fiction. This is something anybody can go and verify by walking to the show ground and seeing for themselves. I am not suggesting it is not a very proper home for the year 2937 or whatever it is, but it is not practical politics now, yet it is being done to-day by a department of the country.

[Major Grogan]

By these Bills, with their rule-giving powers put into effect, make it quite impossible for people to struggle against fearful odds, and work satisfactorily together, and we should find ourselves completely at the mercy of that kind of extravagant absurdity. I do therefore trust that Government will agree that these matters require very earnest, careful, co-operative consideration before they are imposed on this country.

MR. LOGAN: Your Excellency, for the reasons put forward by the hon. Member for Nairobi North (Major Cavendish-Bentinck) I have to say, on your authority, that Government is perfectly prepared to allow further opportunity for discussion of this Bill and consideration of it by those affected, and that we are quite prepared to accept the motion. Your Excellency will in due course appoint a committee which can take evidence on the subject so that further consideration may take place when Council resumes its next session.

The question that the debate be adjourned was put and carried.

The debate was adjourned.

NATIVE REGISTRATION (AMENDMENT) BILL

SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Native Registration (Amendment) Bill.

In this Bill there are no amendments of any consequence to the principal Ordinance, but I think I am correct in saying that if it is moved from the other side of the Council that this be deferred, along with the other Bill, that will be accepted by Government.

Clause 2 of the Bill re-defines the word "employer" in order to correspond with the definition in the Bill we have just considered.

It also defines "employment or engagement" in order to deal with a situation which occasionally arises that a native is engaged for work in exchange for food and lodging. The employer claims he is not a paid servant, therefore it is not necessary to endorse his certificate.

Sub-clause (2) of clause 3 amends section 6 (2), by making it incumbent on an employer to endorse a registration certificate when the native leaves his service. Cases have occurred of employers refusing to do this.

Clause 3 (3) provides for an employer endorsing a certificate in blue or blue-black ink, because there have been cases of endorsements in different coloured inks to express an employer's disapproval of the employee's services.

Clause 4 (*a*) is a new sub-section, which provides that the native, on leaving the service of his employer, must obtain an endorsement on discharge. This is specially to meet employers who have been in the practice of giving indefinite leave to natives. I would remark here that this is probably in the interests of employers, who lay themselves open to continued payment of wages by giving indefinite leave.

The proviso to clause 4 (*b*) is to prevent a native being punished twice for the same offence.

Clause 5 (*a*) is necessary, because the Chief Registrar of Natives keeps returns, and any returns should be sent to him and not to the district commissioner.

Clauses 5 (*b*), 6, 7 (*c*), 9 (*b*) and 11 deal with penalties under the Ordinance, the principle underlying the amendments being that imprisonment can only be given in default of payment of a fine.

Clause 7 (*a*) amends the present law by prohibiting any engagement of a native with a mutilated certificate, and (*b*) makes the production of a registration certificate compulsory.

Clause 8 amends section 14 of the present law. As the law stands at present finger prints should be sent for comparison to the Central Bureau. There is no longer an officer in charge of that, and the bureau has now been absorbed into the office of the Chief Registrar of Natives, hence that amendment.

Clause 9 (*a*) limits the power of the police to demand a certificate of registration to officers of and above the rank of assistant sub-inspector.

Clause 12 introduces two new sections. The first is designed to simplify the procedure in cases of multiple offences against any particular Ordinance. The

[Mr. Willan]

second empowers the Chief Registrar of Natives to institute proceedings for offences against the Ordinance, and also provides that he can produce in court a certificate as to the failure of an employer to submit a return and that certificate shall be evidence, unless the court requires him in person.

There is one final point to mention. Later on it will be necessary to delete from this Bill all reference to the registration of Somalis. Under the present law they are required to be registered but, in fact, they have not been registered for the last 16 years and there is no reason why that provision should stand. Therefore there will be a further amendment, consequential, later on to delete all reference to the word Somali in this Registration of Natives Bill.

MR. WALLACE seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, if only for the reason that the "Objects and Reasons" of this Bill are "to bring certain definitions, penalties and methods of procedure into line with those in the new Employment of Servants Bill", I move that the same procedure be adopted with this Bill as with the Bill to which it refers.

There are quite a number of provisions in this Bill as to the wisdom of which we are in doubt, notably the question of granting an employee leave, which seems to be rather curtailed by this, and the production of kipandis to police officers. It is not worth going into these points now as I understand that Government will accept my motion, that the debate be adjourned.

MR. HARVEY seconded.

MR. LOGAN: For the same reasons I have your authority, Sir, to state that that motion will be accepted.

The question was put and carried.

The debate was adjourned.

1936 SUPPLEMENTARY APPROPRIATION BILL

SECOND READING

MR. STOOKE: Your Excellency, I beg to move the second reading of the 1936 Supplementary Appropriation Bill.

The object of this Bill is to provide formal legislative sanction for excess expenditure incurred in 1936. Full details of all additional expenditure have appeared in the schedules of additional provision which have already been approved by this Council, and the passage of the Bill is largely formal.

MR. WILLAN seconded.

The question was put and carried.

MR. STOOKE moved that the Council do resolve itself into committee of the whole Council to consider the Bill clause by clause.

MR. MONTGOMERY seconded.

The question was put and carried.

Council went into committee.

His Excellency moved into the Chair.

Clause 2.

MR. STOOKE moved that clause 2 be amended by the deletion of the words "and other funds" on line 2 and by the substitution of the word "is" for the word "are" on line 3.

The question was put and carried.

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

Clause 4.

MR. STOOKE moved that clause 4 be amended by the deletion of the words "and other funds" on line 3.

The question was put and carried.

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

MR. STOOKE moved that the Bill be reported to Council with amendment.

The question was put and carried.

His Excellency vacated the Chair.

Council resumed its sitting.

His Excellency reported the Bill with amendment.

THIRD READING

MR. STOOKE moved that the Bill be read the third time and passed.

MR. WALLACE seconded.

The question was put and carried.

The Bill was read the third time and passed.

ADJOURNMENT

Council adjourned till 10 a.m. on Monday, the 9th August, 1937.

Monday, 9th August, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, the 9th August, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of Friday, the 30th July, 1937, were confirmed.

PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

BY MR. LOGAN:

Schedule of Additional Provision No. 2 of 1937.

Game Department Annual Report, 1936.

BY MR. WILLAN:

Report of Select Committee on the Native Hut and Poll Tax (Amendment) Bill.

Report of Select Committee on the Trade Union Bill with Minority Report by Hon. A. N. Maini.

Report of Select Committee on the Resident Labourers Bill with Minority Reports.

BY MR. WALLACE:

Report of Select Committee on the Shop Hours (Amendment) Bill.

BY MR. GARDNER (CONSERVATOR OF FORESTS):

Statement relating to a licence granted to cut bamboo for the manufacture of paper pulp.

NOTICE OF MOTION

MAJOR CAVENDISH-BENTINCK, under Standing Rules and Order No. 28, gave the following notice of motion:—

"That a committee be appointed to consider to what extent further assistance to settlers with approved qualifications can or could reasonably be provided by the Land Bank or by Government, and what provision could be made for imparting knowledge and experience of local agricultural conditions to newcomers, with a view to the establishment of a practical Settlement Scheme based on something tangible.

ORAL ANSWERS TO QUESTIONS

No. 32—OIL EXPLORATION LICENCES

MAJOR CAVENDISH-BENTINCK asked:—

1. Is it not a fact that an official application was submitted in due form as laid down in section 4 of the Oil Production Ordinance, 1924, by a local group, for an Exploration Licence to search for oil over areas amounting to approximately 3,300 square miles, prior to any formal application in due and prescribed form being made by the Anglo Saxon Petroleum Co. and the D'Arcy Exploration Co.?

2. Is it not a fact that tentative discussions between a local group and the Mines Department had proceeded so far that a fee not exceeding £500 had been suggested by the former for the grant of an Exploration Licence over areas totalling about 3,300 square miles?

3. Why, if a local syndicate was prepared to pay up to £500 in fees for areas amounting to approximately 3,300 square miles, should not the Anglo Saxon Petroleum Company and the D'Arcy Exploration Company have been required to pay proportionate, or at any rate reasonable, fees for the two areas totalling 115,000 square miles?

4. Section 4 (*d*) of the Oil Production Ordinance provides that the Governor may reduce fees at his sole discretion, or he may authorize the refund of a part of such fee after the licence has been granted, under what powers therefore has the fee not merely been reduced, but entirely waived, in the case of two wealthy Companies, i.e. The Anglo Saxon Petroleum Company and the D'Arcy Exploration Company, at a time when sources of revenue were of such importance to the Colony?

5. Is it a fact that the Exploration Licence, of which notice was published in the Gazette of the 4th of May, 1937 (Notice No. 376), covering two areas totalling approximately 115,000 square miles, was granted for a period of two

[Major Cavendish-Bentinck]

years as from the 22nd February, 1937, for a disbursement of approximately Sh. 10 Registration Fee, Sh. 1 stamp duty, plus cost of conveyancing of Sh. 150?

6. Does not Government consider that an Exploration Licence of this nature is worth a substantial payment in fees, in view of the amounts extracted from the numerous mining companies who have applied under the Mining Ordinance for Exploration and Prospecting Licences in the Colony?

7. Under what authority did Government give the undertaking that in addition to the Exploration Licences, no right to search for and/or develop oil in the remainder of the Colony would be issued to any other person, except in respect of four square miles applied for by Mr. Nourse, for a period of 12 months?

8. Does Government realize that as a result of the granting of this free option, no further prospecting rights can be granted over the remaining half of this Colony, at a time when another group are carrying out what are reputed to be very promising investigations into oil bearing prospects in a neighbouring Territory?

9. Is Government aware that by closing areas totalling 115,000 square miles to all prospecting or mining, under section 7, sub-section (*f*) of the Mining Ordinance vide Government Notice No. 167 in the Gazette published on March 2nd, considerable hardship has been caused to local prospectors who had spent, and were spending money in prospecting for other minerals in these areas? And does Government consider that such action is likely to encourage development?

MR. HOSKING (COMMISSIONER OF MINES): 1. An application by a local group was made on the 14th November, 1936. At that time the Government had agreed to certain proposals which had been put forward some three months previously by the Anglo-Iranian Oil Company and the Anglo-Saxon Petroleum Company for an oil survey of the Colony.

2. The answer is in the affirmative, but no such suggestion was accepted.

3. In view of the advantage of having the entire Colony reconnoitred for oil by experienced geologists, acting on behalf of two well-known oil companies, Government considered that a nominal fee of £100 was adequate.

4. This question does not arise as the fee has not been entirely waived.

5. The answer is in the negative.

6. The answer is in the negative. Government considered that a substantial fee should not be collected from these reliable companies for the exploration licence, but that full consideration should be given to the collection of the prescribed fees if and when application should be made for an Oil Prospecting Licence.

On the same analogy, fees other than for registration, conveyancing and stamp duty have not been collected for exploration and prospecting licences under the Mining Ordinance, except in the areas known to be mineralized and proclaimed under the Mining in Proclaimed Areas Ordinance, 1933.

7. The issue of an Oil Exploration Licence is discretionary. The application for the Oil Exploration Licence was made in respect of the whole Colony but, as the grant of the licence might conflict with general prospecting under the Mining Ordinance, it was deemed advisable to issue the licence in the first instance, only over such areas as were considered to be potentially oil bearing, but it was considered equitable to the licensees to give them an assurance that no oil exploration licences would for a limited period be issued to other applicants over the remainder of the Colony.

8. The answer is in the affirmative.

9. The answer is in the negative. The attention of the hon. member is drawn to section 16 of the Mining Ordinance, 1933, and to a paragraph which appeared in the *East African Standard* of the 7th May, 1937, headed "Closed Areas", in which it is made clear that the Commissioner is empowered to permit prospecting and mining in such areas usually by way of Exclusive Prospecting Licence.

MR. HARVEY: Arising out of those answers, Your Excellency, may I ask whether there is anything in the arrangement which makes it incumbent on the licensee to get on with real promptitude with the work of exploration?

MR. HOSKING: The answer in the affirmative.

No. 33—LEROGHI AND WHITE HIGHLANDS

MAJOR RIDDELL asked:—

Will Government redeem their promise made to elected members at the Carter Commission debate in October, 1934, and inform Council whether Leroghi is to be retained as an integral part of the White Highlands or whether it is to be handed over to Samburu or what is its ultimate destination?

MR. HOSKING (ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT): The reference to a redemption of a promise is not understood. The position is that the Kenya Land Commission recommended that the Leroghi Plateau should be a "D" area with priority of native rights and should be reserved for native use and occupation for such time as may be necessary.

In October, 1934, when the Land Commission Report was being debated in this Council, a resolution was accepted by Government and passed in which the hope was expressed that full consideration would be given to locally expressed views in regard to detailed recommendations. The attention of the Secretary of State was drawn expressly to the views on the classification of Leroghi Plateau put forward during the debate by several of the unofficial members but no reason was seen by this Government for any departure from the Commission's recommendations. Government has had no evidence that the occupation of this land is not now needed by the Samburu.

No. 34—GAME IN N.F.P.

MAJOR RIDDELL asked:—

Is it correct to state that Turkana natives are actively exterminating the game in the N.F.P. and if the answer is in the affirmative what steps is Government taking to control the slaughter?

MR. LOGAN: It is understood that this question relates to certain Turkana tribesmen who have filtered into the Samburu District. Government is fully alive to the poaching activities of these people. Early in 1937 active steps were taken by the Game Department in conjunction with the Administration, to curb these activities. Game scouts have been increased and steps are being taken both to encourage agricultural pursuits among them and to bring them under closer administration.

No. 55—NAIROBI COMMONAGE

MAJOR RIDDELL asked:—

Will Government make a statement as to the present position of the Commonage (Nairobi) and whether this area is to be gazetted as a Game Reserve in the near future?

MR. HOSKING: The Nairobi Commonage is at present part of the proclaimed Game Reserve. Proposals have been under consideration for the establishment within this area of a Game Sanctuary. Provision must, however, be made for the grazing on the Commonage of such stock as may be necessary for maintenance in the Nairobi Municipality, either as transport stock, stock in transit, stock belonging to authorized Somali residents in Nairobi and stock held in Nairobi for slaughter purposes. Investigations into the numbers of cattle which could reasonably be expected to require grazing on the Commonage and the circumstances under which this grazing should be provided are at present being carried out in active consultation between the District Commissioner, Nairobi, and the Municipal authorities. It is hoped that an early solution to the problems will be found.

MAJOR RIDDELL: Arising out of that answer, Your Excellency, may I ask whether the hon. the Commissioner for Local Government is aware that the Somali stock, obviously in excess of the prescribed number, are still and have been for many years on that commonage?

MR. HOSKING: I do not quite understand the use of the word prescribed. I am aware that stock in excess of that recommended by the Kenya Land Commission is being kept by Somalis on the commonage.

MAJOR RIDDELL: Arising out of that answer, surely there was a regulation as to the numbers of cattle laid down before the Carter Commission Report?

MR. LOGAN: I am not aware that there is any definitely appointed number of cattle there, but the whole question of the numbers of stock kept by these Somalis is one of the points receiving consideration at the moment, and the hon. member may rest assured that that aspect of the problem is under active consideration.

QUESTION WITHDRAWN

MAJOR RIDDELL: Your Excellency, I ask the leave of the Council to withdraw Question No. 36.

No. 37—FREEHOLDING OF TITLES

MAJOR CAVENDISH-BENTINCK asked:—

With reference to the reply by Government on 18th November, 1936, to a question by the hon. Member for Nairobi South, to the effect that Government intended to appoint a committee to consider and report on the question of conversion from leasehold to freehold of titles in respect of land held in townships and elsewhere in the Colony, is the Land Department still too fully occupied with work in connexion with the Land Commission Report for any such inquiry to take place?

MR. HOSKING: It is hoped that in the near future the Land Department will be fully occupied with legislative measures in connexion with the Land Commission Report.

MR. HARVEY: Arising out of that answer, Sir, is it not a fact that in the year 1922 an authoritative and representative commission recommended such conversion?

MR. LOGAN: That is a fact, I think it was 1924, but answers have been given previously in this Council that Government is fully prepared to undertake the inquiry at some convenient time.

MAJOR CAVENDISH-BENTINCK: Perhaps we could be informed how many years it is going to take a Government department to deal with the Carter Commission Report before taking on any other work?

MR. LOGAN: That is a matter of speculation, Sir!

No. 38—INDIAN LUNATIC ASYLUMS ACT, 1858

MAJOR CAVENDISH-BENTINCK asked:—

Is it a fact that the mentally afflicted in the Colony are still being dealt with under the provisions of the Indian Lunatic Asylums Act of 1858?

If the reply is in the affirmative, does not Government consider that in view of progress which has been made in medical science since the middle of the last century a more up-to-date Ordinance is overdue?

DR. PATERSON (DIRECTOR OF MEDICAL SERVICES): The answer to both parts of the question is in the affirmative. It is hoped to introduce amending legislation early next year.

No. 41—OCCUPATION LICENCES

MR. SHAMSUD-DEEN asked:—

Is Government aware of the fact that various Administrative officers in the Native Reserves are giving notices of termination of the yearly temporary occupation licences held by Indian shopkeepers and traders under the Crown Lands Ordinance, 1915, in recognized trading centres and townships and continued for decades before the introduction of the Native Lands Trust Ordinance, 1930, and that these shopkeepers and traders are being offered instead a yearly grant or a sort of licence in a specially concocted form purporting to be under the Native Lands Trust Ordinance but totally contrary to the provisions contained in section 23 of the said Ordinance and sections 10 and 11 of the Rules thereunder and also contrary to the recom-

[Mr. Shamsud-Deen]

mendations of the Kenya Land Commission, thereby taking away from these shopkeepers and traders even the temporary and frail security of tenure under the Crown Lands Ordinance, 1915, leaving them at the mercy and the idiosyncracies of the Local Native Councils and Local Boards?

2. Will Government, in accordance with the provisions of the Native Lands Trust Ordinance and the recommendations of the Kenya Land Commission, consider the grant of at least 33 years lease to all non-native shopkeepers and traders for plots in recognized trading centres where they had established themselves in good faith with the consent of the natives concerned and of Government before the passage of the Native Lands Trust Ordinance and the Rules thereunder, as specially mentioned and contemplated in section 13 of the Rules referred to above?

MR. HOSKING: Government is aware that Administrative Officers in some districts have, in their capacity as Assistant Land Officers, given notice of termination of Temporary Occupation Licences under the Crown Lands Ordinance held by shopkeepers and traders in recognized trading centres and townships and have offered in substitution therefor yearly leases under the Native Lands Trust Ordinance. This procedure is not, in the opinion of Government, contrary to the provisions of section 23 of the Native Lands Trust Ordinance, nor is the form of lease now in use for this purpose contrary to the provisions of Rules 10 and 11 of the Rules under the Native Lands Trust Ordinance; nor is Government aware that any action that has been taken in the matter is contrary to the recommendations of the Kenya Land Commission.

Government is not at present prepared to consider the grant of 33 year leases for plots in trading centres in respect of which no development plan has been prepared. Application will, however, be considered for the grant of 33 year leases in respect of trading plots in Native Reserve Townships in respect of which development plans have already been approved or may from time to time be approved.

No. 42—CONTINUATION CLASSES, NAIROBI

DR. DE SOUSA asked:—

1. Is Government committed financially towards the Continuation Classes recently started in Nairobi?

2. If so, what is the amount to which it is committed during 1937?

3. From what vote in the approved Estimates for 1937 is such amount to be spent?

4. If the amount in question was not specifically provided in the 1937 Estimates, under what authority is the said amount being spent or has already been spent?

5. Are any educational officers in the service of Government, engaged in the work of the Continuation Class and, if so—

(a) how many of them?

(b) what emoluments is each of them receiving? and

(c) by whose authority were their services made available?

MR. MORRIS (DIRECTOR OF EDUCATION): The answer to the first part of the question is in the negative and, therefore, parts 2, 3 and 4 do not arise.

In regard to part 5:—

One officer of the Education Department superintends the classes and acts as Secretary to the Committee. For these services he receives an allowance at the rate of £50 per annum, paid by the Nairobi Municipality.

One officer of the Department is lecturing in Swahili and receives remuneration at the rate of Sh. 15 per hour, for one hour per week.

The services of these officers were made available on the authority of Government.

No. 43—GROUPED HOSPITAL, NAIROBI

DR. DE SOUSA asked:—

1. Has any finality been reached with regard to the erection of a Grouped Hospital in Nairobi?

2. Has the special committee appointed by Government last April issued any report and, if so, will

[Dr. De Sousa]

Government lay such Report on the table of this House?

3. Is the original amount earmarked from loan funds for the erection of a grouped hospital for Nairobi still available for the purpose and, if so, will Government give an undertaking that this amount will be immediately used for the building of the more urgent parts of the scheme, leaving the less important ones for a future occasion when funds may be available?

MR. LOGAN: 1. The answer is in the negative.

2. The report of the *ad hoc* Committee has been received and has been referred for consideration by the Loan Works Committee on whose recommendation the *ad hoc* Committee was appointed. The report will be laid on the table in due course.

3. The answer to the first part of the question is in the affirmative, but Government is not prepared to give any such undertaking as suggested by the hon. Member.

No. 45—BAMBOO PULP PAPER

MR. HOEY asked:—

1. Will Government state whether any concession has been granted to exploit any bamboo forests of the Colony for manufacturing paper pulp?

2. If the answer is in the affirmative, will Government give full details?

MR. GARDNER (CONSERVATOR OF FORESTS): The answer is in the affirmative. A statement has been laid on the table.

No. 46—UPLANDS-NAKURU RAILWAY

MR. LONG asked:—

Will Government state its intentions with reference to realignment of the railway between Uplands and Nakuru?

SIR GODFREY RHODES (GENERAL MANAGER, K.U.R. AND H.): The Railway Administration is considering the possibility of carrying out certain major realignments between Nairobi and Nakuru, with a view to effecting economies in working costs and increasing the capacity of the Railway by the reduction of gradients.

The fact that such realignments are physically possible has already been established, and the detailed survey between Uplands and Nakuru now being made, will be completed in the near future.

On completion of this survey it will be possible for the cost of the realignments on that section to be estimated, and the Administration will then be in a position to examine the economic aspect of the proposal and to decide whether the advantages gained would justify the expenditure and outweigh the disturbance involved.

Should the results of this investigation appear favourable, opportunity will be given to all interested to submit any representations they may wish to make.

In the meantime, the Acting Chief Engineer will be glad to indicate the approximate position of the new alignment to anyone who will call upon him.

No. 47—KITALE POST OFFICE

COL. KIRKWOOD asked:—

Will the hon. the Postmaster General supply details of the proposed additions to the Kitale Post Office to the Local Authority concerned?

MR. HEBDEN (POSTMASTER GENERAL): The answer is in the affirmative.

ROAD CONSTRUCTION FUNDS

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

"Be it resolved, that this Council approves additional expenditure during the year 1937 of an amount of £17,081 upon the purposes specified in the Schedule hereto as a charge against the loans of £64,000 and £35,000 respectively granted by the Colonial Development Advisory Committee for road construction in the Mining and Tea areas of the Colony.

SCHEDULE

Colonial Development Fund.	
Roads in Mining Areas ..	£14,000
Lumbwa Kericho Roads ..	£3,081
	£17,081"

[Mr. Stooke]

This motion is largely formal in character. Work on these roads has progressed rather more rapidly than was expected, and further funds, as shown in the motion, will be required in addition to those provided in the Estimates for the year. The money will, of course, be drawn from the Colonial Development Fund and will appear as revenue. I may say that there is no question of reallocation of the amounts allotted to these various roads.

MR. WALLACE seconded.

MR. HARVEY: Your Excellency, recently I made it my business to traverse these particular roads. I honestly believe that the money so far voted has been well and wisely spent, but the people who are so vitally concerned with the progress of this important work would be greatly interested to hear from the hon. the Director of Public Works exactly what progress has been made, how soon he expects the roads which are nearing completion to be finished, with special reference to the road from Lumbwa to Kericho, and how soon he hopes to get on with the extension to Jamji and, after that, the extension of an all-weather standard road from Jamji to Chemagel as part of the scheme for the Jamji-Lolgorien Road ultimately?

MR. WALMSLEY (ACTING DIRECTOR OF PUBLIC WORKS): Your Excellency, the Lumbwa-Kericho road was expected to be finished by the end of the year but the rains interfered with the original programme. I now expect to complete it before the end of the year.

The rains also interfered with the Kisumu-Kakamega road, which was expected to be completed by the end of August; it will now be October. The staff employed will be transferred to the Kibos-Kibigori road. The Jamji-Chemagel road has been in course of preparation with such staff as could be spared to do it, and the staff now employed on the Lumbwa-Kericho road will proceed to that on completion of the latter road.

Further details I am not in a position to give at the moment.

The question was put and carried.

EXCLUSIVE TRADING LICENCE: TOBACCO

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

Whereas His Excellency the Governor in Council by Order in Government Notice 574 of 1937 dated the 3rd day of July, 1937, declared the areas set out in the first column of the Schedule hereto to be areas in which the purchase and sale of the specified native produce set out in the second column of the said Schedule shall be controlled and regulated:

And whereas new or improved technical methods of preparation of the said specified native produce are essential:

And whereas His Excellency the Governor in Council is satisfied that the production of the said specified native produce in the said areas is susceptible of development and will be stimulated and advanced under special control:

Now, therefore, be it resolved that this Honourable Council, under the provisions of section 5 of the Marketing of Native Produce Ordinance, 1935, hereby approves the grant by His Excellency the Governor in Council of an exclusive trading licence for the purchase of the said specified native produce in the said areas.

SCHEDULE

The first column.

(*a*) Those portions of the Embu, Fort Hall and South Nyeri districts, forming part of a native reserve, with a radius of twenty-five miles from Sagana.

(*b*) That portion of the Kitui District within a radius of twenty-five miles from Kitui.

The second column.

Tobacco Leaf.

This is a proposal for a grant of an exclusive licence under the Marketing of Native Produce Ordinance for the purchase of tobacco leaf in two areas, one, part of the Embu-Fort Hall and South Nyeri districts, or the area about Sagana, and the other near Kitui.

This is the first application for issue of an exclusive licence which has been put before this Council. The Ordinance

[Mr. Wolfe]

was passed in 1935, and some three or four projects were put up to Government for the grant of a licence, but Government's determination in the matter was that the projects did not come within the conditions laid down in the Ordinance. This one, however, is considered by Government to come well within those conditions.

The Agricultural Department has for some years desired to develop the tobacco industry in the Sagana area but has not had the capital funds or staff for the purpose. Tobacco is an industry requiring very skilled attention and some substantial equipment. Experiments were made to judge the quality of the leaf, which was submitted to the British-American Tobacco Co. for its opinion. It was, however, fire-cured leaf, although the original intention had been to develop the flue-cured leaf industry.

The British-American Tobacco Co. submitted a favourable report on the leaf, and when it was made known to them that we were thinking of developing the flue-cured industry, they expressed themselves as interested.

By this time the Ordinance had been enacted, and it was clear to my Department that the only way to develop the industry was under an exclusive licence. Projects of this kind which require substantial capital investment will not attract private funds on any scale, except under the protection accorded by an exclusive licence to purchase over a period of years. Accordingly, a motion was placed on the order paper in Legislative Council last year.

The British-American Tobacco Co., however, requested the Department to put the matter off, since it desired to submit an application for a licence when advertised but wished to carry out a full season's experiments on its own account, to judge the quality of the leaf and the willingness of the natives to grow tobacco, before undertaking the investment. This suggestion was acceptable, and accordingly the motion was withdrawn in Legislative Council on the 29th October of last year.

The company then sent out an expert from America who, during the season, was joined by another expert. They erected a flue-curing barn near Sagana at a cost of £150, this being essential for the curing of the leaf. Five acres of tobacco were grown by a number of natives, and the green leaf was purchased by the Company at 4 cents a lb. The Company had themselves prepared the seed bed, raised the seedlings, and distributed them to the natives. This price was a higher price than any native in the area had ever received before for any produce, and they were highly pleased, and large numbers have come forward with a request to grow tobacco.

The experiment was a success, and the British-American Tobacco Co. has intimated its intention of applying for an exclusive licence when advertised. The Company has, from the beginning, been given to understand that Government is under no commitment to it, that the whole of its expenditure in this initial experimental stage of the industry has been entirely at its own risk, and the Company has fully understood that.

The experiments were confined to Sagana. The flue-cured tobacco requires a very special type of soil. Tobacco can be grown on a very large range of soils, but the significant factor of quality requires a particular soil, a light sandy soil, preferably with a clay subsoil. There is, in fact, a very narrow range of soils which can produce good quality flue-cured tobacco. A survey of the area around Sagana was accordingly made by the American expert and an agricultural officer, and it was found that a very small area of suitable soil existed, but it was patchy and scattered.

The company was then told that it was believed a larger area of suitable soil existed about Kitui. The expert and the officer visited it and made a survey, and the American expert expressed agreement with this view. Accordingly, the company asked that Kitui should be included in the proposal for an exclusive licence if it was to be advertised, and this suggestion was accepted. Hence the inclusion of Kitui in the motion for the licence.

The justification for an exclusive licence under the Ordinance is new or improved methods of manufacture. There is no flue-cured tobacco industry in the whole

[Mr. Wolfe]

of East Africa. In Uganda it is fire-cured, and in Nyasaland too. The capital expenditure required for flue-cured leaf may be judged by the fact that one barn costing £150 is required for every 6 to 8 acres, and a grading barn costing £250 for every 50 acres. In addition, expert services have to be kept in the field, and the British-American Tobacco Co. has intimated that, if successful in getting the licence, it will employ two European experts and two expert Indian curers from South India in the field. They will, besides curing, have to prepare the seed beds, grow the seedlings, and distribute to the natives.

Hon. members will understand that it requires a good deal of capital outlay and this with the new and improved method of preparation so far as Kenya is concerned justifies the granting of an exclusive licence.

Now I have to refer to the general term "tobacco leaf" which occurs in the second schedule under the motion.

It is proposed to include fire-cured leaf in the industry. Both areas are judged to be suited to this as well as flue-cured, and although it does not require the erection of curing barns (the curing is done by natives in their own houses) it still requires grading barns and expert services in the field and the preparation of seed beds and raising of seedlings and distribution. It is therefore proposed to take the opportunity of developing the fire-cured industry for the area. It is considered particularly desirable because a large number of natives are wishing to grow tobacco, and most of them will not be able to grow the flue-cured leaf. Hon. members will judge that from the fact that 100 acres of flue-cured leaf require 13 curing-barns, and the harvesting and curing make a very concentrated season requiring the unremitting attention of the experts.

It is proposed to attach a condition to the exclusive licence to regulate prices. The exclusive licence will be naturally one limited to the purchase of tobacco leaf in the areas, apart from sales between natives themselves of their somewhat inferior tobacco. It is not proposed to eliminate the ordinary native tobacco growing for domestic purposes, which will take place outside the carefully controlled industry. Consequently, it is very necessary to attach a condition, that the prices to be paid by the licensee will be subject to agreement with the Department of Agriculture, and that condition will be attached.

I think I have explained the situation fully, and I have no doubt I shall be asked to reply to certain questions.

MR. WALLACE seconded.

MAJOR RIDDELL: Your Excellency, I regret that I have not my notes on this subject, but I have been marooned by the rain for the weekend at Nakuru so that I was unable to get home to get them. Therefore, the remarks I am about to make are from memory and not from notes, and I stand accordingly to be corrected.

I am entirely in favour of the motion, and I should like to make one or two remarks about a similar company in Uganda, because it is constructive as regards the costs Government may be called on to pay.

The company that has this exclusive licence in Uganda paid last year £65,000 in excise alone. I understand that in Uganda, which is after all a model for us as regards these things, the excise duty in the last three years has been raised very little over double what it was when the company was formed. It seems to me that when you are fixing the price by agreement with the company and Agricultural Department that the company has to pay the natives, you have to take into consideration this fact of excise, because the excise is very nearly half the gross sales. I think that is right. Therefore, there is that point.

But the real point I want to make seems to me the point of expenses liable to be incurred by Government. Surely it is a good investment if we get anything like £65,000 in the form of excise.

MAJOR GROGAN: Sir, would the hon. the Director of Agriculture inform us what the ultimate objective is? whether the purpose of helping the production of tobacco on a large scale in this country is primarily aimed at the elimination of im-

[Major Grogan]

ports of tobacco for local consumption, or whether it is an export trade? because these questions of produce and their controls are becoming more and more important, and if Government is going to take steps to encourage production on a large scale for the export of tobacco I would beg the hon. member to remember that tobacco is one of the redundant crops; that is to say, there are a large number of European farmers in Rhodesia with farms equipped for the production of tobacco who cannot find any market or outlet for their produce and it has been for some considerable time a serious problem in Rhodesia.

It would be a great pity, I think, to go and invest in a particular form of production for export which would compete seriously with other portions of the British Empire. It is a curious thing that the stimulation of crops in this country as far as natives are concerned is in respect of crops that are all redundant.

A good deal has been done in Tanganyika and here and Uganda to stimulate the production of coffee by natives, although it is a well known fact that Brazil has two years stocks in hand sufficient to supply the world for two years and a new crop coming in more than sufficient for a year's consumption of the entire world.

It strikes me rather peculiar that crops which are dominantly produced on the capitalized method, a bad term, by Europeans or Indians such as sugar and tea are limited, and possible extensions of production in this country are checked, hindered, for the benefit of other countries in which possibly we have no concern at all. Whether that is legitimate Imperial policy or not is not the occasion to debate now, but the fact does remain that the most promising crops in this country, sugar and tea, are definitely restricted by an external ukase against the interests of the inhabitants of these territories for the benefit principally of the inhabitants ultimately of Formosa or any other country not concerned with Imperial interests.

I think this matter has got to be considered in its widest possible aspect, and I shall be glad if the hon. the Director of Agriculture will inform us whether the ultimate objective is export or the substitution of the local product for imported.

ARCHDEACON BURNS: Your Excellency, I should like to ask the hon. the Director of Agriculture whether the Local Native Councils have had this matter before them, and whether they are really at the back of it; that is, to help and encourage their fellow-tribesmen in the production of tobacco.

I understand that the tobacco has to be grown on the plantations of the natives themselves, not that the company has got an area of land on which to grow that crop, but it has to be grown by the natives on their own shambas and gardens. It would be rather serious for the company if they expended all that amount of money and, when they had finished putting up their buildings and other things, found that the natives were really not at the back of this enterprise, which, for my own part, I hope will be successful in these areas.

I should like to be given the assurance that the Local Native Councils have had this matter before them and that they are at the back of it.

DR. DE SOUSA: Your Excellency, I am in principle opposed to any form of monopolies, but at the moment I am only concerned with the effect which tobacco growing will have on another industry which has been encouraged in these two districts, in the Sagana and Kitui areas.

In the Sagana District the natives are already encouraged to grow cotton, and an Indian has invested large sums of money in providing for ginning operations. I understand that an exclusive licence has also been, or is being, given to an Indian in Kitui for ginning cotton. Although I understood from the hon. Member for the Coast (Major Grogan) that tobacco growing was only subsidiary, I cannot believe that the African at this stage of his development would be able to separate the two, cotton and tobacco.

I want to know the effect that the encouragement of tobacco growing in these two districts will have on the growing of cotton in the same districts, and on the money that is provided by Indian concerns for ginning purposes.

MR. HARVEY: Your Excellency, I wish to move a small amendment, namely, Sir, that the penultimate word in the sixth line from the end of the motion be deleted. I think I am right in saying that this Council is not "Honourable," although its members are!

As I shall not have an opportunity of speaking again, I support the motion in principle mainly on two grounds. As a producer myself I welcome anything that may tend to give the producer the maximum financial result for his labour and knowledge, and I think anything that makes for orderly marketing of any agricultural product should be welcomed.

There is another reason, and that is I think it is for the benefit of the community as a whole that instead of large sums of money going out of the Colony for the purchase of tobacco grown in foreign countries, we should as far as possible increase the wealth of the Colony by the production of more tobacco and keep the money in the country in circulation instead of sending it out for the purchase of foreign goods.

I beg to move the amendment.

MAJOR CAVENDISH-BENTINCK seconded.

MR. WILLAN: I am authorized by Your Excellency to say that the amendment is accepted! (Laughter.)

The question of the amendment was put and carried.

The debate on the original motion as amended was resumed.

MR. BEMISTER: Your Excellency, do I understand from the hon. the Director of Agriculture that in spite of the investigations and capital expenditure by this company, which I think is an English company, this licence is to be advertised and put out to anybody who bids? Because I do think it is bad to consult and encourage a large experienced organization to give you the benefit of their work, then to put it out to any Tom, Dick or Harry who will just play the fool on a gamble as has been done in a neighbouring colony.

MR. WOLFE: Your Excellency, the first question put to me is, what is the main objective of this industry? The main motive is to provide a high priced crop for the natives in these areas. In Sagana and Kitui they have no high priced crop. They have a medium priced crop, cotton, but not a great deal of cotton is grown in Sagana area. In my opinion, the area is better suited to tobacco than it is to cotton.

The main objective so far as marketing is concerned is to supply the local market with cigarettes. I am not in a position to judge the export possibilities, but I have no doubt that those who apply for a licence will judge for themselves what risk they are taking in providing the capital funds for the industry. At least, there seems to me no reason why this Colony should not enter the very large competitive market for tobacco leaf, both the local and overseas market. Undoubtedly the price of tobacco fluctuates, the demand does too for all products, but if we are not to embark on an agricultural industry because the price may go down on producers we should make very little progress.

A large production of flue-cured leaf is not anticipated. Not more than 100 acres will be under flue-cured leaf by the end of the third year. It is an industry to be developed very slowly indeed. I should like to suggest as well that there is no reason why this industry should not be extended to Europeans in suitable areas such as Maragua, but naturally it would not be covered by the exclusive licence.

As to whether the local native councils have approved of the granting or advertising of this licence, the local native council for Sagana area has approved of it. They have actually approved of the alienation of the land required for the barns and the houses, etc., but it has not been put to the council in the Kitui District. If that is considered desirable before the licence is actually granted that will be done. I have no doubt myself that the natives will welcome the new industry. It is only very recently that the Kitui District has begun to receive cash for its agricultural products. It has been so far away that the cost of transport was to high for its low priced

[Mr. Wolfe]

products, hence the desirability of introducing high priced products.

The tobacco will, of course, be grown on the natives' own shambas and not on land outside at all, and it will be very carefully supervised by the experts who will have to be put into the field; no matter what company or person obtains the licence expert services will have to be provided. There is, of course, an agricultural officer in the area as well to assist.

I was asked whether the industry is likely to interfere with the cotton industry in these areas. I have already said there is very little cotton in the Sagana District and that tobacco is more suitable to the area. Cotton production is increasing rapidly in Kitui, but it is a large area with a large number of natives that I feel confident there is room for both in that district.

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

ARYA SAMAJ COMMUNITY SCHOOL GRANT

MR. MORRIS (DIRECTOR OF EDUCATION): Your Excellency, I beg to move:—

"That under section 4 (*d*) of the Education Ordinance, 1931, a special grant of £850 be made to the Arya Samaj Community, towards the cost of the erection of the new girls school on plots Nos. 2233 and 2436 in the vicinity of the Fort Hall Road, Nairobi, the grant to be payable in instalments, as to £450 in 1937 and as to £400 in 1938."

In November, 1922, the Arya Samaj Community obtained a temporary occupation licence for Plot No. 14, Queen's Way. The lease was for a period of 3 years for the erection of a girls school. A stone building was erected on this site at a cost of £3,375, of which sum Government contributed £750 in the form of a building grant.

In December, 1933, the Araya Samaj Community were offered permanent occupation of a plot on a 99 years lease at a stand premium of £1,215, and an annual rental of £507-12-00. This offer was open to the 1st January, 1934. The society was warned that the temporary occupation licence would be terminated on the 31st December, 1934.

It was quite obvious, of course, that the society could not accept these terms. The school was not a business proposition. It was built and run by voluntary contributions for the benefit of the Community. In November, 1934, a deputation waited on the Commissioner for Local Government and asked that they should be allowed to stay on the plot at a more or less nominal rental. He informed them that this was impossible because it was a valuable site, and advised them to set to work to raise funds for a new building and then bring their case up to Government for further consideration.

In 1935 the Society was offered, and accepted, two plots on the Fort Hall Road, or just off, Nos. 2233 and 2324, and on those plots they have now erected a very fine building which accommodates between 150 and 200 girls. The original building on the Queen's Way plot cost £3,375; of the amount Government gave in the form of a building grant £750. The whole of this capital expenditure was lost except for £200 which was obtained from the building materials.

On the new plots they have spent £1,766 on the building.

Although the machinery for making these grants is provided by the Education Ordinance, owing to the very difficult financial position of the last few years no money has been voted for these purposes. But the special circumstances in this case fully justify some assistance being given. It will be realized by hon. members that by erecting this building the Society has freed Government from the implication of finding accommodation for about 150 to 200 Indian girls, and by vacating the plot on the Queen's Way a very valuable site estimated to be worth some £10,000 has been given up.

The £850 which I am now asking Council to vote has been arrived at by taking the amount spent on the original building, £3,375, of which amount £750 was paid by Government, leaving a balance of £937-10-00. That would be one way of calculating what the Arya

[Mr. Morris]
Samaj Community might expect to get from Government.

Alternatively, if we take the cost of the new building, which was £1,766, and take the £200 received for building materials from the old school, we get the figure of £1,576-10-00. Half of this would be £788. If we take the mean between those figures we get say £850. That is the amount which Council is asked to vote in two instalments, £450 this year and £400 next year.

MR. WALLACE seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, in view of the special circumstances I support this motion.

I would, however, like to say that I very much doubt whether this Council is in order in committing the Council, which may be a new one next year, to expenditure in another year's budget. In principle, of course, I am all for this expenditure next year, but I do think it quite wrong, subject to correction, for us to pass now expenditure for next year's budget.

I should like to pass £450 for this year, and merely suggest that Government, when it prepares its budget, should include £400 in the Estimates for next year. I believe that would be the proper course.

MR. SHAMSUD-DEEN: Your Excellency, I should like to congratulate the hon. mover on the motion, although I think the sum might have been more generous, but the Government have made a very good bargain out of it. As the hon. member said, they got a plot surrendered to them valued at nearly £10,000. Not only that, but the Society itself, as explained by the hon. Director, has been made to spend a sum in the vicinity of over £5,000 and are only getting £850 in the way of help. Of course, they have had help before.

There is one point I should like to mention, and it is this. As the hon. mover said, it is helping the education of the children, which is really the responsibility of the State, and all these aided schools, who draw an annual average aid of £2-10-0 from Government, give Government an annual saving of £6 to £7 per head. That in itself, if calculated, would come to quite a large amount which has been saved by Government, and the taxpayers of the country, by the Society carrying on this education by voluntary contributions.

In any event, I think it is a matter on which the Education Department deserves to be congratulated.

DR. DE SOUSA: Your Excellency, I too join in congratulating the hon. mover of the motion.

I should also like to thank him for initiating a system whereby Government take some responsibility in the education of the Indian children through grants for the building of communal schools.

I have intervened in the debate to draw the attention of Government to a paragraph that appeared in the 1936 Education Report in connexion with these girls schools:

"A meeting of representatives from community schools for girls in Nairobi was held in September, and the principle was accepted that Junior and Senior Cambridge classes should be combined and conducted in the Government School."

What does this mean? It means that some sort of arrangement is being made whereby primary education of all Indian girls in Nairobi is going to be the responsibility of the Indian public through their community schools, and that all Government will be asked to do for Indian girls education is undertaking the senior education, and that is by Junior and Senior Cambridge classes in the Government School.

This not only relieves Government of a year to year expenditure on the education of Indian girls but of an enormous amount in the provision of adequate Government school buildings for primary education, so that if £850 is sanctioned for this one school— where I understand about 200 girls are being educated—what should Government do in the case of other schools, some of which have buildings but have not yet met their liabilities. Some of them, like the Muslim Girls School, are not likely to proceed very far.

People in Nairobi will be interested to know that in 1936 there were 1,011 Indian

[Dr. De Sousa]
girls being educated in Indian community schools, and if Government had to erect a suitable school for all those girls Council can imagine what an amount of money would be needed in the capital expenditure, let alone recurring.

I intervened in the debate because I feel that this principle should be extended to all Indian girls schools in Nairobi in need of assistance for building purposes.

Council adjourned for the usual interval.

On resuming:

MR. LOGAN: Your Excellency, I beg to move that the motion be amended by the deletion of the following words: ", the grant to be payable in instalments, as to £450 in 1937 and as to £400 in 1938".

The proposal to pay in two instalments was done quite deliberately by Government, in order that there should arise no question in the minds of anybody that Government was accepting, in making this *ex gratia* grant, any question of principle or guiding lines to be followed in connexion with grants to privately erected educational institutions.

Government does, however, appreciate the point made by the hon. Member Major Cavendish-Bentinck, and there is no other objection to paying the whole amount of £850 this year.

Again I should like to stress that this grant is an *ex gratia* grant, based partly on the special circumstances which the hon. the Director of Education recited in full in moving his motion, and that no point of principle is acknowledged. (Hear, hear.)

MR. STOOKE seconded.

The question of the amendment was put and carried.

The debate on the original motion as amended was resumed.

MR. MORRIS: Your Excellency, that point of the payment by instalments having been disposed of, I think the only questions I have to answer are those of the hon. Member Dr. de Sousa, who seemed to fear that by the arrangement made in regard to the senior classes in the girls schools in Nairobi that Government was evading its obligations in regard to elementary education for Indian girls.

I can assure him that that is not the case. He is well aware that these girls schools run by the different communities in Nairobi exist really because it is the wish of the communities concerned that their girls should receive a rather special education, particularly in regard to religious matters. At the same time, it was pointed out last year that there was a very great waste of effort in carrying on very small classes in each community school and that it would be far more economical for all parties that a few girls from each school should be grouped together in the Government school for the Junior Cambridge course and also for the Senior Cambridge course. But it was not intended to close the elementary section of the Indian Government schools for girls.

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

MARKETING OF NATIVE PRODUCE (AMENDMENT) BILL

FIRST READING

On the motion of Mr. Wallace, seconded by Mr. Willan, the Marketing of Native Produce (Amendment) Bill was read a first time.

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

SETTLEMENT SCHEME: MOTION

MAJOR CAVENDISH-BENTINCK: Your Excellency, I beg to move:—

"That a Committee be appointed to consider to what extent further assistance to settlers with approved qualifications can or could reasonably be provided by the Land Bank or by Government, and what provision could be made for imparting knowledge and experience of local agricultural conditions to newcomers, with a view to the establishment of a practicable Settlement Scheme based on something tangible."

This is the first occasion this morning on which I have had the opportunity of speaking, and I would like to preface my remarks by congratulating both on behalf of myself and on behalf of all elected

[Major Cavendish-Bentinck]

members an old and personal friend of ours, the hon. Acting Colonial Secretary (Mr. Logan) on his appointment as Chief Secretary to Northern Rhodesia. (Applause.)

Your Excellency, the motion to which I am speaking was read out this morning in an amended form to that in which it appeared on the Order Paper. I will in due course explain my reasons for making this amendment.

The gist of the motion is that we are asking for a special committee to deal with what we consider possibly the most vital problem which faces the country to-day. It may be said that we already have a plethora of committees and bodies for dealing with most questions. I hope to be able to substantiate that there is not only room but an urgent need for one further committee such as we propose should be set up.

We maintain that increased settlement is an essential to the further development of this country. We consider that the remarkable development that has been done in a very short space of time in East Africa is largely due to the enterprise of those people who came out here to colonise these territories, and I am glad to say that that opinion I have very frequently heard expressed by hon. members on the other side of this Council. Admittedly that we have occasionally been told that very little has been done by the settlers, but that accusation has been refuted on more than one occasion, and is certainly not the impression left on those best calculated to judge.

I need only quote one instance, and that is that when we recently had a visit from a well known cabinet minister of great agricultural experience from South Africa, he said, having gone round the settled areas, that he would not believe it had been possible for so few people to have done so much in so short a time.

In discussing this general question of increased settlement, one generally couples settlement with publicity. I do not know why; it is a convenient way of dealing with these two subjects, and of course they do interlock to a certain extent. So in developing my argument in favour of the appointment of this committee, I am going to just touch on the publicity side of attracting further settlement.

There is no doubt that, up to recently, very little has been known overseas of the developments which have taken place in these territories. When one goes to Europe, or even to South Africa, or any other part of the world, the general impression one finds is that either we are in the very, very early stages indeed and practically no development has taken place, or that these are hot, sandy, or swampy countries, as the case may be, in which very little will ever be done. Therefore, admittedly in connexion with settlement as in connexion with the general interest which one wants to stimulate, in order to get more investment, more visitors, more tourists, and generally in order to get better known, the question of publicity is a very important one.

But I think the question of publicity should, in the main, be rather divorced from settlement. I think that, in view of the better times, what has been done in these territories would be better known and would be more appreciated if a combined effort was made by all three territories to try and stimulate more interest on general lines in the territories as a whole. It would be to the equal advantage of all the territories, and I have great hopes that something on those lines will be done. That hardly comes within the range of this motion, and I hope to have another opportunity of dealing with it. But, as regards Kenya itself, when one has got the general potentialities of all these countries better known, there is no doubt whatever that a great responsibility rests on the people of this country; that is, to try and stimulate and inform people of the opportunities that exist in this country for those who are prepared to make their homes here and help to develop Kenya.

In the past there have been very few of what I call concrete settlement schemes. There was one immediately after the war, the Soldier Settlement Scheme, which was backed by Government and which undoubtedly did bring a great number of people into the Colony. But it is not uninteresting to see exactly how people have come into this Colony, and in what numbers.

[Major Cavendish-Bentinck]

In 1911 we had, according to the census of that year, before the war 3,175 Europeans. In 1921, largely owing to the post-war arrivals and soldier-settlers, we had 9,651, according to the census taken that year. In other words, in those 10 years we had trebled our European population. In 1931, that is in the next 10 years, you might say that roughly we again doubled our population, because at that time we had over 17,000 European inhabitants. But between 1931 and to-day things have remained much as they were, and I understand that according to the latest figures presumably we have somewhere about 18,000 Europeans here to-day.

Now, why has there been this lag? There are quite a number of reasons, but I think the chief reason really is the complete lack of policy, the complete lack of drive, the complete lack of anything tangible which is going to attract more white people to this country. Of course, in addition we have been through very very difficult times.

One is told frequently, when one asks why we did not have more stimulus from overseas, by the Colonial Office, and so on, that they are not yet satisfied that white settlement in this country is an economic proposition.

My reply to that is this: that during these years in which we have merely lagged, we have not gone back. We alone in the whole of the Colonial Empire, and almost alone in the world, are the only agricultural country that has had no assistance whatever, and yet has carried on. So I do not think that that argument holds water.

Another argument which may be put up is that it has not yet been established that these territories are really a white man's country. Perhaps if one is very pernickety, it may still be early days to draw any conclusion, but I think everything goes to prove that those people who have been born here do not seem to go back either in intelligence or physique. Indeed, I think if anybody quietly goes around the schools in this country and looks at the children, they will be amazed at the specimens of young manhood and womanhood that they see.

Furthermore, we have gone further than that, because quite a number of the children at these schools are the children of persons born in this country, so that I do not think we need have very much fear on this point.

Lastly, there is the argument of the difficulties of life in these sort of countries, the difficulty of getting education, the difficulties of getting entertainment and the amenities of life. There, again, I think that that can be easily refuted. A person of modest means can certainly live in these countries on a far higher standard than they can in Europe.

Educational facilities provided, thanks to the Directors of Education in whom we have been very lucky over a period of years, are quite remarkable for this country. Even as regards transport and being in touch with the rest of the world, after all, in a few months, we shall only be a few days from the capital of the Empire. There, again, we have everything in our favour.

Perhaps I should add that there is sometimes raised the question that there is no more land available. There, again, I can only refute that by quoting figures which are going to appear shortly in the agricultural census, which show that there is land. We have, of course, native reserves of 31 million acres, forest reserves of 3 million acres, the Northern Frontier and Turkana of 77 million acres (that, of course, has to be regarded as placed on one side), land has been alienated to the extent of 6½ million acres, and land surveyed for alienation of 1 million acres, exclusive of Government reserves and township reserves, and there is still unclassified land to the amount of 25 million acres.

I do not think there is any difficulty, if one really goes into the question, of finding land for many more settlers, even if one dealt only with the land already alienated and surveyed for alienation. In my original motion, as it appeared on the Order Paper, I did make mention of how much land remained for alienation or could be made available, and how much land there was which was not being beneficially occupied. I altered the wording of the motion in those respects as a result of a conversation with the hon. the Acting

[Major Cavendish-Bentinck]

Colonial Secretary, who quite rightly pointed out that possibly the type of committee I had in view would not be the right committee to inquire into this particular subject. As I have to some extent agreed with him, I withdrew the words from this motion, but I would like to stress that the whole question of land is very much interwoven with the question of further settlement, and I must say that the type of answers we have had this morning from Government as to whether an inquiry could be instituted into land holding and free-holding conditions is rather disappointing.

The question of land tenure was brought up first in 1921 or 1922. It has been constantly brought up ever since. Last November we were given an assurance that as soon as the Land Department could get free of work in connexion with the Carter Commission Report (that report is now over 4 years old) this would be undertaken. To-day we are told they are still too busy and it is all in the air. If we go along on these sort of lines indefinitely, we are never going to get a policy regarding settlement or a policy regarding anything else. Sometimes even when one is busy, one has to find time for inquiry into important subjects.

I have tried to establish the fact that we have a great deal to offer. We are past the stage of the depths of depression, when it was very difficult to show people that they had any real prospects in agriculture, and I maintain that if we do not go forward now, for now is the propitious moment, if we do not go forward and try in competition with other countries to tell people what we have got to offer, and help people to come here and see for themselves, and help people when they have come here and are putting their very heart and soul and money into this country, the country will go back, and the responsibility for that will rest on this generation.

It is not enough to get up in London or elsewhere and say that the modern young man has lost his sense of initiative and that if he had any he would come out here. What the modern young man has got is a sense of proportion, and a great deal of commonsense, and the first question he asks is "What have you got to offer?" If all we can say is, "Well, we think there is a certain amount of unalienated land, it is a good long way away, we can look it up in some book or get some information from some committee as to how many square miles or acres there are; there is still unalienated land but of course you have got to get people to sell and it is rather difficult to know what they will ask. You can learn local conditions, but you have got to go out there, and possibly the Kenya Association may be able to arrange for some farmer to take you but at what price we don't know. There is a Land Bank from which you can get a certain amount of assistance, but we don't quite know what," then these young men are not coming to this part of the world. They are going to places like South Africa or New Zealand or some other place, about which they can, in London, be told exactly how they will be looked after, helped financially or otherwise, and how they will be given land. In other words, it is a known settlement policy and a tangible settlement scheme which can attract that class of person.

You may remember, as an example of our shortcomings in this direction, that two or three years ago a gentleman, in the interests of a certain type of prospective residential settlers, retired Indian Army officers, went to Southern Rhodesia, and there he found they had a concrete plan with which to help the type of person whom he was representing. He came here and looked at this country, and came to the conclusion that we had more to offer, but we had no scheme and no methods of helping those people. We had nothing definite. We tried to knock out something definite, and got out two schemes, one for people who would get assistance from the Land Bank and go in for small scale farming, and another scheme for purely residential or consuming settlers.

After a lot of talk we were turned down on the first scheme by the Secretary of State. I have here a letter from him which says:—

"An essential part of Scheme 'A' was the provision through the Land and Agricultural Bank of Kenya for financial assistance for participants in the form of a Government guaranteed loan.

The Secretary of State has been unable to approve of the adoption of this scheme on the ground that it will not be possible to increase the Land Bank loan beyond the provision recently made . . ." etc., etc.

He may have had good reasons, but at the same time if we really believe, as we do on this side of Council, that most of what has been done here has been done by the white man, the unofficial white man who came and invested his all and spent his life here, and if we believe the future development of the country depends on that type of person, for heaven's sake let us get going now when things are getting better and try to get some of those people, and not be content for another 10 years with 18,000 people.

The only way it can be done is to get a committee, to get the assistance of those of vast experience of this country, who have nothing to sell but the interest of the country at heart, and co-opt the agricultural community and Government, and knock out something definite, so that when a man is bitten with the idea of coming out here he can see what we can do for him, that we can guarantee to look after him and help him to make a success of his new life in what I maintain is one of the best parts of the British Empire. (Applause.)

SIR ROBERT SHAW: Your Excellency, I have very much pleasure in rising to second this motion so eloquently moved by the hon. Member for Nairobi North.

One cannot in this country but be conscious, when one comes to this question of increased settlement and the cultivation of land, of the complete lack of any form of definite co-ordination or organization designed to bring about these ends. I know nothing more difficult than to meet the questions and inquiries of a visitor or friend or some young person from home who is thinking of looking for some new line in life. To meet the inquiries of such people on the most obvious subjects which they must be informed upon if they are going to make up their minds to try the country, such as what land is available, the terms on which it can be obtained, and what kind of financial assistance is available, whether Government gives any assistance or not, and finally, in what manner such people can obtain any knowledge of what they should do or partake in the experience of those who have gone before them, one must confess that one can only give the vaguest answers to those questions if one is met with them to-day.

These things can be found out. One can make inquiries at the Land Office or Secretariat or Land Bank or wherever it may be, but one can give no definite answers. There is no central organization or established body to which one can refer anybody of that sort and tell them that if they go there they will get all the information they want and can rely on the information they get.

I think we have got to realize, if we look back in the history of the country, when settlement was started 30 years ago, that we have passed now into a completely new era of settlement. Those were the days of the happy-go-lucky pioneer type of settler, who came out here to look at the country and was ready to chance his arm, who, the more acres he got the better he was pleased but did not know what to do with them. He had nobody to advise him, and he bought his experience, and has bought it at a very high price. But he did gain that experience, and that experience is available now for new-comers.

But we cannot expect that type of pioneering settlement to go on any longer, the time has passed. It is a magnificent thing to be able to record in this country that the impetus of the early settlers, both pre-war and immediately after, during the settlement schemes mentioned by the hon. member, has carried this Colony right on to the present day and right through the depression period, so that we can say, to take only our two big financial considerations—firstly, the Railway, that it is really in a magnificent financial position at the present time considering what it has been through, and secondly, we realize that the Colony's finances have made a less spectacular but still a satisfactory recovery the moment the tide began to turn—and

[Sir R. Shaw]

we realize these satisfactory results still come from the impetus of that early settlement and the people who came into the country in that more or less happy-go-lucky condition, but with capital, brains, energy, enterprise, and giving their all to the country.

We have got to follow that up, and it must be followed up in some reasonable, organized manner, and the committee such as is suggested in this motion would, I suggest, be an excellent step forward to try and get us into that condition of providing some kind of co-ordination to follow up the early work.

Of course, one of the first answers to a suggestion of this sort is that already mentioned by the hon. mover when he said there were people in the world who are still in doubt as to whether white settlement in this country is an economic proposition or not. I consider that is an entirely wrong way to look at that question. It is not a question of white settlement being an economic proposition or not. What we have got to realize is that the whole economic structure of the country is built up on white settlement, and if white settlement is not followed up, if it is not organized and developed by Government with Government assistance, then the economic structure built up so far must inevitably collapse and we shall have to start again on some other basis. I do not know what that will be.

That is the only way to look at it, and those people who in a kind of friendly academic manner discuss whether white settlers can make an economic success of life out here are besides the mark and, in that kind of criticism, do not contribute anything to our problem at all.

Your Excellency, I have little more to say, except that I think the whole subject has been set before you in a most admirable way by the hon. mover. He has explained the exact objects that he wants to achieve, and I can assure you that we are all with him and support him very strongly in those objects. I am only here to second the motion, and I second it most sincerely and have added what little bit of evidence I can to the remarks he has already made.

MR. LONG: Your Excellency, I also wish to support the motion put forward by the hon. Member for Nairobi North (Major Cavendish-Bentinck) and seconded by the hon. Member for Ukamba (Sir Robert Shaw).

The whole purpose, as far as I can see, of this committee being formed would be to organize the various industries, to define a definite policy for white settlement and to stimulate action.

To my mind, as I see it to-day, the position of the white settler in this country, without its industries organized and marketing facilities provided, is very similar to that of the gannets on the Bass Rock who, in order to keep the numbers down are daily encouraged by the fishermen to dive off the cliffs into the sea and break their necks in order to catch a fish which, in actual fact, is made of wood and looks like a real one!

We must have in this country for white settlement to go forward a definite policy, and I would ask hon. members opposite to, in the words of St. Paul, "Come over to Macedonia and help us." The devil can quote scripture for his purpose, I know, but, in fact, the white settler in this country does not come under that description, and the whole purpose is white settlement.

When I talk about white settlement, I do not talk about white settlement to the exclusion of the native interests. We are essential to them, just as essential to them as they are to us. At the present moment you have various ordinances—the Wheat Ordinance, the Pyrethrum Ordinance, and various others—but for some reason or other which I cannot understand the Dairy Bill has been set aside, yet this is one of the most important industries in the country. It has been talked about now for years and nothing has happened, and it seems to me that one of the chief objects of this committee would be to set forward a definite policy for co-ordination of industries and help white settlement as much as possible.

DR. KARVE: Your Excellency, I feel I have to oppose this motion: I think it is about 10 years premature.

In this country, which is a very young country, there is a tendency to go too fast

[Dr. Karve]

and to run before we are able to walk. Any forced colonization, whether it is white or any other sort, is bound to bring discredit on this country, as new settlers, coming without experience of the conditions, may founder and lose their capital as they have done in the past. Government some years ago tried the Soldier-Settlement Scheme, and I think everybody in this Council will agree that that scheme was a complete failure and resulted in a complete loss of capital for most of the soldiers or settlers who were asked to take part in the scheme.

The hon. Member for Nairobi North, while speaking to the motion made points or statements which I should say will not be accepted by many people.

In the first place, he made a statement that this country has now been proved to be a country suitable for white settlement. That statement, for one, has not been accepted by many eminent doctors, who have thought that this country is suitable only for such type of farming where managers can be kept to manage, given regular leave every two or three years to go home and recuperate.

Another statement was made that the white children in this country had very good health and their intelligence was just as good as elsewhere. Dr. McKinnon, a medical officer of local standing here for over 10 years, and medical officer to the European school in Nairobi, has made a statement in meetings of the British Medical Association and I think also in the Press, that this country is not suitable to maintain the health and intellect of the young rising generation, unless they have periodical leaves. I have talked with Dr. McKinnon myself.

There is also an opinion that this country is not a suitable country for the development of the small farm, and is only suitable for development by large farming companies who manage interests in different ways.

Unless all these points are cleared up by experience which can only be gained by passing on for a generation or two generations, it will be premature to force the development of this country by putting forth any advantages and special efforts on the part of Government to bring in new settlers very rapidly to this country.

One other point that the hon. mover made, was that the development of this country has been attained by unofficials without any Government aid—

MAJOR CAVENDISH-BENTINCK: On a point of order, I never said anything of the kind. The hon. member has quoted me as saying a number of things but I certainly never said that!

DR. KARVE: I am sorry if I misunderstood the hon. member, but I understood him to say that in other colonies like New Zealand, which is rather more grown up, they are making every effort to help the farming and agricultural industry and this Government had not done its share—

MR. SHAMSUD-DEEN: He said that this was the only Colony which has received no assistance.

DR. KARVE: That this is the only Colony which has received no assistance. It may be that the Colony has not given capital grants to farmers for farming; but in every other way it has helped the farming industry all it possibly could. The railway rating of this Colony has been devised specially for helping farmers in this country, even to the detriment of other races who have to pay a very large amount for imported goods which they have to buy. With all this assistance, I do not say the farming community have not done well here, some of them have, but on the whole question of whether the farming community has generally done well or not has not yet been decided, and I think it will take another generation to decide this question.

I would certainly support the motion in 10 or 15 years time when all these things have proved themselves, but while further development at this stage might help the farmers already here who want to off-load their farms on to new settlers it will not help anybody else.

MAJOR GROGAN: Sir, this motion would surely appear to a newcomer in this country to be a very curious necessity.

[Major Grogan]

Anybody who is conversant with the current trend of the world's affairs would naturally assume that this country, because of its geographical position, would put every other matter in abeyance until satisfied that it had co-ordinated every possible factor towards an elaborate comprehensive establishment of white settlement on an ever-increasing scale. In other words, staffing and manning a part of the British Empire which, because of the very dramatic change in world affairs, has become essentially a citadel.

My hon. friend who has just spoken has suggested that this is going too fast. But if he has followed what has recently happened in Addis Ababa not far away, to some of his own compatriots he would realize that if effect is not given to this policy in staffing this country, it might happen that it would be impossible for his fraternity to go too fast! I am sure that he ought to bear in mind the fact that his race and his people are not treated by other races in the same way as they are treated by us. He has only got to carry his mind back to Tanganyika before the war and to what has actually happened in Abyssinia to-day to realize that the position of his people might be very different in this country if anybody else had charge of the situation.

I want rather to emphasise that particular point, because it is incredible to me that there seems to be no definite recognition—I trust that this is germinating in Government circles but no external indication has been given so far—that no proportionate attention is being paid to the incredible change that has taken place quite recently in the circumstances of this Colony. The net emigration of Italy before the war was 500,000 a year; every year before the war a million adults would leave Italy on an average. Of those, on an average 500,000 used to return, leaving a net emigration of 500,000.

In those days I used to wander about South America at odd times, and anybody who has wandered about in Brazil, and more especially Argentina and the southern cities of America, must have realized that a very large proportion of the dramatic development of those territories was affected by Italian settlers. One has only got to go into these territories adjoining Kenya, as I took the opportunity a few years ago, to see what their capacity is in these circumstances.

Five or six years ago I had a look-see through those territories, and found in Webe Shebeli Italians with their families, following the precedent established by our Principal Medical Officer, without hats wandering about in the hot sun doing most effective agriculture, working with no native assistance of any kind or description, a complete European settlement. Under really quite intensely tropical conditions at Massowah. I found all the artisans skilled work being done by Italian labourers. I watched a lot of buildings going up. The Italians were setting the stone, and the only part natives were playing was in mixing the mortar and carrying it to the artisans, white men without hats even.

There is a place called Ras Hafun, which probably some have noticed on the way home, as about the most pitiless place on earth. The heat is incredible, there is no rainfall there at all, and it has been selected as the site for probably the biggest salt works in the world. The native of the district, the Somali, is not much addicted to that class of labour and discreetly withdrew from the whole territory leaving the contractor in the position of being quite unable to carry out the work. He merely went to Italy and brought out 60, 70 or 80 Italian navvies. I travelled on the same boat with them. In a short space of time they had completed the work.

That is the answer to this contention that it is impossible for white men to work under African circumstances.

Admittedly there are differences in resistance to these climatic conditions among the different peoples of Europe, whether they come from the north or the south, but I venture, with your permission, Sir, to quote my own example as a specimen from Europe, who did not come from the Mediterranean but from the north.

Last week I had an opportunity of showing my black associates what I could do and what my conception of a manual task was. I was building a dam, and just as a matter of curiosity or to show what should be done, I wanted to find what a man ought to be able to do, for four or five days I worked from 8 a.m. till 4 p.m. with a pick and shovel and, after supper, did another four hours in the moonlight, to the great astonishment of the local inhabitants, who came to the same conclusion as my hon. members opposite, that I was a demented old gentleman. (Laughter.) I found out, with no possibility of refutation, that my manual capacity under a tropical sun at the age of 62 was equivalent to 10 well set up Kavirondo! This, to me, is an intensely important matter.

I have not the slightest doubt in the wide wide world that Italy is capable of putting into Abyssinia in the next two or three years, at the most 5 years, an effective white settlement of at least half a million. People say it is impossible, that they cannot finance it. They can certainly find the human folk for it. But Italy is also escaping from some of the disabilities under which England still suffers, this convenient illusion that it is impossible for a man to take up a spade and dig a hole in the ground unless an equivalent amount of gold is lying in the hole in New York, Amsterdam, London, or Rome. They have got over that. They fought a war on a tangible form of inflation, which was utilizing all the energies available. If they fought the war on that basis they can fight a further war against physical obstructions of the land.

Therefore we need not worry about that, and I am perfectly convinced that there is in fact now going on an effective white settlement on an enormous scale in Abyssinia and the immediate vicinity. I think it only right that Government, if they have information about that—one never knows what sort of information they have, but they have the same access to newspapers as we have, though one sometimes doubts certainly during a debate if they take advantage of those facilities but they certainly must have every possible or better opportunity than us of finding out exactly what is going on—I suggest that it is right and proper that all these facts should be ascertained and that they should be readily available to the man in the street so that everybody's mind can be properly concentrated on what I believe to be the most important issue before the country at the present time.

Nobody can challenge the suggestion that the whole position of these territories has changed to an extraordinary extent in the last 3 or 4 years. That is to say, Kenya, with its wounderful port, and its capacity for carrying a considerable population, capable of producing a very wide range of foodstuffs and raw materials, has become suddenly and dramatically one of the essential pieces of the whole scheme of Imperial defence. Therefore everything should be done to push its elaboration as such as fast as possible.

It has been suggested by my hon. friend Dr. Karve that an immense amount has been done recently and during these crises for white settlement. That is not a fact, of course, because as the hon. Member for Nairobi North said—and I want to get this exactly what he did state—I did not understand that he said nothing had been done by Government for white settlement because, of course, that is all nonsense. Practically everything Government has done is based on white settlement, an essential part of collaboration with white settlement.

What my hon. friend Major Cavendish-Bentinck did say, as I understood him, was that no comparable steps have been taken during the financial crises to assist white settlement in being. That, of course, is a fact. Every other country in the world in any comparable position adopted all kinds of remedies and reliefs for the maintenance of people whose position has been deteriorated by the monetary factor over which they had no control. Any ameliorative schemes that were put forward by this country were turned down at home. The bond scheme, for example, which is only based on certain principles that every country in like circumstances adopted and which had the effect of saving many people.

Not long ago a confidential document was circulated among members emanating from a so-called economic expert in the Colonial Office, pointing out that all those products which were specialized in this country could not be produced at a profit, were never likely again to be produced at a profit, and so on, and before the ink had dried every one could be pro-

[Major Grogan]
duced at a profit. The fact remains that the Colonial Office mind must always function in terms of minor black states. It has never got the idea of constructive colonization.

It is up to us to remedy that deficiency in their minds by keeping on hammering away at this particular subject.

It is often suggested that this country can only be settled by what is sometimes described as the "Old School Tie Brigade." There are a great many other potential and other factors in settlement, and I am not including European races only. I say that settlement in this country must be absolutely comprehensive. It must take into its conception every conceivable type of men—black, white, brown, yellow, green, or blue—who can safely be identified with the interests of the British people and not as potential enemies. The more we can collect and fit into the scheme the more we shall have done our duty to the Empire.

There is another amazing happening going on in the world, the eviction on a colossal scale of an enormous number of Jews. These Jews are being organized now and trained by their fellow countrymen. I was credibly informed yesterday by a friend of mine that one Jew alone has made himself responsible for over 90,000 Jews to see that they are definitely assisted somewhere to be trained and so on. During the last two or three days I have found employment for no less than three of these Jews who have been brought out to this country by this organization.

These Jews are being trained. We know what they are doing in Palestine, the almost unbelieveable results which have been achieved there in a very short time. We know the serious complications arising from the success of these people. It is quite obvious that the settlement of Palestine by the Jews is a limited possibility because of the political difficulties that arise in the process, and there still remains an enormous surplus which has got to be absorbed and placed somewhere.

Why should we not focus our minds on those people who are already being organized and trained at other people's expense and by various bodies very well organized and financed? Why not look around and see what sort of facilities this country offers these people? because there is no doubt about it, these people politically and in the wide Empire sense are going to be people on whom we can rely in the future.

That is very important in the settlement of this country. I think, personally, the idea that this country cannot absorb very large numbers of Europeans of some sort or other is ridiculous. One has only got to go and study or make a garden in this country to realize the possibilities of intensive cultivation of land under these special circumstances. I do not believe that any of this land one can reach is impossible. There are very large areas which nobody could imagine would ever be dealt with, but if you exclude certain large areas in the Northern Frontier, all the other areas are capable of producing something, and we are now busily proving the incredible number of things it is capable of.

That idea that this is a sort of Lido where people want to build a fancy villa of the Naivasha type is all wrong, and many farmers are able, with not a very large amount of practical experience of the climatic conditions of the country and what to grow, to do well.

These territories—and one has got to look on them collectively—are capable of absorbing millions of European people without any sacrifice or menace to the indigenous population. In other words, the faster we can pump Europeans into the country the greater will be the prospects of the future and of the people we found here when we came.

I think the moment is dead ripe now. There was a gentleman who, some years ago, in one of his broader moments, said "There is a tide in the affairs of men which, taken at the flood, leads on to fortune." I believe this tide is on the flow!

MR. LOGAN: Your Excellency, perhaps before speaking to the motion I may be permitted to express my thanks to the hon. Member for Nairobi North for the kind congratulations he offered me and

[Mr. Logan]
my appreciation of the good will and friendliness I have always experienced from all members of the Council, both the unofficial side and from my own colleagues. (Hear, hear.)

In speaking to this motion, I might perhaps usefully give a brief review of the settlement position in the Colony over the last few years.

As any young country develops and as communications improve, as farming knowledge expands, and as new markets come into being, the size of the economic farming unit tends to decrease, and whereas under pioneering conditions units from 2,000 to 3,000 acres were thought to be essential here, smaller units of up to 1,000 acres rapidly become practicable. In many parts of the Colony I think we have come to that stage at the present time, and I have no doubt that during the next few years, as the present difficulties in regard to water, fencing, dipping, and so on tend to disappear our economic mixed farming unit will become still smaller.

Ten years ago, in 1926, Government took stock of the position of its land assets in relation to the possibilities of mixed farming and, generally, smaller farming purposes. It then found it had not got a very great deal of land to offer. In that year, a scheme for settlement was propounded and approved, called the Closer Settlement Scheme. Hon. members will remember that that scheme was divided into three parts.

Under the "A" scheme a settlement of 48 farmers centered on Kitale was envisaged, each farm being 200 acres in extent, and each farm so equipped with water and fencing facilities that individual large capital expenditure might be avoided and the cost recovered by way of annual repayments. The partial introduction of that scheme was approved by the Secretary of State, but it had presupposed the existence of a Land Bank, and by the time Land Bank legislation had been enacted and funds provided for the Land Bank a bleak change had come over the economic situation. The depression had set in, prices had dropped, and it was quite evident that for the time being the economic foundations of that scheme had been destroyed.

The second part of the scheme, "B", did not postulate either State or Land Bank assistance. Originally, in the schedule, it comprised 75 farms ranging from 750 to 1,500 acres. Later, on further examination, that number has become reduced to 52, principally because of the change of view that has taken place in regard to the utilization of the Ndaragua property. In the meantime, we have disposed of 24 of those 52 farms, and have 28 left.

In recent months an examination has been made, a further examination of the areas of Crown land that are thought to be suitable for closer settlement. Hon. members will realize that that involves a question of staff and so forth, that the areas of Crown land divided into farms at the present time were divided a number of years ago on the basis of 3,000 acre units and, in order to find out whether farms can be reduced in size for closer settlement purposes, an intensive examination of a great number of individual units is entailed.

I have hopes that, not including the Kitale settlement scheme, we shall find available for closer settlement something in the region of 60 to 70 farms of appropriate size.

So far, I have only dealt with land suitable for small farming, but settlement in this country is not necessarily confined to that. The occupation of larger areas means the employment of Europeans as managers and sub-managers, and that is a feature of our European settlement which we cannot afford at the moment to lose count of.

During the last 7 years we have disposed of close on 400,000 acres of land for agricultural purposes, principally in large blocks. Of this class of land suitable for large scale farming, sheep and cattle runs, and also for plantation farming, we still have several hundred thousand acres of land available. But I do not think the figures quoted by the hon. mover can be accepted at their face value. Although they appear as so many millions of acres available, on further examination they are not all available for farming by white people.

The hon. mover rather charged Government with lack of drive and lack of policy during the last six years, based on

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the fact that during that period the European population had not materially increased. During those years we have been assured in this Council from time to time that the farmers were on the brink of ruin, that it was impossible to make farming pay under the then ruling prices, and it was quite evident that this Government could not possibly take direct action in encouraging new settlers to come out to this country with a view to making a living off the land.

We therefore turned our attention to residential settlers, and to the best of our ability and not, I think, without some success, we endeavoured to put before people the attractions of the country from the point of view of residential settlement, and to put those attractions before the type of person that we thought would make the best residential settler. Residential settlement has, of course, its place in this and any other colony, but I do not need to stress the truism that this country for its progress must depend on its output and, pre-eminently, what is wanted in future is more producers. Our problem now is to people our empty spaces with more farmers. I have shown what Crown land is available for settlement, and unfortunately it is not much.

Frequently in this Council and in annual reports, I have stressed my opinion that the future of white settlement in this country lies particularly in the hands of the landowners of the country. From the Government side, it is right and proper that the spokesman on behalf of Government from time to time should be required to give an account of the Government's stewardship in the management of its land administration. None the less, those people to whom land has been alienated on promise of development should be required from time to time to give an account of their stewardship.

Apart from freehold grants made in the early days without development conditions, land in this country has been alienated under leasehold for 99 and 999 years. The 99 years leaseholder covenanted to develop the land in a prudent and businesslike manner, and the 999 years leaseholder accepted specific covenants to instal and maintain improvements to a certain valuation as set out in the schedule to the Crown Lands Ordinance.

Up to the end of 1936, as the hon. mover said, 6,853,198 acres of land had been alienated. During the dark days, during the last four or five years, a good deal of land perforce went out of cultivation, and though to-day it is a pleasure in many parts of the country to look across the countryside and see on every side signs of crop life abundant and strong, yet it cannot be denied that there are many large tracts of land which show no signs of cultivation and no signs of development of any sort.

While the depression was on, it was clearly inopportune for Government to require from the owners of these undeveloped tracts an account of their stewardship, but now that the clouds of depression have lifted, I think it is necessary to say that such owners must be expected, and must be required, to give an account of their stewardship and to do something about the position. Beyond that I do not wish to go at the moment. They may perhaps have their own difficulties but, given the will to develop, I feel sure that Government will give sympathetic consideration to those difficulties. But one thing I must lay emphasis on: there must be the will to develop.

Not only is it important that hitherto wholly unused land should be brought into use, but it is also perhaps of equal importance that those farmers who have developed their land up to the maximum of their financial capacity and still have a surplus over which they could set aside and sell, should do so. If they, in turn, find financial difficulties in their way, I can think of no body more competent to discuss the position with them than the Kenya Association. That appears to me to be one of the functions that body should undertake, and, as I say, I think it would do so in a particularly able and efficient manner.

Regarding the new settler, the terms of the motion are to consider what assistance could reasonably be provided by the Land Bank or by Government.

The Land Bank already makes certain specific provisions, and if any assistance over and above what the Board of the Land Bank is legally empowered to offer

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is to be offered, that can only be done by way of a guarantee by Government. The extent of such guarantee, the extent to which Government might properly ask the Secretary of State to subsidize white settlement, is a question which has been raised. It is a question which will have to be considered, and I think it will form a profitable line of inquiry by a committee.

It is perhaps also necessary to stress this view. It is not only for new settlers that provision is required for imparting knowledge of agricultural conditions. We have growing up in this Colony a number of young people who, if they appear to be cut out specially for any walk in life, are more particularly suited for farming population in the Colony. The possession of 200 or 300 acres of land is not the birthright of any and every Briton. It is quite idle for these young people to think that they can each be accommodated with land; but, in my opinion, we should be following a sensible course if we set ourselves to inquire as to what measures and at what cost we could train these people, so that they will eventually be fitted to take up positions of trust and responsibility on farms as employees.

Then, Sir, I agree also that for the new settler instruction, particularly as regards mixed farming, is highly desirable. When the Ex-soldiers Settlement Scheme was being administered, some steps towards that end were introduced, perhaps not with very great success. A demonstration farm formed one of the features of the Kitale settlement scheme to which I have alluded. I think there is little doubt that we are better equipped now to deal with that type of instructional training, and whatever facilities can be offered they should be offered to the new settler on those lines.

An inquiry along these lines, it appears to Government, will serve a very valuable purpose, and I have Your Excellency's authority in saying that this motion will be accepted. (Applause.)

COL. KIRKWOOD: Your Excellency, I rise to support the general principles of the motion, but before doing what I intended to do I find I have been sidetracked by the hon. Indian member who has spoken, and one or two of his remarks I feel must not be allowed to pass without being replied to.

He has stated that the Soldier Settlement Scheme was a failure. I deny that. As a soldier-settler I cannot admit myself as a failure in any sphere of life I have undertaken in this Colony, including farming.

I will refer to the general principles of the scheme.

In 1920 Kitale was 110 miles from a railhead, there were farms 140 to 150 miles away, there was only a wagon road for transport, and progress with an ox-wagon on the road exceeded six days at the rate of 10 to 12 miles a day. It was a very difficult problem to develop the district under those conditions. Nevertheless, within ten years we were producing half a million bags of maize a year, apart from other produce, we are third in our coffee acreage, we have got a railway now, we have schools and hospitals and all the amenities found in any other part of the civilized world.

The scheme itself may have been a failure as far as individuals were concerned, but that was due to circumstances over which they had no control, such as the advice given to them when leaving England, or wherever they came from, that £1,000 was sufficient capital to take up the soldier-settlement scheme. That was incorrect, of course, and bad advice to give, but nevertheless it was given and acted upon, with the result that from 1920 to 1926 the district was without a railway. The soldier-settlers had been growing crops and developing the district very rapidly, and they had the greatest difficulty in being able to market their goods.

Maize in those days was in the region of Sh. 8 provided you could get it on the main line, but there was a freight haul of something like 100 miles over bad roads to do that, and it stands to reason that under those circumstances the individual would fail for want of capital. After we got the railway in 1926, we had approximately four years when we were doing quite well, from 1926 to 1930. The whole of the capital made by the soldier-settlers during those years was put back into their

[Col. Kirkwood]
farms and in increased developments, building, etc., implements, oxen, and so on.

From 1930 to the beginning of this year we struck an economic blizzard, as everybody is aware, and maize was as low as Sh. 4/42 last year. We have had it for the last six years on an average Sh. 5/50, which is below the cost of production. Those are the reasons why individuals have failed.

As regards the scheme itself, it was a wonderful success. It was the pioneer to a great extent of Kenya from 1922 onwards to the present day, and certainly created a vast development in Trans Nzoia. There are still a considerable number of soldier-settlers, and although they may have difficulties I hope the majority will get over them if the present prices are maintained.

The hon. Indian member also referred to the fact that European settlement has not been proved, that it has not been proved to the satisfaction of various medical men that European civilization could flourish in this part of the world. I challenge that! Irrespective of medical opinion, you have, as Mr. Reitz pointed out when he was here, only to go to our schools and see the children, to see the numbers who have gone home for business facilities, and for higher education, to realize that there is going to be a very fine type of men in this country in the years to come.

The hon. member also suggested that it was necessary for Europeans to go out of the Colony every three years. That I emphatically deny! The speaker himself has not been out of the Colony since 1927; I have had no urge to go, and I feel none the worse for it. I have lived in Africa for the last forty-three years and in this Colony since 1920, and I have not been out since 1927. I maintain it is not essential for the average health of the individual to take periodical leave outside the Colony.

The hon. member also referred to the K.U.R. & H. and their policy, which he said was to foster the European farmer. I emphatically deny that! It is not the policy of the Railway to foster the farmers, but it did appear as if their policy for a long time was to drive them out of the Colony. Take my own district. We did agree when the branch line was built to pay branch line rates.

We were between the devil and the deep sea. We had to get the railway and we were prepared to get it at any price, and being in that position we made a mistake in undertaking to pay branch line rates. It is not the policy of the railway to let us off. We were paying the highest rates in the whole of Kenya, 25 cents a bag of maize higher than any other part of the Colony, and that policy kept going on long after the Kitale branch line was a paying proposition, against the understanding with the settlers. Those rates were eventually abolished in justice to the district and to the benefit of the Colony in general.

I think I have said enough, Your Excellency, to show the hon. Indian member who brought up these points has not talked from the book.

Now, Your Excellency, I am in agreement with the principle of this motion, and am very pleased to have heard the hon. the Acting Colonial Secretary say that Government accepts it.

I agree more especially with the last two parts, with a view to the establishment of a practical settlement scheme based on something tangible. This is not a new question; it is not the first time it has appeared in this Council. As far back as 1927 at the meeting held in Mombasa of this Council it was debated. Fortunately, I have found a piece of paper on which is the notice of motion which I gave dated the 9th September, 1927:—

"1. That this Council recommends a committee be appointed to revise and amend the present land laws and favourably consider that:

(a) Payment should be extended over a period of 25 years.

(b) Fifty per cent advances by Government on all permanent improvements to Crown tenants.

(c) Implement conditions to allow selectors to acquire land from private owners.

(d) Disposal of Crown lands by ballot.

(e) Priority to be given to applicants who were unsuccessful in the Soldier Settlement Scheme and who still reside in the Colony.

[Col. Kirkwood]

(f) Raise a loan to finance approved applicants."

This motion is put up with the intention of getting a committee appointed to formulate a policy and if possible improve the conditions under which settlers could secure Crown leases in this Colony.

I go further and suggest that when this committee is appointed they also investigate the advisability of an Expropriation Act as they have in New Zealand, plus an Arbitration Board. That will meet the objections of people who state that land is being held for speculation in this Colony, which I know to my own knowledge is not true. There is undeveloped land held by individuals in this Colony, for the simple reason that for many years it has not been a marketable proposition. Land suffered during the economic blizzard we have had during the last few years, and if farms are very little developed it was owing to the depression, so that the owners of farms are not in a position financially to spend money on them at the present moment.

Under an Expropriation Act, Government could acquire land with very little trouble, to the advantage of Government and the settlers, and probably to the advantage of the owners of the land. In New Zealand it is compulsory, and it did work in this way. An offer was made by Government. If it were refused, the offer was withdrawn. The case was then referred to the Arbitration Board appointed under the Act, and their decision was final. All an owner could retain was 5,000 acres. Take the Hammer Springs in Canterbury, something over 50,000 acres were acquired by Government like that, and the town was planned and everything else; it was not done in the slipshod way we do it here. That land was eventually thrown open to selection, with a very good profit to the Government.

Most of the points have been covered, and I shall not keep Council much longer.

No. 1: A closer settlement scheme, if recommended by this committee, will lead to man-power, and man-power is definitely an essential requirement of this Colony. It has been brought strongly into the limelight since the conquest of Abyssinia. That is, from a military point of view.

No. 2: What we require are more taxpayers to distribute the burden of taxation and consequently to increase the revenue.

No. 3: It would also help by increasing the railway users, increasing their financial position by increasing the railway users. That would also tend eventually to enable the Railway to reduce rates to all railway users, to the advantage of the Colony as a whole.

No. 4: It would also increase production. Increased production in this Colony, whichever way we may look at it, is bound to be a blessing to the Colony, and there can be nothing else.

No. 5: Increased exports and imports. To increase the European population of this Colony hits right at the foundation of all essentials required at the moment to send this Colony ahead.

No. 6: It would increase the Customs revenue, which means increased Government revenue and make for a very different budget session by budgeting for a surplus.

No. 7: Increase the part of the revenue which is now administered by the Railway, and probably in time would undoubtedly mean reduction in the port and handling charges to the benefit of the finances of the railway as a whole.

No. 8: It would increase the general prosperity for Kenya as a whole, and what more, Your Excellency, can we ask for?

I hope that these points will be considered when the committee is appointed, and if it is a committee to take evidence I shall be only too pleased to give evidence myself, to try and urge Government to formulate a definite policy of what in the past we have called closer settlement, both on unalienated Crown land and undeveloped farms, to put an Expropriation Act on the statute book, and clear the land for closer settlement. By that I mean I am very pleased indeed, and congratulate Government on the notification that they accept this motion.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, the 10th August, 1937.

Tuesday, 10th August, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, the 10th August, 1937, His Excellency the Governor (Sir. Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 9th August, 1937, were confirmed.

SETTLEMENT SCHEME: MOTION

The debate was resumed.

ARCHDEACON BURNS: Your Excellency, it was not my intention yesterday nor is it my intention to-day to oppose the motion, but there are two or three things I should like to speak about with regard to what was said yesterday by the hon. Member for Nairobi North (Major Cavendish-Bentinck).

He spoke about the wonderful progress made in this Colony during the last 20 years or more. My memory goes back to 38 years ago, and I know what wonderful progress has been made in the Colony since those days. What I want to say is that that progress could never have been achieved by the white man himself or by the Europeans themselves.

The hon. Member for Rift Valley (Mr. Long) was good enough to give expression to what I want to say now, and that is that, apart from the Africans who help the white man in his efforts for this progress which has been so wonderful—and it has been wonderful, and it does not take some big man from South Africa to tell us what we know ourselves—apart from the help given by the Africans towards that development, that development could not possibly have been achieved.

The second point I wish to make is with regard to any inquiry as to land matters in this country. There is one thing that I would urge, and I do urge it with all the energy that I have, upon Government and upon those who may be dealing with this question. That is, the urgent need there is at the present time for providing land for Africans who, to-day, have no homes, no place that they can call home.

We are to-day to deal with the Resident Labourers Bill which will bring to light the fact that many Africans who left the places where they were living in the old days and went to live on European farms and help to develop those farms to-day have no place they call their homes or to which they can return. There are multitudes of them.

Not only that, but a few days ago I was speaking with one of the chiefs whose business it is to settle these people on the land. He said to me, "We don't know what to do because not only are there the natives who have returned from the European farms but the Kikuyu who have been living in the Masai Reserve with the consent of the Masai for some considerable number of years." It is understood by him that a rather large number are being sent back to the Kikuyu Reserve to be domiciled there and, provided that takes place, and all these Akikuyu who were in the Masai Reserve have to be returned with their wives and families and cattle, plus those who may be returned (I do not suppose all of them will be returned because some will still be needed) from the farms of Europeans, there will be created a very serious situation.

The necessity is very great and very urgent; even if you retain the resident labourer without his wife and family, the latter must have some place where they can make their homes, and to which the resident labourer, when his contract is finished, can return.

I do urge upon Government, I do not know whether it will come within the terms of reference of this committee when appointed, the necessity there is at the present time, the urgent necessity, of providing for these people so that they will have a home, in addition to what the Carter Commission provided.

With regard to the other points raised yesterday as to whether this is a white man's country or not, well, I have lived in it for 38 years, and instead of going back to England, or to Australia where I came from, I have decided to make this my home as long as I am allowed to remain on this earth. For myself, I think that is testimony enough from my point

[Archdeacon Burns]

of view that this is a white man's country. (Hear, hear.)

As to whether it is a white man's country in the sense that the white man, despite what my hon. friend the Member for the Coast (Major Grogan) said yesterday, can take off his coat and start at 8 o'clock with a pick and shovel and go on to 4 o'clock, and then have a rest, with no doubt some refreshment—(laughter)—and then go on for another four hours, I don't know. One wonders——

MAJOR GROGAN: On a point of explanation, I suggest it is essential he should keep his coat and hat on!

ARCHDEACON BURNS: I think that had the natives who looked on at this work been asked their opinion, they would no doubt without hesitation have said, "Mzungu huyi ana wazimu" ("That European is mad!"). (Laughter.)

Joking on one side, it is a white man's country, provided the white man makes provision for Africans to be his co-workers in its development. (Hear, hear.) To-day, they must be made comfortable, must be given a place which each man can call his home and leave his wife and children when he goes out to work on the estates throughout the whole Colony.

If that is not done, I for one will feel, and feel very strongly, that the African is not being fairly dealt with. I do not think it is the intention of the majority of white settlers in this country to do anything else than what is fair and just for the Africans, but they have come to a crisis, Your Excellency, at the present moment, and unless provision is made for them to settle on the land and we have a happy and contented people who will be glad to go out and work and help the Europeans—and, incidentally, earn money for their taxes and other needs—our boast of being trustees for the African will be a complete and absolute farce.

COL. FITZGERALD: Your Excellency, I, like the two hon. members on my right (Archdeacon Burns and Major Grogan), have been acquainted with Kenya for a considerable number of years, and I have seen this country grow up and develop from its infancy, so to speak. That development, I agree with my colleague, could not possibly have taken place without white settlement aided by the inhabitants of this country, and it therefore seems to me that if we wish this country to go ahead we should encourage as much as possible white settlement to come to the country.

We are told that there are still vast acres of land undeveloped in Kenya, and when one realizes the number of people there are at home who would only be too pleased and delighted to come out to a country of this nature, provided reasonable facilities are given them for making good, surely it is our bounden duty to do something for those people to encourage them to come out to this country, even at the risk of it not being a white man's country as suggested by the hon. member Dr. Karve yesterday.

At the same time, having been in Kenya for so long, personally I do not take off my hat in the midday sun. I do not know exactly what the death rate of this country is, but I can imagine it cannot be any greater than it is at home.

If there is any fear in anybody's mind as regards the position of the natives here being jeopardized by an increase in white settlement, that fear should be removed straightaway, because it is perfectly certain that no development could possibly take place in this country without the aid of the native inhabitants, and therefore why kill the goose that lays the golden eggs?

MR. SHAMSUD-DEEN: Your Excellency, we have had notice of two motions under Standing Rules and Orders. This motion we are now discussing was changed in a manner that certainly took me by surprise, and I do not think that Rule 28 quite covers it, because it contains one important proviso:—

> "Provided that such amendment does not, in the opinion of the President, materially alter any principle embodied in the original motion or the scope thereof."

Both of these motions as originally tabled here have been altered in such a way that it certainly alters the shape of them, and it takes members by surprise.

I am glad that we have had twenty-four hours at any rate in which to digest the

[Mr. Shamsud-Deen]

whole thing, and I am in a better position now to say a few words on this motion in its altered form.

My hon. friend Dr. Karve said yesterday that he thought the motion was ten years too premature. I submit it is about two centuries too premature instead of ten years!

I personally think a lot of irrelevant things have been said as regards this being a white man's country, a European's country, but since so many things have been said perhaps I might be permitted to quote in this Council the experience of South Africa. The venerable and hon. member for native interests (Archdeacon Burns) said just now that, in spite of what the South African people may teach us, during the 35 years he has learnt more.

I think that South Africa started white colonization about 250 years ago, and no one can say the experience gained in this country within 37 or 40 years can excel the experience gained in South Africa.

As regards Africa, and this Colony, being a white man's country, I wish to quote from a speech delivered by General Smuts on "The Future of South and Central Africa" at the Savoy Hotel, London, on the occasion of the South African dinner given in his honour on 22nd May, 1917. Here is what he said:—

"Referring to previous attempts at civilizations made in the Central Africa by other nations in early days, General Smuts said: 'Rhodesia also shows signs of former civilization. Where are those civilizations now? They have all disappeared, and barbarism once more rules over the land, and makes the thoughtful man nervous about the white man's future in South Africa. There are many people in South Africa—and not foolish people either—who do not feel certain that our white experiment will be a permanent success, or that we shall ever succeed in making a white man's land of southern Africa; but at any rate we mean to press on with the experiment. It has now been in progress for some two hundred and fifty years, as you know, and perhaps the way we have set about it may be the right way.'"

Then he goes on to say:—

"'You will therefore understand that a problem like that is not only uncertain in its ultimate prospects, but is most difficult in the manner that it should be dealt with. Much experience has been gained and there are indications that we have come to some certain results. You remember how some certain missionaries, who went to South Africa in the first half of the nineteenth century in their full belief in human brotherhood, proceeded to marry native wives to prove the faith that was in them. We have gained sufficient experience since then to smile at that point of view.'"

From the whole trend of the debate which has gone on since yesterday, one would feel that it was a debate of controversy between the white man and the black man in this country. My hon. friends the European representatives, who very often advance their claim for self-government in this country, have not said one word to give any indication that there is also a third community living in this Colony which has followed the British flag in the full confidence and good faith of being given fair treatment.

I personally have, during my 37 years stay in this country, changed my views entirely as regards colonization. At one time I was very much in favour of Indians being given their full share in colonization, but I think the last forty years have showed to the world that what was considered in the last three centuries, in the eighteenth and nineteenth centuries, to be colonization is now coming to be understood as nothing but an invasion of other people's grounds.

Although the hon. Member for the Coast said yesterday that we had better treatment here than we got from other nations, I think the day is not very far off when we shall probably have no claim whatsoever for any rights or consideration in any colonies. That day will be when India gains its own independence, and I shall certainly have no objection to clearing out from colonies lock, stock and barrel and putting a stop to any such invasion as we have at the present moment.

[Mr. Shamsud-Deen]

But, while the circumstances last, it is perfectly painful to hear that the hon. European members will advance the cause of Jews and Italians and others. I am not against Jews; I personally think it a very good idea and it will probably relieve a good deal of the tension in Palestine by making some arrangements to find homes for them here, but I think my hon. and gallant friend the Member for the Coast will remember that certain investigations were made in this country as far back as 1903 when a delegation of the Jewish community came to the country to examine the land and did not care much for it.

That was the time I believe I am right in saying, when the hon. member himself was associated with Lord Delamere in lodging the strongest protest against any Jewish settlement being allowed in this country.

MAJOR GROGAN: I never did anything of the kind. I acted as guide for that particular expedition, and that expedition was to investigate one specific area of land, not the prospects of settlement, but found it unsuitable because the elephants arrived!

MR. SHAMSUD-DEEN: I have proof that Lord Delamere with others lodged a strong protest against the Jewish colonization in this country, but I should thank our European friends if I may be allowed to say this, what I feel this Colony should do in the whole of Europe.

I am glad to say that every hon. member on this side of the Council is a Britisher, but if you are going to advocate the cause of Europeans, all the Europeans from Albania, Italy, all parts of Europe, you should also welcome a very large settlement by Italians, let them bring a few hundreds of thousands of Italians also. That is what my friend seems to want. He wants the white population to increase in this Colony, to make it the battlefield for the quarrels of all the nations in this Colony.

I expected the hon. Member for the Coast to say something about the coast, but as far as I can remember I do not think he said a word about the coast. I am going to suggest that it is the duty of the European members, if they want to show themselves as responsible fit persons to have self-government of this Colony, to show a real interest in the welfare of all the communities living in this Colony. Therefore I expected my hon. friend the Member for the Coast to have said something about the possibilities of the cultivation of land at Lamu.

I remember that Your Excellency said, on the occasion of one of your visits, that we must take Kenya Colony as a whole. Well, Sir, we voted £17,000 only yesterday for roads in the mining areas. I should like some Government member to inform me how much money has been spent on any roads or communications between Mombasa and Lamu? I rely mainly on the information I get from the *East African Standard*——

MAJOR CAVENDISH-BENTINCK: On a point of order, are we discussing roads or settlement?

MR. SHAMSUD-DEEN: We are discussing settlement, and I am discussing the most important point that this vast tract of land in the area of Lamu is left waiting, crying, for settlement, for which Government has not done as much as to raise a finger for the colonization of it.

Therefore I want to submit to Government that it is their duty, when dealing with the appointment of this committee, to do something for the development of Lamu. If I am permitted to show what is known about that neglected area which should have had a very useful settlement long ago, I shall quote briefly from the book written by the late Sir Frederick Jackson, *Early Days in East Africa*, in which, on page 355, he says:—

"The once prosperous Lamu mainland lying between the Kipungani Creek, opposite Patta Island and Kipini, as I knew it——"

(He had been there in the last part of the nineteenth century, and this book was written just before his death about four or five years ago.)

"and as it must still be remembered by many Indians such as Sherif Dewjee Jumal, who made fortunes out of a variety of slave-grown grain, beans, peas, rice, simsim and what not, *before* they ever thought of moving to Mombasa—is, I believe, eminently suitable

[Mr. Shamsud-Deen]

for Indian colonization. Further, if such local men of standing and influence, and men like A. M. Jeevanjee, who also made his fortune in the country, had the wisdom to devote their energies towards the establishment of colonies of Indian agriculturists—ryots—within the ten-mile strip of Protectorate (and it is not too late now), they would be doing a good service to the Empire, and would greatly enhance their own reputation and position."

I think the British Government did a wonderful thing in abolishing slavery. I have very often wondered how the British Empire has survived throughout the long centuries in spite of being surrounded by so many enemies all over the world and, even to-day, I doubt whether she has one sincere friend in the European powers. But she has done what great nations failed to do, abolish slavery.

But while slavery was abolished in Lamu, there was a duty to be done after that which the British people neglected to do; that, having abolished slavery, all these fertile lands to which I have just alluded—and which, before the abolition of slavery, were well known as granaries not only for East Africa but India and the Persian Gulf—have gone back to bush, because Government did not perform its duty of following up the abolition of slavery.

To-day, what is the condition in that part? The slaves, although liberated, are in the position of an animal which has been liberated from the custody of its master to earn a living as best it can with nobody to look after it. The masters themselves are left at the mercy of decay, and have been described by one hon. member as a fast disappearing community. I submit that if Government were to give a fraction of the attention which has been devoted to the highlands to Lamu and the coastal districts, I think the problem of the Arabs and liberated slaves, and incidentally of the Indian community, would be solved to a very great extent, and the Indian community would have thought they were living in a part of the Empire which they are always given to understand belongs to this scheme of a very big family, and not in the way we have been treated since yesterday, when it is said the only people they object to are British Indian subjects. They have no objection to Italians and everybody coming in from any part of Europe.

The hon. and gallant member also quoted his own case of doing work equivalent to ten Kavirondo. I submit he should wait until his great-grandson settles in the country and spends about sixty years here, and then see if his progeny can do the same work as he demonstrated. I submit that it is his vitality which helped him to do that work, the result of the northern climate of Europe, and not of this Colony.

I am not against European colonization at all, although I think it is a very distorted implementation of trusteeship. In one breath you say that British people are the trustees of this Colony, and in the second breath you say it is a white man's country. You have never heard of a trustee taking a big slice off the estate of his ward. If you are here as trustees you must look after the interests of your wards, not to claim more than half their estates.

I want to make it clear that, in spite of what I have said, I am not against white settlement. I think a very large number of British settlers—I will not talk about the white man—and Europeans have really rendered very great service to this country and to the natives by sacrificing their fortunes, etc. Like a successful doctor who gets a reputation of being a very good physician, the names of his patients who have been cured are always advertised, but those who go to their graves are never mentioned. We always talk about the present success of the settlers, but if Government compiled a list of all those unfortunate people who have gone back absolutely ruined, I think it would be a very interesting study.

I personally should not like to hazard such a dangerous experiment as to invite white settlement out on a very large scale and let the small people be ruined here, as one case we have seen in that book so frequently referred to. All I ask is that if you talk about settlement it should not be for the benefit of any one community, but that all His Majesty's subjects residing

[Mr. Shamsud-Deen]

in this Colony should be given an equal opportunity.

Although this may sound commonsense on the face of it, we have known what is in the minds of the hon. mover and European unofficials, but I do hope Government will not be swayed by what was said yesterday and that if the committee is appointed at least two Indian members will be appointed on it, and every opportunity given to investigate the possibility of settlement and development of the coastal areas.

DR. DE SOUSA: Your Excellency, I must say very frankly that I oppose this motion, and I think it is very clear, from what the two hon. Indian members who have spoken previously have said, that the Indian side of the Council is opposed to it.

It is a very unfortunate thing to have to speak when, in the course of the debate, Government have already taken for granted the arguments for and against which would be produced in the debate. Long before the opinions of the most interested parties, the representatives of the Africans, were put to the Council, we get the Government representative telling us that this motion has been accepted.

I think the procedure on these controversial subjects is bad, and it ought to be the duty, if not decency, of Government to listen to all shades of opinion in the Council and then only give its decision as to whether they accept it or not, rather than prejudge the issue by a previous decision. That is what has happened in connexion with this motion, and I am sorry that my colleagues missed the opportunity of making a protest against methods of this kind in legislative business.

MR. LOGAN: On a point of explanation, members who followed the debate yesterday no doubt noticed that one hon. Indian member did speak and thereafter another European member spoke, and then there was considerable delay. One cannot wait interminably to see if members will take part in a debate. At the time I intervened it appeared that every member who wished to speak had already made up his mind to do so.

DR. DE SOUSA: I am very sorry for the poor opinion which the hon. member has of members of the Council if he thought they were keeping silent. In any event, the members representing native interests had not expressed their opinion, and the whole secret of the debate is native opinion. That is one difficulty.

The second one is that the native representatives spoke after the Government decision and were perhaps influenced by that decision, as one said he does not oppose and the other said he supports the motion.

It is difficult for a representative of a community which, in and out of season, has been officially and unofficially considered as not wanted, to speak on a subject like this. It is very difficult for such a representative, but certain questions have been raised, and as this question of white colonization has been a very important one right at the outset I will put before this Council an opinion expressed in the *Crown Colonist* of May last by a very well-known gentleman who is supposed to be an expert on colonial matters. That opinion was expressed only last May, and while I am sure many hon. members on the Council are acquainted with it I will read it nevertheless in order to record it in the proceedings of this Council—

"Except in the south, where it has a long history behind it, we doubt whether there is any future for white settlement——"

MAJOR GROGAN: On a point of order, this motion refers to settlers, but it does not say anything about the colour of their faces.

DR. DE SOUSA: I did not hear the hon. member?

HIS EXCELLENCY: I think the hon. member is in order.

DR. DE SOUSA: I will read it again:

"Except in the south, where it has a long history behind it, we doubt whether there is any real future for white settlement in Africa; whether, in fact, except in South Africa and the Mediterranean littoral, Africa is not destined to be predominantly the black man's continent. This is a hard saying

[Dr. De Sousa]

to some, but looking ahead fifty years and more we see this as a steadily increasing tendency, though the white man will be needed and will find ample scope in Africa for much longer as a leader and help to the African in most fields.

"White settlement may remain on the highlands of East Africa and Rhodesia, though we need longer experience of their durability, but we frankly do not see an East African Dominion under white self-government linking up with the Union.

"Closer union of East African territories will and must come, but whatever special rights may be justly reserved for the white communities, the combined territories will be administered primarily in the interests of their inhabitants. The probable effects of the next fifty years of progressive awakening of the African are incalculable."

This was in the *Crown Colonist* of May last. A little earlier than that, Your Excellency is aware that the Under Secretary of State for the Colonies said something to this effect:—

"He admitted that the Government had a duty to the whites, but it adhered to the principle that the interests of the indigenous populations must come first."

This motion has been brought up primarily in the interests of the Europeans. As one hon. Indian member said, it would have some sort of justification if it included first, the African, secondly, perhaps the Arab, and thirdly, the Indian. But it does not, and although I know what the effect of this acceptance by Government of this committee is going to be, I am compelled to take hon. members back, I fear, to the conditions then brought about which are going to be repeated.

This was ten years ago, and were the prosperous days. Those were the days of government by agreement. Now we are just stepping again into that kind of government, for I notice that every suggestion coming from the European unofficial side of the Council is being very tenderly accepted by Government, and I am afraid that we are now entering into another year not dissimilar to that of 1910 and 1926 and a few subsequent years.

What is going to be happen is that we shall be saddled not with white settlement, because we know it is not going to be a success and cannot be. You cannot get white men to come here because they have better places to go to. Britishers are different from Italians, who are not really Europeans. Neither are the Jews. The Jews in Palestine call themselves Asiatics, but because they live in Europe they call themselves Europeans.

I do not think that history or tradition could make Europeans of people who are not really Europeans but whom other people sometimes consider as Europeans.

My feeling is that we are not going to have 100,000 Europeans in this country in the next five or fifteen years, but my fear is that on some pretext or other unfortunate innocent people will be brought in and useless land alienated for thirty years and undeveloped and not taxed by Government off-loaded on them by land speculators, and that we shall have a budget of progressively high expenditure, grants here and there and land banks, and we shall get the same unbalanced budgets. That is my fear.

I do not want to say much, but I must protest against the very ungallant references made by the hon. and gallant Member for the Coast to the Indians. On the very first protest from an Indian member he hit back. He reminded us of what we had suffered from the Italians, and of what we had suffered in the past at the hands of the Germans.

He would be surprised to know, if we took him back to India and told him of what we had suffered at the hands of his own countrymen.

But when there is a solid body of opinion among settlers themselves, the European mercantile community and in Europe and England against white settlement, when Government not more than a year ago had the pronouncement of the Secretary of State for the Colonies that these countries must be primarily administered in the interests of the natives, when his own countrymen write in the papers against white settlement, he resents a small reference by the hon. member Dr. Karve on medical rather than on political grounds.

[Dr. De Sousa]

I think it most unfair to bring in the whole community and rake up feelings when it is not necessary, and particularly when this motion, notwithstanding the support it has from the native representatives, is going to be a matter which will affect the feelings of Africans. It would not matter if it affected the feelings of Indians, because they do not count, but I know Africans resent it very strongly. In one and the same breath you say, "We do not want you to live on our farms although you have lived on them for thirty-five years and more. You can go back to the reserves where there is no room for you, and we want to reserve the highlands for white occupation even if they are not developed and even if white settlement fails."

When all these things are happening and the native representatives do not oppose the motion, they know, or ought to know, that this white settlement is not what the African wants or what everybody wants, but that the European ought to take his ordinary share in the profits and losses this country can give. But that white settlement should be boosted at the expense of the other communities and at the expense of the Africans themselves is the thing which surprises me and will, I think, surprise everybody.

We are opposed to this motion, and in this I do not go to the extent that I condemn white settlement. The hon. Indian member before me said that white settlement, like any other settlement, even the Arab settlement in coast area, has done good, but we oppose it being carried to the extent that this motion anticipates.

MR. BEMISTER: Your Excellency, I did not intend to join in this debate, but I happen to come from the coast. In fact, I am staggered at the attitude of my Mombasa colleague in even criticizing this motion, and as to the remarks of the other Indian members, I must admit that I am ashamed.

Can one of them point to any epoch in this country's history where the importation of the European has not advanced the history of the Indians?

I was hoping that the hon. the Acting Colonial Secretary would have said something about the large tracts of land in Tsavo offered to the Indians for years and never taken up. I think it was the hon. member Mr. Shamsud-Deen who spoke of the time when Lamu was a great productive area. It is true it was, and I am a great opponent of Government taking away the slaves from their masters and not providing them with a proper outlet. But that industry along there could have been taken up and was there to be taken up by the Indians he mentioned, and that industry to-day would be a great one if the Indians had the pluck to take it up.

But what was done all through the country? They followed the white man, and where the white man improves and made it comfortable the Indian has followed, and I am saying now, Sir, that the hon. member Dr. de Sousa would not be living in such comfortable circumstances if it had not been for the improvements Europeans have made in this country.

I cannot realize how it is that the hon. Indian members have not supported this motion right the way through. From A to Z it is to their advantage. The only people who should have refused it is the Colonial Office people, because so sure as European colonization advances their comfortable positions will not be so numerous!

Everybody knows, the natives know themselves, that when they can get a European into their locality the less trouble it is to get the district commissioner to handle their difficulties. That is known, and it was known in a case in which Alexander Morrison was asked by the natives to take up land in Macupa: in order that the natives could get more attention.

My colleague, Dr. Karve, spoke of this country as not being a white man's country. I have only had twenty-two years but, of course, I suppose I was salted when I came here. But within a few tens of miles from here there is a family which, up to a few months ago, had four generations of that family living on the Kinangop. I refer to Captain Fey. I doubt whether it could be questioned that either of the descendants of that man could not even to-day keep his coat and his hat on and do eight hours with pick and shovel with anyone in the Colony.

[Mr. Bemister]

You can go right through this Colony, especially in these healthy regions, and you can find Europeans—well, Australians most of them, I do not know that many come from Europe—hale and hearty men with sons working from six in the morning till six at night on ranches and farms, and a healthier and stronger set of men you could not find. I quite agree that they do not take the risk a Government servant does by going home every three years. They stay in the country, get acclimatized to the country, and can grow up better, fitter men.

If, of course, this caste system is built up and the leave question allowed to continue and people are encouraged to trot home every three or four years and their health is debilitated, then it will not be a white man's country!

MAJOR CAVENDISH-BENTINCK: Your Excellency, in the first place I should like to thank Government for accepting this motion, because I am convinced that a committee of this kind might contribute very largely to the development of the Colony at the present time. I do not propose, in view of that acceptance by Government, to spend very much time in replying to the debate, but there are one or two points I should like to touch very shortly.

The hon. member Dr. Karve expressed a point of view, in moderation, that has been expressed here before. All I can say, in reply to him, is that you either have faith or you have not. If you have faith and confidence in the future you have got to go ahead, and you cannot put things off and "wait and see" what may or may not happen for ten years, as he suggests.

I would, however, just like to refute a statement which he alleged I made, I think it was that I claimed that everything that had been done in this Colony had been done by the unofficials. Of course I never said anything of the kind. Anybody who looks back on the early days of the country will realize that only an idiot could make a statement of that kind.

The hon. member Major Grogan referred at some length to the experiment going on to the north of us, in Abyssinia. Well, Sir, I did ask in this connexion a question of Government: whether they could tell me if they knew what was going on. I received as a reply that the question could not be answered because Government were not in a position to reply. I realized that probably I should get that answer, and I admit I asked it in connexion with this motion, but I suggest that the hon. member's point is one of some importance, because an experiment of that kind is bound to have repercussions not only on this Colony but on the whole of British Africa. I can therefore only express the hope that that experiment is at least being watched by those who are responsible in the home country.

The hon. the Acting Colonial Secretary, who replied generally on behalf of Government, made a very clear statement and one provocative of a great deal of thought, and I thank him for it. He at any rate did not take a narrow view of this motion.

He pointed out that there were a great many questions which had to be considered: There was the question of the subdivision of land, and of what was being done with the land at the present time which had been alienated. Speaking purely as myself at the moment and giving my own point of view, I agree with him very heartily. I think the time has come when we have got to turn round and make people give an account of their stewardship of the large tracts of land which they may hold. (Hear, hear.) I do not think it is to the interests of the country to allow land to remain undeveloped indefinitely, if and when we can find people to put on it.

At the same time, it is a very complicated and difficult subject, which deals with property rights and so on, and it is for that reason that I withdrew from my original motion the phrase or section which referred to that particular problem. I did so because—and this is in answer to the point raised by the hon. member Mr. Shamsud-Deen—it was pointed out to me that possibly the type of committee I was asking for to deal with settlement would not be quite the right committee to deal with this question of land.

Equally, the question of freeholding of land. That was referred to yesterday, and

[Major Cavendish-Bentinck]

I would only add that I agree with a special committee for that. But I do hope, in view of the debate which has taken place, that Government will not continue to put forward the excuse for not dealing with a difficult problem that they are too busy with other things, because this problem has been raised constantly in this Council for now, I believe, something like fifteen years. Surely at the end of fifteen years we can begin to face up to something that may present a few bristles.

Another point was touched on by the hon. the Acting Colonial Secretary. This was the question not only of new people coming into the country but the possibility of placing on the land or finding employment for people already in the shape of the young men, many of them Kenya born.

I carefully phrased my motion to show that I had not overlooked that problem. If you will read it:—

"To consider to what extent further assistance to settlers with approved qualifications."

It does not say new settlers. I only specifically referred to them when I dealt with the question of imparting knowledge and experience in the motion.

I am grateful to my hon. friend for pointing out that problem; it is one which will have to be taken very carefully into consideration.

He referred in kindly terms to the Kenya Association and the work it had done. Perhaps, although I should not say this as I am intimately connected with it, I am nevertheless, in common fairness to those who have helped and taken the greater part in building up that Association, going to say that I believe when the time comes to look back it will be found that the Association had done very good work indeed and laid a very sound foundation for what may eventually be achieved.

I would, however, like to add, that the reason we want this committee is because there is a limit to what that Association can do. It has done a great deal with the help of such people as the General Manager of the Railways in getting concessions and helping people to come out and assisting them when they come here, but it is not the job of an unofficial association of that kind to initiate a policy or a settlement scheme. That, Sir, is the job of Government, helped by such an Association and by the unofficial community, and it is for that purpose that we put forward this motion.

The hon. members representing native interests raised the question of fairness to those whom they represent. I do not think a single word was said in this debate to suggest that we did not realize that the native interests have got to be taken into consideration. On the contrary, nearly every speaker has alluded to that particular question. The only thing we said, or rather, tried to bring out, is that the native, who after all is here, is being looked after officially, and I think his development has been very great during a comparatively short time, but the European settler is not here yet in sufficient quantities, and we believe we can and must get more Europeans for the good of the country and, incidentally, for the good of the native.

For some unknown reason the hon. members who represent Indian interests chiefly picked on the hon. Member for the Coast as a target for their broadsides. I cannot understand why, as it so happened that the hon. Member for the Coast yesterday made a particular point which I want to stress now, that in this question of settlement and development of the country everybody, every race, has a place.

Actually, and I am perfectly frank, I moved this motion entirely from my own point of view, from the European standpoint, because I think it would be for the good of the Indian community, for the good of the native community, for the good of the country as a whole, to vastly strengthen European settlement in that part of the country which we have been building up as a reserve for that particular purpose.

But I have never said there is not room also for Indian settlement, because there is. The only trouble is that the opportunities given have not been taken advantage of. If they want assistance, if they want an inquiry, I shall be the first to let them have it and shall do my best to assist them.

[Major Cavendish-Bentinck]

I think it is the greatest pity in the world, when one brings up a thing from a particular point of view, that other races should have to jump on it and oppose it, and I do not believe it does any good to anybody.

The fact remains, whether it is politic or not to say so, that in my opinion the development of this country still primarily rests on European endeavour. It may be a bigoted point of view, but it is mine, and I think that, on the whole, Europeans in this country have given more than a fair deal to other races. If we are going to advance, we must advance with the European leading, but all three races hand in hand, and there is no question of racialism whatever in this particular motion.

That, Sir, is all I wish to say, and again I should like to thank Government for expressing their willingness to accept this motion, which I believe will be for the good of everybody. (Hear, hear.)

The question was put and carried.

MARKETING OF NATIVE PRODUCE (AMENDMENT) BILL

SECOND AND THIRD READINGS

MR. WALLACE: Your Excellency, I beg to move the second reading of the Marketing of Native Produce (Amendment) Bill.

Under the Principal Ordinance, if a district is notified to be a declared area it is an offence within that area for anyone to purchase native produce. If Nairobi were to be notified as a declared area to-morrow, it would be an offence for any hon. member of this Council to purchase native produce without first obtaining a Sh. 2 licence. That obviously was the intention, and the only object of this Bill is to make it quite clear that it only applies to persons purchasing native produce for purposes of re-sale.

MR. WILLAN seconded.

The question was put and carried.

MR. WALLACE moved that Council resolve itself into committee of the whole Council to consider the Bill clause by clause.

MR. WILLAN seconded.

The question was put and carried.

Council went into committee.

His Excellency moved into the Chair.

The Bill was considered clause by clause.

MR. WALLACE moved that the Bill be reported without amendment.

The question was put and carried.

His Excellency vacated the Chair.

Council resumed its sitting.

The Bill was reported without amendment.

MR. WALLACE moved that the Bill be read the third time and passed.

MR. WILLAN seconded.

The question was put and carried.

The Bill was read the third time and passed.

SCHEDULE OF ADDITIONAL PROVISION No. 2 OF 1937

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

"That the Schedule of Additional Provision No. 2 of 1937 be referred to the Standing Finance Committee."

If this motion is adopted, the Schedule will be examined item by item by the Committee. In these circumstances, I do not propose at this stage to go into any details, particularly as a full explanation of all the major items is afforded, either in the explanatory memorandum or in the remarks column of the Schedule itself.

I would, however, point out that, although the total Additional Provision recorded at the foot of column 6 on page 3 of the Schedule amounts to £17,236, it is explained on the title page that, after providing for set-offs by way of specific savings, reimbursements, and consequential revenue, the net additional provision amounts to £6,799 only, of which approximately £3,000 is on account of the liquidation of a long-standing liability in respect of the establishment of the East African Agricultural Station at Amani.

MR. STOOKE seconded.

The question was put and carried.

NATIVE HUT AND POLL TAX (AMENDMENT) BILL

SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the Report of the Select Committee on the Native Hut and Poll Tax (Amendment) Bill be adopted.

In view of the general desire that there shall be no compulsion on a native to accept from his employer kodi stamps in part payment of his wages, section 6A of clause 3 has been redrafted in the form in which it now appears in the report of the select committee.

That being so, there is no need either for the proviso to the present sub-section (1) of new section 6B, nor is there any need for new sub-section (2). Accordingly, both have been deleted.

Section 6D of the same clause has been amended, making it quite clear that a native can utilize any kodi stamps, whether he has purchased them or received them from his employer or not, in payment of his tax.

MR. MONGOMERY seconded.

The question was put and carried.

TRADE UNIONS BILL

SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the Report of the Select Committee, save and except the minority part of the report, on the Trade Unions Bill be adopted.

The select committee only recommends five amendments to this Bill, and none that is of any consequence.

The first is in paragraph A, that clause 6 be amended to the effect that on an application for registration that application must be accompanied by "a statement as to the sources from which the funds of the trade union are to be derived." This merely gives some information to the Registrar on an application to register as he is entitled to have under clause 13 of the Bill once the union has been registered.

Under clause 7 of the Bill as it stands, the Registrar is authorized to call for further information or evidence as he requires, but as the Bill is drafted it is not quite clear what would happen if that were not given. Accordingly, clause 8 has been amended by an addition making it quite clear that unless that further information or evidence is given the union cannot be registered.

The proviso to clause 8 has been amended so that the reference of any question by the Registrar shall be to the Governor in Council instead of the Governor. A further proviso has been added to the same clause providing that the Registrar shall inform the applicants for registration of any question which he has referred to the Governor in Council, and it has also been provided that applicants have the right to send their views on that question for consideration by the Governor in Council.

The last amendment which is proposed is in clause 17 (2). If the sanction of the Registrar has been obtained by fraud or mistake or by wilful violation of the rules, the registration certificate may be cancelled. It is proposed that the period of notice which the Registrar must give of such cancellation shall be reduced from two months to one month.

MR. WALLACE seconded.

MR. MAINI: Your Excellency, I beg to move that the motion be amended by inserting before the word "Report" where it first occurs the words "Majority and Minority" and by deleting the words "save and except the minority part of the Report".

While I do not disagree with the proposals of the majority of the members of the select committee on the Bill, there was disagreement on one particular matter which I have embodied as part of the Minority Report.

Before starting to outline that matter, I want to pay tribute to the chairman and my other colleagues on the committee, who listened with very great patience to what I had to say on the points where we differed.

I know that in proposing this particular amendment I am fighting what is commonly called a lost battle but, in common with other members of my profession, I have to do that very often, and I hope, if I failed to convince my colleagues on the select committee on the

[Mr. Maini]
point of view I hold regarding an appeal lying to a court of law, to convince as a last effort the members of this Council. Otherwise, this amendment would be in the nature of a funeral oration on the point raised regarding an appeal to a court in preference to an appeal to the Governor in Council.

I have been born in a community which believes in reincarnation, and I am hoping that in the years to come, when this Bill has been working in practice and experience has been gained regarding its clauses, this amendment will then be resurrected and made part and parcel of the Bill, if not to-day!

My main purpose in asking for an appeal to a court in preference to the Governor in Council has been very elaborately set out in the Minority Report. There are only three main grounds on which I have put up my case.

The first aspect of this is the aspect of constitutional practice of determining which is the proper authority to say what are the rights of individuals or institutions under existing law. That is not to say that I consider that the Governor in Council will not give as good a decision as any court of law in this country would, but my point is that there is certainly a separation of functions between the judiciary and the executive, and I consider it is only right, constitutionally right, that the judiciary should pronounce as to what are the rights of individuals or institutions under existing law.

It does not amount to saying that I myself or my colleagues have less faith in Your Excellency's advisers in that particular Council, but the point really is that there must be a separation of powers. There must be nothing to control this judiciary when it comes to determining individual rights. Maybe the hon. and learned mover, if he has any inclinations in that direction, will attain the highest honour in the judicial sphere as we know he has in the executive sphere and as a member of Your Excellency's Executive Council. So my opposition on this ground of referring appeals to the Governor in Council is purely a matter of principle.

Secondly, there are the technical advantages which accrue from a trial in court which are not obtained when a trial is held before Your Excellency in Council. There is the public nature of a trial in court. There is the possibility of bringing to bear all the precedents of the past in order to judge what should be done in that particular case. Then the open nature of the proceedings in court, as distinguished from the air of secrecy in which the proceedings are bound to be discussed in Executive Council, are far more preferable from the point of view of creating a sense of faith in the minds of citizens in a body of law.

I have elaborated this point in very great detail in the minority report, and I do not wish to take up the time of Council in repeating all I have said on that particular matter there.

You are providing in this Bill for sending memoranda to Executive Council. Is it not far more preferable to have the matter discussed rather than set out in writing? I say that the technical advantages from the procedure point of view of an appeal to court are far greater than when the appeal will lie to the Governor in Council.

Thirdly, is the question of considering what is being done in similar circumstances elsewhere than in this country. In this I do not see any particular reasons which differentiate the case of trade unions in this country from a trade union say in a country like England. The right of appeal to a court in England has stood now the test of time and has not been found unworkable, and I cannot see what reasons there are why much the same procedure should not be workable in this country.

It has been said in certain quarters that because there are several races to be considered and the possibility of racial issues arising, it is necessary that quick decisions must be taken by Government. That, I submit, is not the case. The fact that there is any differentiation of races in this country does not make it different from that which exists in England where, too, there is horizontal differentiation as compared to the vertical differentiation of races in this Colony. I say that good unions could exist in this country, and since it is not the intention of Council to kill trade unionism absolutely we should

[Mr. Maini]
follow the precedent that has been followed in England.

Doubt has been expressed in certain quarters that it is necessary to give these powers to the Executive in the interests of peace and order and good government. I say that no legislation of this nature can be conceived in fear. This legislation, I hope, will lay the foundations of trade unionism in this country which the whole country will be proud of and will legislate for institutions of a permanent character. It is not justified that we should conceive this legislation in an atmosphere of fear. I do not know how it is, but the idea has become prevalent that every trade unionist is a seditionist or a person whose activities will be subversive to good government and peace. I say that if Government has the slightest apprehension of that kind they should make special provision for giving powers to the Governor or Governor-in Council to act when he considers that action is justifiable in the interests of peace or good government. A special clause may be embodied for that purpose in the Bill but, in the ordinary circumstances, there is no justification for depriving the ordinary citizen of his right of appeal to court and making him appeal to the Governor in Council.

This is roughly a summary of the main points I have made in regard to appeal to court. There are two other points in the minority report, but I am not going to labour them at the present time, because I consider the point of an appeal to court of far more importance from the point of view of practical necessity than the other points raised in the minority report. However, in passing, I would refer to them.

The first is the point regarding an unregistered trade union being made illegal. The last time I spoke in this Council on this point, I was rather obscure, and I should like to make it clear.

I do not say that we should place unregistered trade unions on exactly the same footing as registered unions, but while you are granting special facilities to registered unions in the sphere of criminal and civil law you should not penalize unregistered trade unions by making their existence illegal and criminal. And that, if I understand it rightly, is the position in Great Britain.

There is the point regarding the powers of a Registrar to call for additional information from a prospective trade union. In my opinion, all that can be reasonably required of a prospective trade union is already contained in clause 6 of the Bill, and there is no necessity for clause 7. It is possible that it may in certain circumstances be used as a means of suppression rather than getting any real information from the prospective union.

I hope this Council will see fit to consider these points, and particularly I urge again the point regarding the appeal to a court in preference to an appeal to the Governor in Council.

In this Council are no representatives as such of the people who are going to be affected by this legislation. In the broad, general sense it can be said that the Indian members of the Council represent the Indian workers, and I know it is their strong and earnest desire that a proviso be inserted in this Bill to provide for appeals to a court rather than appeals to the Governor in Council. That, I think, is a very strong reason why this Council should consider allowing appeals in the manner I have outlined, for, after all, they are going to be one section of the people living among Europeans and Africans affected by the Bill, and it is only mete that Council should consider their wishes and desires in this matter.

I will say this much for them. They have a very strong case, they have arguments very much in their favour, and I hope this Council will consider them.

Regarding unionists being seditionists, I say that it is rather giving the benefit of the doubt the wrong way. It is one of the maxims of English jurisprudence that a man is not guilty until he is found guilty. Let us give credit to the leaders of the trade union movement for being as good and loyal citizens as any member of this Council is, unless we definitely know to the contrary.

I say that that is really the basis on which all legislation ought to be framed and it is, if I may say so, one of the characteristics of all legislation of the British Empire. Indeed, only a few years ago, in a building not far from here, a

[Mr. Maini]
speaker said that the British Empire was not joined or kept together by iron chains but by silken cords of love, and the same sentiment was again repeated by a very great Indian at a Round Table Conference. I say it is that attitude in which you must approach all problems, and I hope the Council will consider that point of view.

SIR ROBERT SHAW: On a point of order, Sir, I should like to ask a question. I am not quite clear what the procedure is. I understand from the hon. member's speech that he would like to see an amendment to clause 17 (3) of the Bill. I do not see anything on paper suggesting any addition to the select committee report which would provide for such an alteration. I am asking for information only.

MR. WILLAN: The position, as I gather it from the speech of my hon. and learned friend, is that I moved that the report of the select committee, save and accept the minority report, on the Trade Unions Bill, be adopted. Now I understand he wishes to include the minority report in this motion. In other words, he is moving an amendment that the minority report be also included in the motion.

ARCHDEACON BURNS: I should like to ask what becomes of the minority report if the majority report is adopted by this Council?

MR. WILLAN: The position then is that the minority report has not been adopted, merely the majority report. Of course, it is for my hon. and learned friend to alter his amendment by moving a specific amendment to clause 17.

MAJOR GROGAN: Are we to understand that this depends on two reports, one the antithesis of the other?

MR. WILLAN: On a point of order, unless the amendment is seconded and carried, then the procedure, as I foresee, would be that the Bill be re-committed to the whole Council and for the amendments to be proposed when we reach the relative clauses to which the hon. member has referred. That is the only way I see out of the difficulty.

The amendment was seconded by Dr. de Sousa.

MR. WILLAN: My hon. and learned friend (Mr. Maini) made three points.

The first is that clause 17 (3) (*b*) be amended so that an appeal shall be to the court instead of the Governor in Council. This Bill is modelled on the Tanganyika Ordinance, which has been in force in that Territory since 1932. I wrote to the Attorney General of that Territory and asked him if there had been any necessity to amend the Ordinance during the last five years, and the reply received was "No".

As I stated emphatically in speaking to this Bill on the second reading, we are embarking on new legislation, and therefore it is very advisable to keep that legislation as simple as possible. I repeat that that we must keep this Bill as simple as possible. My hon. friend now seeks to have this appeal to the court which, in my submission, will make the Bill much more cumbersome. I therefore stress that it is more prudent to keep the clause as it stands.

On the second point, regarding unregistered trade unions, this, according to its title, is "A Bill to provide for the registration of trade unions." If you are going to allow unregistered trade unions at the same time, you cut right across the principle of the Bill and there will be no need for it.

On the third point, which is contained in clause 7, that the Registrar may require applicants to submit further evidence or information concerning a union, my hon. and learned friend has qualms about that clause. But I do submit that it is most unwise to fetter the discretion of the Registrar in elucidating any point which the applicants have made with regard to the registration of a union.

MAJOR GROGAN: Sir, on that particular issue I find myself very much in sympathy with my Indian colleague. We have always got to remember that we live in an arbitrarily governed country, however benevolent that government may be, and the only security that a citizen has got under Crown Colony government is an appeal to the courts.

[Major Grogan]
I think we ought to go very warily indeed before we tread any further along this path which leads to the concentration of all power in an arbitrary executive. I think it extremely questionable whether it is even possible, by legislation in this country, to deny a citizen the right of appeal against arbitrary acts of Government.

I quite understand the objective of Government in putting this in, and think it quite a proper objective. It is presumably this. We are living in a country of different races, many of whom are still savage, to put it quite bluntly, and it is quite easy for malignant parties to come along and, under cover of trade unionism, follow subversive objectives. It is right and proper in a country with such delicate matters that we have to deal with that Government should be in a position to act very promptly if they have proper and adequate grounds for believing the purposes behind any action are subversive rather than defensive or constructive to the economic interests of the parties concerned.

But Government sometimes makes a mistake, and it is wrong that citizens should not have the ordinary normal appeal to the courts, the fundamental principle of our system. I cannot see it is impossible to devise some means whereby Government can act promptly whereby that action becomes effective subject to reversal on appeal at a later date.

I suggest that the hon. and learned Attorney General tell us whether it is possible to incorporate these two proper objectives in this Bill.

MR. SHAMSUD-DEEN: Your Excellency, I do not agree with that. I do not think it is a proper thing to embody anything in a Bill of this nature. If Government is really afraid that certain parties under the cloak of trade unionism are going to indulge in subversive and seditionist propaganda, there should be something in the Penal Code to deal with it, or it should form the subject of a separate Ordinance.

We are all in favour of such things being suppressed; we do not want that sort of thing, but to include it in this Ordinance is out of place.

On the other hand, to deprive people from being heard in court is really a dangerous principle, as explained by my hon. friend.

As regards the third point, the other day we were discussing the inadvisability of giving too much power to the Governor in Council. This goes much further. It not only gives power to the Governor in Council to make rules but unlimited powers to the Registrar to embody anything he likes not already embodied in this Ordinance.

MAJOR CAVENDISH-BENTINCK: Your Excellency, this is a very difficult Bill dealing with a very difficult subject. The hon. member Mr. Maini made, I must admit, an exceptionally good case for his point of view. His arguments were very logical, and require a certain amount of answering. My hon. friend who represents the Coast also stressed the same point of view.

Well, one has got to look at these things from the point of view of the state we have reached at the present moment. I think when it was originally suggested a few years ago that a measure of this kind should be enacted, most members, on this side of the Council at any rate, felt we were some way off the days of trade unions, that we did not want them, we had not reached that stage, and that it would be a pity to have an unnecessary Bill dealing with something we did not want and hoped would not happen for some years to come. For that reason legislation of this kind was not proceeded with. Latterly, and with regret, we have had occasion to see that some such measure is necessary. As a result, this model Bill has been produced.

It is now suggested, I understand, that clause 8, which so far has not been alluded to, under which the Registrar may refuse to register, and can refer to the Governor in Council, should be amended to provide a right of appeal to the High Court. Furthermore, when a question of cancellation comes up under clause 17, it is suggested there should also be the right of appeal to the court.

If we were in the same stage of development as Great Britain or other parts of the world, I would say that they would probably be very and proper provisions.

[Major Cavendish-Bentinck]
But, as things are here to-day, with the possibility of all sorts of strange organizations being formed, perhaps by natives, at a time when they really do not quite know what they are doing and possibly at the instigation of some not very desirable influence from outside, that although we appreciate the force of the argument put forward by the hon. members, we feel it is necessary to give the Governor pretty wide discretionary powers for the present.

Later on, we may find a good many unions are formed, and there may be difficulties with the Registrar. Such things have occurred. Then, I think, will be the time to suggest this right of appeal to the court. But for some years to come I feel there will not be many unions, possibly none (there is only one in Tanganyika), and for that reason, while I do see the force of the arguments put forward, speaking for myself I am going to support Government to put the Bill through as it stands. It can always be reviewed at a later stage.

MR. LOGAN: Your Excellency, the speech of the last speaker has been phrased in terms that, if I may say so, cannot be improved upon from this side of Council.

The considerations that he put forward are exactly the considerations which have induced Government and persuaded Government that it is not only desirable but highly important, at this stage of the development of the country, in introducing a measure of this sort, that control should be vested at least for the time being in the Executive until it is seen how the matter works.

For those reasons, I regret that Government is unable to accept the amendment proposed by the hon. Indian member.

The question of the amendment was put and negatived.

The question of the original motion was put and carried.

RESIDENT LABOURERS BILL

SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the Majority Report of the Select Committee on the Resident Labourers Bill be adopted.

In the first place there is an amendment to clause 1 to the effect that this Bill cannot come into operation until "such date as the Governor may, by notice in the Gazette, appoint". The reason for that suspending clause is, as I stated in my remarks in moving the second reading, that this will give time to Government to find land for those resident labourers who may be turned off European farms as a result of the Bill becoming law.

The definition of "farm" in clause 3 has been amended in two respects. First of all, after the word "land" in line 1 thereof these words have been inserted: "held under a grant, lease or licence from the Crown," to make it quite clear that this Bill has nothing to do with native reserves. At the end of that definition there has been inserted: "and, except for the purposes of sub-section (10) of section 5 and of sections 18 and 19 of this Ordinance, shall include a forest area." The position will be that wherever you see the word "farm" it includes forest area, except in that sub-section and the sections named.

Turning to the definition of "occupier" in the same clause, the words "unalienated Crown land" have been cut out and, in fact, they have been deleted from all clauses in the Bill in which they appeared. The reasons for that are, first, that a person who obtains a temporary occupation licence from the Crown he it is who is the occupier and not the Commissioner of Lands. Any person other than the person holding a temporary occupation licence who is in occupation of Crown land can and will be dealt with by the Commissioner of Lands under the Crown Lands Ordinance, and any person who obtains a temporary occupation licence becomes the occupier and is therefore subject to all the provisions of this Bill.

Then comes the question raised in select committee of grazing permits. These, in fact, are temporary occupation licences, and I am assured by the hon. the Commissioner for Local Government that it is the policy of Government not to issue those grazing permits without prior

[Mr. Willan]
reference to the local authority, and that is the same local authority which has jurisdiction under this Bill.

Those are the reasons, and very cogent reasons, why it is unnecessary to make provision for unalienated Crown land in this Bill. In fact, to do so would be to limit the powers of the Commissioner of Lands under the Crown Lands Ordinance.

Turning to clause 4, in sub-clause (1) the words "for a longer continuous period than forty-eight hours on any farm or in any forest area, or on any unalienated Crown land" have been deleted. For myself, I am not sure whether it is wise to delete those words, but we were pressed to do so in select committee, and I did not feel sufficiently strongly on the matter to resist that request. Therefore, they have been deleted.

Now the position will be that no native or Somali shall reside on your farm or any railway land unless he comes under the provisions of the paragraph in that sub-clause.

Paragraph (*d*) of the same sub-clause has been amended to make it necessary for a native or Somali to obtain the permission of the occupier before he can remain on an occupier's farm. I sincerely trust that all occupiers—I am sure they will—will act reasonably with regard to those aged and infirm people.

New paragraph (*f*) has been added to the same sub-clause dealing with forest areas. I am informed by the Conservator of Forests, with regard to the forest areas adjoining native reserves, that grazing permits are issued and not only do these permits provide for the cutting down of grass in those forest areas but they also bring in a certain amount of revenue to the Colony.

The proviso to sub-clause (1) has been re-drafted as sub-clause (2) without any amendment thereto.

The only amendments of any consequence in clause 5 are contained in sub-clauses (6) and (7).

In sub-clause (6) the words "in his discretion" have been deleted, and we have substituted the words "for good and sufficient reason", and sub-clause (7) has been re-drafted to make it necessary for a magistrate to furnish his good and sufficient reasons to any occupier who wishes for them.

Clause 6, which formerly consisted of three sub-clauses, has been entirely re-drafted, and the position now is that where an occupier wishes to obtain servants from a native reserve he must inform the district commissioner of the native reserve when he wishes to enter into a contract with one of the natives in that area.

In clauses 8 and 10 all reference to Somalis has been deleted, because although it is the law at the present time under the Native Registration Ordinance that Somalis must be registered, in fact that law is not being carried out, and therefore it is absurd to make provision for the registration of Somalis in this Bill. In fact, when the Native Registration Ordinance comes before this Council next session, reference to Somalis will be deleted therefrom.

Under clause 12 the penalty has been reduced, that is imprisonment can only be given in default of payment of a fine, and not, as at the present time, imprisonment or fine or both given.

In clause 13 a labour officer is given power to demand contracts to be produced to him, and the power of a police officer under that section has been confined to Assistant Inspectors or police officers above that rank. I am assured by the Commissioner of Police that at the beginning of 1938 there will be sufficient Assistant Inspectors to carry out these duties throughout the whole Colony.

Clause 15 has been deleted altogether; that is, that the resident labourer must be supplied with a labour ticket. We were creditably informed in select committee that it is not the practice at the present time and, in fact, where occasional labour tickets have been given to resident labourers they get so crushed or lost and become so dirty as to get quite illegible. We were also impressed with the argument that on a large farm it is impossible for an occupier to go round and mark tickets every day or every week. Those are the reasons why clause 15 has been deleted.

Now I come to clause 16 onwards, and here it is going to be rather confusing, because by the deletion of clause 15 it is

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necessary to re-number the subsequent clauses.

Clause 17, now 16, may appear to contain many amendments, but, in fact, they are of little consequence, and the only ones I might mention are, first of all, the deletion of paragraph (*b*) of sub-clause (1), the deletion of (*a*) of sub-clause (3), and the amendment to sub-clause (12). All these three amendments are interlocked, and clarify the position that, for the purposes of this Bill—I emphasize that—all the stock on a farm should be deemed to be that of a resident labourer.

In paragraph (*d*) of sub-clause (1) of the same clause, that is 17 re-numbered 16, which is now re-lettered as paragraph (*c*), the age at which cattle should be branded has been raised from six to twelve months, and consequential amendments on account of that have been made in sub-clauses (5) and (10).

In the same paragraph is a further amendment by providing that a period of thirty days will be allowed in which to brand cattle which are annually brought on to a farm.

Paragraph (*b*) of sub-clause (2) of the same clause has been re-drafted merely to make the wording better, but the sense has not been altered in any way.

A new sub-clause (13) has been added at the end of this sub-clause, providing that—

> "Nothing in this section contained shall apply to any stock depastured by a native or a Somali in any forest area under the authority of a grazing permit issued to him by the Conservator of Forests under any law for the time being in force relating to the granting of such permits."

But for that new sub-clause, all cattle allowed in forest areas under grazing permits would have to be branded. That is the reason for the insertion of that new sub-clause.

Clause 19, now 18, which appears on page 13 of the Bill, has been amended, giving a magistrate power to remove stock of resident labourers as well as resident labourers themselves from undeveloped farms. This was an omission from the Bill.

Sub-clause (2) of clause 20, now 19, is slightly re-drafted so that it will cover fertilizers such as wood ash produced by the work of resident labourers.

Now I come to the local option clause, No. 22, now re-numbered 21, which appears on page 14 of the Bill. The amendments to this important clause may seem few, but in effect they are important ones.

First of all, paragraph (*a*) of sub-clause (1) has been deleted. The position will now be that the local authority cannot prohibit but can only limit resident labourers on farms.

In paragraph (*d*), now (*c*), in the same sub-clause, the local authority can only prescribe the minimum number of days within the limits of 180 and 270 on which resident labourers can work on farms.

Passing on to sub-clause (2) of the same clause, the local authority in paragraph (*a*) shall only have regard to the wishes of the occupiers of the area to be affected by the order and not to the wishes of the occupiers of farms within the whole area of the jurisdiction of the district council.

A new paragraph, (*d*), has been added to that sub-clause (2), reading as follows:

> "In making any order as aforesaid the local authority shall have regard—
>
> (*d*) to the value of the interests, and the extent, of each farm within the area to be affected by such order together with the nature of farming operations conducted on each such farm."

That is a most important amendment, restricting the powers of a local authority and particularly aimed at safeguarding the rights of a farmer who has a large farm consisting of valuable stock, or crops planted thereon. It is designed to protect such farmers who form a most valuable community in this Colony, so that they shall not be left at the mercy of the small farmers who have farms surrounding such large farms. This new paragraph, I submit, is comprehensive and clear, and I hope I have sufficiently emphasized the reason for its inclusion.

In the same clause, (4) has been deleted altogether and a new one substituted for it. This really is consequential

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on the amendment which was made in sub-clause (7) of clause 5. This new sub-clause (4) of clause 21 deals with the cost of removing resident labourers, their families and stock from farms when the occupiers have failed to carry out the orders of any local authority given under what is now clause 21. For instance, a local authority may make an order regarding a farm, that that farm could have fifty resident labourers and a certain amount of stock. The occupier disobeys that order, and engages sixty resident labourers. Then, of course, he is contravening the provisions of the Bill, and the question is, what is he going to do with the extra ten, how are they going to be got back to the reserve? In my submission, the occupier ought to pay for returning them and their families and stock to the reserve, and that is the object of this new sub-clause.

In clause 23, now re-numbered 22, minor amendments have been made.

In sub-clause (1) the period of notice, fourteen days, has been extended to thirty days, with a consequential amendment to sub-clause (2) increasing the period therefrom thirteen to twenty-eight days. In sub-clause (6) the word "vary" on the last line has been deleted, and the words "refer back to the local authority" substituted, so that the Governor in Council will only have power to confirm or reject an order or refer it back to the local authority. If it is referred back, it will come back to the Governor in Council again from the Standing Committee.

Clauses 24 to 27 have been re-numbered 23 to 26 and do not call for any comment.

Three amendments have been made in clause 28, which is now No. 27.

In paragraph (*a*) the words "on demand" have been deleted. Paragraph (*c*) has been re-drafted, and will now read: that an occupier shall be liable—

> "(*c*) if he fails knowingly, or on demand—
>
> (i) to provide any resident labourer of his with proper medicines during illness; and
>
> (ii) to provide any resident labourer of his, who is seriously ill, either with medical attendance or, if the resident labourer consents, to send such resident labourer to the nearest hospital:
>
> Provided that an occupier's liability in respect of the costs of medical attendance or of hospital treatment shall not extend beyond a period of thirty days."

Paragraph (*d*) of sub-clause (2) has been deleted altogether; it is considered advisable not to include penalties in a provision designed to settle civil disputes by arbitration.

Clause 29, now 28: the penalty has been reduced from £100 to £30.

Now I come to new clauses 29 and 30. The first of these merely empowers a labour officer to institute civil proceedings on behalf of any resident labour, and the second allows any claim to be filed in respect of wages due to a number of labourers, thereby saving much time and expense. Both of these clauses are in common form.

Clause 31, now re-numbered 32, contains the rule-making power of the Governor in Council. It now consists of two sub-clauses. The position will be that all rules made under the Ordinance will be laid on the table of this Council, and all members will have an opportunity of debating those rules. If a resolution is carried that any rule should be amended or revoked, such amendment or revocation will come into force from the time the resolution is passed in this Council.

Apart from a few amendments, the schedules at the end of the Bill do not call for any comment. The only other clause I need mention is new clause 35.

Hon. members will remember that when I spoke on the second reading of the Bill, I emphasized that under this Bill contracts would be made with each individual labourer instead of with the head of the family, which is the law under the Ordinance of 1925. The difficulty which had to be solved in select committee was, what was going to be done with contracts made under the existing Ordinance when this Bill come into force and the 1925 Ordinance is repealed?

The members of the committee felt that the only proper effective way of dealing

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with that problem is by providing, immediately the provisions of this Bill are applied to any area under clause 2, that occupiers in the area shall give six months notice of all contracts existing under the 1925 Ordinance and then enter into new ones under this Bill.

That, Sir, is I think all that is necessary for me to say in moving the adoption of the select committee report. As all hon. members are aware, this is a Bill which has aroused the interests and comments of a large section of the community. It affects so many divergent interests of different types of farming that the problem before the select committee, which was unusually large, was not an easy one.

In conclusion, I wish to pay a tribute to all my colleagues on that committee for the way in which they earnestly and reasonably deliberated on the various and many difficult provisions contained in this Bill.

MR. WALLACE seconded.

SIR ROBERT SHAW: On a point of information. The first minority report does not contain my signature, but I am associated with it.

MR. WILLAN: In reply to that, I did not obtain the signatures of the hon. Member for Ukamba and the hon. Member for Rift Valley until yesterday morning, and the first minority report is signed by the hon. Members for Nairobi North, Trans Nzoia, Ukamba, and Rift Valley.

MAJOR CAVENDISH-BENTINCK: Your Excellency, before suggesting an amendment to the substantive motion before Council, I should like to draw specific attention to the recommendation made by the majority of the select committee with regard to clause 35, because this clause really deals with a matter of principle.

It has been pointed out in debate on these various Bills that we are finding ourselves more and more at the mercy of rules. I would like to pay a tribute to Government that they are apparently prepared to accept a fundamental alteration which, to my mind, is long overdue. In other words, on matters that concern the everyday life of the people rules made under this sort of legislation will be laid on the table of this Council, and will then be before us to debate and alter them if necessary. That, Sir, is I think a very great step forward.

There is one other general remark that I want to make regarding a number of clauses, notably those added to confer additional powers to labour officers, just referred to by the hon. and learned Attorney General. Again and again it has struck me that it was really a perfect farce having three Bills in contemplation for dealing with one problem. All this business about giving powers to labour officers is merely a duplication of the powers given under another Ordinance. Again, we could really have cut out that part of clause 21 dealing with the powers of restricting, or rather prohibiting, resident native labour, because I do not believe there is anybody to-day who can tell you precisely when you should sign on a labourer under this Ordinance or when you can sign him on under the Employment of Servants Ordinance, save in one respect, when he has cattle, and the stock can be prohibited or controlled.

You have a Bill of this thickness to deal with one class of labour, another Bill to deal with another class, and another made to deal with signing on, and yet signing on is referred to in all three Bills, which seems to me an unnecessary surfeit of legislation. The fact remains that all these people are "servants", and we have got to have a certain amount of simple legislation to see they are properly looked after and contracts properly enforced. That can easily be done, in my submission, in one Bill in which special provision is made for a servant who happens to want to keep a few cattle.

These measures are not veterinary ordinances or penal codes, and we merely want to regulate the relationship between servant and employer.

I do hope, if this Bill passes, that when we come to consider the others Government may yet see fit to really take this matter into consideration, because I happen to know that the views I have expressed have a great deal of support on the other side of Council, so I trust that

[Major Cavendish-Bentinck]

Government will take into consideration whether it is not possible to have one simple Ordinance to deal with one simple problem.

I wish to move the adoption of the first minority report which is attached to the majority report. It is merely an addition to the latter, and in no way negatives anything which has been submitted by the hon. mover. It will require one alteration, because it was written before I noticed the re-numbering of the clauses, and the additional clause will be 19 (4) instead of 20 (4).

MR. HARVEY seconded.

MAJOR CAVENDISH-BENTINCK: If I may speak to that amendment, Sir?

It is in two parts. The first deals with the question of the native or Somali disposing of "any crops or produce of cultivation produced on a farm without having first obtained written permission to do so from the occupier or occupier, such permission not to be unreasonably withheld."

I know it will be alleged that this is a perfectly unfair suggestion to make, in that you cannot possibly prevent anybody doing what he likes with what is his own. We do not in any way deny the justice of that contention, but what we do say is that you have a right, as far as possible, of preventing a native doing what he likes with what is not his own. Actually, in practice, there is a tremendous lot of petty thieving; indeed, it is not petty thieving, because in the aggregate it amounts to very large amounts.

The basic idea of a resident native labourer is that you allow a servant to come on your land, you provide him with materials with which he can build a house, and he can have a certain amount of cultivation and possibly stock. This means that you really want him to have enough for his own use and, if he has a little over, you do not object to his selling it. But we do not think you are in this Bill endeavouring to suggest that a native can farm on land which has been alienated to the occupier.

The second provision deals with the question of the jurisdiction of the local authority over Crown land or railway land situated within the boundary or the jurisdiction of such local authority. This point was brought up during the debate on the Bill.

We consider it is quite unreasonable that in the case where a local authority has jurisdiction over an area, that because there happens to be small pockets within those areas which are railway land or forest areas any order which the local authority makes should not affect such small islands. After all, according to the definition, these people are occupiers. Because they happen to be servants of Government it does not follow that they have got to be treated quite differently from any other ordinary citizen.

COL. KIRKWOOD: Your Excellency, I rise to support this amendment, and I hope it will be accepted.

The first part deals with the removal of ops presumed to have been grown and which is the property of a resident labourer. I know from experience, the same as every producer knows, that there is not a farm in the whole of this Colony where the crops, even stock, are not pilfered by the natives. I even go so far as to say that in my district there is not a maize crib in the area from which pilfering does not go on by natives employed on that or the adjoining farm.

I think it only reasonable, if this Bill is going to be made to work, that in the interests of the natives themselves they should be required to get permission from the employer, such permission not to be unreasonably withheld.

I am afraid that if this is not carried it will have a detrimental effect on the interest of the native himself. An employer will have to seriously consider what sized plot of land he is going to set aside, either for a particular native or natives in general, on which they are to grow their crop. If the amendment is not agreed to, that is the only way for a farmer to protect himself, by making the plot so small that there will be no surplus to be sold by the native, and the small quantity he is allowed to grow will be consumed by his family.

There is another point we might consider in passing.

[Col. Kirkwood]

I do not agree with another clause that, on the expiration of 180 days or 270 days, you are compelled to give a native a certificate and sign him off, for he can then go and work on an adjoining farm where he may get 50 sents or Sh. 1 or Sh. 2 more. It amounts to bribery or corruption or inducing a native to leave a bona fide employer, and is dealt with in another Bill to come before Council and should not be incorporated in this Bill.

HIS EXCELLENCY: On a point of order, we are dealing with the amendment proposed by the hon. Member for Nairobi North; that is, the incorporation of two proposals in the minority report. We are not dealing with the whole of the select committee report.

COL. KIRKWOOD: I apologize; I have been rather slow in coming to the point!

I have been pointing out that a native has a right to leave the farm on which he is cultivating certain crops and he wants to sell them. I have also pointed out that he can leave and work on an adjoining farm and work there under certain conditions, notwithstanding his wife and children plus his stock stay on the farm on which he has worked. For his own subsistence he returns to that farm and removes his crops.

As regards the second part of the amendment, I am in entire agreement with it, that unalienated Crown land, forest reserve or railway land should be under the jurisdiction of the local authority in the district concerned, in which those different types of lands are situated. Otherwise it is going to lead to complications. We are going to have the Commissioner of Lands, residing in Nairobi, as the authority who has jurisdiction over unalienated Crown land in Trans Nzoia or elsewhere.

Surely it must be readily admitted that the local authority, who live in the district and know the farms intimately and what is going on more or less week to week, are in a better position to regulate trespassers and unauthorized grazing, thereby assisting the Commissioner of Lands, who is not aware of those particular doings at the time? Regarding the railway land, it is only a very small area, I think something like fifty yards on either side of the line. Surely these small areas should come under the local authority.

As regards forest lands, I do not know, outside Nairobi district, where the jurisdiction would pass from the Conservator of Forests. It would not in mine or the adjoining district, but would affect Nairobi, where you have small islands of forests surrounded by European farms. Surely these should come under the local authority for administration under this Bill.

I do hope grave consideration will be given to both the points raised in the minority report and by the hon. mover of the amendment.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, the 11th August, 1937.

Wednesday, 11th August, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 11th August, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 10th August, 1937, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 51—VOTERS ROLL

MR. BEMISTER asked:—

Will Government state the last date for citizens to register their names on the Voters Roll to enable them to vote at the 1938 general election?

MR. WILLAN: Under the provisions of Rule 3 of Schedule II to the Legislative Council Ordinance, No. XXVI of 1935, the last date on which it is possible for an elector to claim to have his name inserted in the Register of Voters is a day not later than four weeks after the publication of the new Register in the Official Gazette in accordance with Rule 3 of that Schedule.

The preparation of the new Register in accordance with Rule 1 of Schedule II has now been completed, and publication in the Gazette will shortly be effected. No further claims for insertion of names, therefore, should be made until statutory notification of publication under Rule 3 of the Schedule has been given in the principal newspapers circulating in the Colony.

MR. BEMISTER: Arising out of that answer, Sir, I am sorry but I did not understand the reply.

All I want to know is, what are you going to do with people who are registering now for the next election, or do you contend that May was the last date for anybody to get on the register to vote next March or April or whenever the election may be?

MR. WILLAN: The new register will be in force in January. After the publication of the register, the four weeks as I have stated will apply.

DR. DE SOUSA: Arising out of that, in the case of people who were on the old register but who have been away from the Colony during the present registration, will they be entitled to ask to have their names inserted in the new register after the publication of that register?

MR. WILLAN: I should be much obliged if the hon. member would give notice of that question so that an answer could be given him to-morrow. It is getting rather complicated.

DR. DE SOUSA: I do give notice now.

MAJOR RIDDELL: Arising out of the answer, can we have a plain answer to a plain question? If anybody wants to register for the 1938 election, can they or can they not do so now? If not, let us hear why, and, if they can, up to what date?

MR. WILLAN: I must ask for notice to be given of that question.

MR. BEMISTER: Can it be answered to-morrow, because there are over 100 people in Mombasa waiting to be put on the register, and if the question is not answered to-morrow it will be of no use.

MR. WILLAN: It will be answered to-morrow.

MAJOR GROGAN: Arising out of the answer, are we to understand that everybody who does not register on the new register is disfranchised or, in other words, that nobody is on the new register at all unless at some future date, not made quite clear by the hon. and learned Attorney General, they apply for registration? There is a great deal of confusion in the matter, and a very simple statement without legal jargon will help to allay a good deal of dissatisfaction.

MR. LOGAN: I suggest that the answers to all these questions be incorporated in the reply to-morrow.

MR. SHAMSUD-DEEN: May I ask a question without notice?

Has Government done anything to publish the proposal of Government as

[Mr. Shamsud-Deen]
regards the next election in languages, other than English, which are understood by the voters? And, if the answer to that be in the negative, does Government propose to take any such steps?

MR. WILLAN: I do not see that that arises as a supplementary question; this is a question of dates, not of languages. Will the hon. member please give notice of his question?

RESIDENT LABOURERS BILL

SELECT COMMITTEE REPORT

The debate was resumed.

ARCHDEACON BURNS: Your Excellency, I feel rather strongly about the first part of this minority report, which reads as follows: That an additional section be added, to read as follows:—

> "No native or Somali may sell or dispose of any crops or produce of cultivation produced on a farm without having first obtained written permission to do so from the owner or occupier, such permission not to be unreasonably withheld."

A man goes on to a farm to work for an employer, and he takes his wife and family with him. The employer gives him a section of land, wherever it may be, to be cultivated by him for food for himself, his wife and children. That being so, is the produce that is grown on that section of land handed over to the man by the employer not to be at his disposal, or will he, as stated here, supposing that he has grown more than he needs—bearing in mind that the man can only plant on that section of land such crops as the occupier gives him permission to do so—have to apply for permission to sell or otherwise dispose of them?

Suppose that man works on a maize farm. I presume the maize farmer will not give him permission to plant maize, because it might, as he thinks, be too much of a temptation to the man. But I do feel strongly that if the man has a little produce over that he wants to sell, it may be to buy clothes for his wife or children or himself, it is very hard, and would be a great hardship to him, if he were denied the right of selling that produce grown on the land which has been handed over to him.

I feel very strongly on that, and do hope that the proposer of the minority report will see his way to meet that difficulty, that a man, thus given a bit of land, the produce from that land is his property to be disposed of for his own benefit, for the upkeep of his own home or, if necessary, to sell potatoes or something like that in order to procure for himself a few shillings for his family.

I think myself that the time has come when we should not look upon every African employee as a thief and a robber. We know that there are plenty of them about. If you go to England you will find plenty of such people there, or if you go to India; but surely in this country there are plenty of young men who go on to farms to work who are not thieves and robbers and can, and are, depended upon by employers who employ them every year, so that it would be a degradation to such a man if he is a decent fellow and trusted by his employer to have to go to him, before he can sell a load of potatoes or anything else, and ask him, "Please may I have a chit permitting me to sell this produce I have myself produced on the land you gave me."

I do hope the hon. mover will see my point and try and meet it as far as possible.

MR. HARVEY: Your Excellency, I share my venerable and hon. friend's strong feeling in regard to this particular matter, but I am afraid that my urge is in exactly the opposite direction, and I most wholeheartedly support the amendment before Council.

I suggest, in all seriousness, that failure to accept this proposal is a very direct and definite encouragement to employees to steal the produce of their employer on whose farm they reside. Actually, it merely suggests that before the surplus produce of such employee can be disposed of off the farm, the native desiring to sell must get a permit from the employer. I suggest that that imposes no hardship whatever on the individual concerned.

He has to get permits for everything else, as everybody knows. He has to get

[Mr. Harvey]
a permit to move his stock, he has to get written permission to move himself, and I see no reason in the world why he should not get a permit to dispose of his surplus produce.

If he wishes to farm seriously, there are 47,747 square miles of native reserve dedicated to the use of native agriculturists. When they leave those reserves to go on land alienated to Europeans and Indians and others for purposes of work, it is unnecessary that they should grow more stuff than they require for their own family requirements but, in the nature of things, there will occasionally be a small surplus, and it is absolutely essential for the owner of the land to know what is happening.

I have had a very long and bitter experience of the predatory proclivities of native employees. It just happens that I signed on the very first resident native labourers in 1918 ever signed on in Kenya, and I must claim to know something about the subject. I wish everyone to clearly understand that people, more especially those resident in the back-blocks, are seriously handicapped by the petty thieving which is steadily on the increase and is a very serious drawback to settlement and comfortable existence in the White Highlands.

The classic example of this sort of thing occurred at Limuru a few years ago. A retired Government official invested his life savings in a potato farm. He planted 10, 20 or 30 acres, and the potatoes grew and flourished exceedingly. He could not understand why the foliage should be so prolific and why everything should seem so magnificent: everything in the garden was lovely. But, when the time came to raise his crop, there were no potatoes there. They had all been taken in the dead of night, and this, of course, encouraged the prolific growth above ground! That is the classic example.

There is a necessity for some check on what is being done by natives wandering about European farms with produce of their own and employers generally.

The venerable and hon. member the other day quite rightly emphasized the very friendly relations which exist between European employers and native employees. I can support that. My own natives invariably address me in those endearing terms mentioned by the hon. member, *Baba* and *Mama*, the term varying according to the extent to which they wish to exploit my generosity! But the fact remains that petty thieving is rapidly on the increase, and a great many people in my own district who have a matter of 250 or 300 acres of maize find it necessary to employ as many as five or six night watchmen during the five to seven months period of the growth of the crop.

I suggest that this state of affairs does not exist in any other country in the world, and it is up to Government to do anything it reasonably can to meet the situation. Police protection, as everyone must realize, in this matter is entirely out of the question; it cannot be done, there is not the police force to do it, and we have not the money to spend on that sort of thing; furthermore, when alleged thieves are apprehended it is the most difficult thing in the world to get a conviction in such cases owing to the very grave difficulty surrounding the identification of maize and suchlike crops.

This difficulty is not confined to the native of Africa, and, as your legal advisers, Sir, must be fully aware, legislation has been enacted to deal with thefts of primary produce in most countries in the British Empire, with very special reference to India, Ceylon, Rhodesia, and the Union of South Africa.

I suggest, in all seriousness, that failure to accept this amendment would lead to conditions most demoralizing to natives and most inimical to the best interests of the Colony as a whole. I most heartily support the first portion of the amendment.

Equally, I should like to say a word in support of the second portion, which sets out to make the local authority solely responsible for unalienated Crown land, forest reserves, and such small slices of railway land as may be situated in the district under its control. It does to me seem absolutely farcical that in one comparatively small district, such as Kisumu-Londiani, where I come from, there should be no less than four authorities dealing with the same simple matter. The

[Mr. Harvey]
four authorities are, firstly, the district council; secondly, the High Commissioner of Transport; thirdly, the Conservator of Forests, and fourthly, the Commissioner for Local Government, Lands and Settlement.

I see no reason in the world why you should not save the fuss and bother and trouble and expense and make for the pleasant administration of this particular measure by endowing the district council with authority over these areas, in the same way that they have authority over farms within their jurisdiction. I most heartily support the amendment.

ARCHDEACON BURNS: In explanation, I was only dealing with the first portion of the amendment, and not the last.

MR. MONTGOMERY: Your Excellency, I want to speak to the first part of the amendment, dealing with the selling of crops, and I want to oppose the amendment.

In speaking to it, I want to try and answer the question raised by the hon. Member for Nairobi North (Major Cavendish-Bentinck), in which he implied that there was no real difference between this and the Employment of Servants Bill and that one comprehensive measure would meet the situation.

When he said that, he inferred that certain members of Government were probably in agreement with him, and I think he in his mind thought of me. I gave evidence before the original committee. I was not a member of it. My own personal opinion was given there, and he is both right and wrong in what he said. Up to a point he is right.

I gave it as my personal opinion that I was not in favour of squatters as such, but I was in favour of whole-time resident labourers, which is a different thing altogether. If you had put whole-time resident labourers and no squatters as such within one Ordinance, I think you would have met the case, but that view of mine was not accepted.

The essential difference between this Bill and the Employment of Servants Bill——

HIS EXCELLENCY: We are speaking on the amendment moved by the hon. Member for Nairobi North, not on the Bill as a whole. Perhaps you are just a little bit premature?

MR. MONTGOMERY: I was answering points raised by the hon. member in moving his amendment, but I will leave it for another time.

I was leading up really to this point, that the essential part of this Bill is that it is part-time employment. Under the Employment of Servants Bill a man works for thirty days and is paid; here he works for a number of days at the option of the employer. In every case, the wages under this Bill are far less than those for full-time employment; the wages under the Resident Labourers Bill vary from Sh. 2 to Sh. 6, about, and for full-time employment they go from Sh. 6 to anything you like.

A native agrees to go on a farm and work for a low wage because he gets certain other considerations. He is given fencing material, timber, and a piece of land, and the contract says that he must have enough land to grow food for himself and his family. That means that the produce of that land is absolutely his own, and while I admit there is an enormous amount of theft of produce, especially in the maize areas, I do not think this amendment would make any difference at all if you put it into law.

But I know of nothing to prevent an employer putting this section into his own contract if the native agrees. He may not agree, but if he did, there is nothing to prevent it being put in. A contract is between two people, and is an agreement, and if that was in, well and good, but I oppose it being put in the law. In my view, the native who grows the produce ought to be able to dispose of it as he wishes.

The hon. Member for Trans Nzoia (Col. Kirkwood) said that if this was not accepted one effect might be that employers would limit the amount of land they give to their servants. Of course they can, within the terms of the contract. But I would remind him that the contract is an agreement, and if a native thought he could get better terms on another farm

[Mr. Montgomery]
he would leave your farm and go somewhere else.

The only people short of labour are those who do not give such good terms as their neighbours on other farms, and the only way to attract labour is to give the best terms. If you insist on a native having to ask permission to sell a bag of maize, I believe he would object. If you can agree with him, you should put it in the contract and your object will then be achieved.

SIR ROBERT SHAW: Your Excellency, speaking to the first part of this amendment, I can see it is a case of where all concerned have a good deal of sympathy with both sides of the question, and it seems to me, from what I have heard, that the chief objection to this amendment is that the native should be forced to obtain permission to sell property which actually belongs to him. On the other hand, we are conscious of the fact that inevitably, human nature being what it is, it is more than likely that a considerable portion of that property he claims to be his own and proposes to sell will not, in fact, be his own.

If we could find some way of providing that there are some means or method of control over the matter without imposing too onerous conditions on the one side or leaving it too open to abuse on the other, it might be as well to try and do so.

As regards the remarks of the hon. the Chief Native Commissioner about entering the thing on a contract, in the first place it seems to me that everything which goes in the contract must be provided for in the body of the Ordinance and, in the second place, once you start allowing people to make endorsements of one kind and another on a contract you will get all sorts of funny things, as I know from experience.

I suggest that there is a way out of this, and while I much regret prolonging the debate a little more I move as an amendment the following:—

"That sub-paragraph 18 of the report be amended by adding thereto the following sub-paragraph: '(2) By adding thereto the following new sub-clause:—

(4) No native or Somali may sell or dispose of any crops or produce of cultivation produced on a farm without having first notified the owner or occupier of his intention to do so.' "

That does not force him to obtain permission, it does not give the employer power to forbid a man selling his own property, but it does give the employer an opportunity of checking what is going on in that way on his farm. I submit that in that way we can get out of the difficulty.

MAJOR GROGAN: I second the amendment, Sir. It exactly meets the two points at issue. It meets quite reasonably all the arguments adduced by the hon. the Chief Native Commissioner and also of my hon. and venerable friend. On the other hand, there is no question whatever about it, that the the control of the stealing of produce is a very serious problem indeed, and is liable to lead to all kinds of disturbances in future.

It is absolutely essential, if any produce is being moved off a place, there should be that authority and recognition, and I suggest this amendment will cover both points of view. It certainly could not be described as inequitable in any way whatsoever.

MR. WILLAN: Your Excellency, because we are getting rather involved, because we now have an amendment which contains two parts proposed by the hon. Member for Nairobi North and seconded by the hon. Member for Nyanza (Mr. Harvey). Now we have got a further amendment to the first part of that amendment, and in spite of my legal jargon I will endeavour to clarify the position!

The second part of the amendment proposed by the hon. Member for Nairobi North deals not with crops but with forest areas and Crown land or railway land, and all hon. members will find in front of them a suggested amendment to the report of the select committee which was drafted yesterday. In clause 22, now re-numbered 21, the word "farm" at the present time means the ordinary farm of a farmer and a forest area, but does not include railway land. The suggested amendment includes a new sub-section (5): "For the purposes of this section 'farm' shall include railway land." The position then will be that a farm includes an ordinary farm, forest area, and railway land.

[Mr. Willan]

Then it is proposed to add a new subsection (6):—

"(6) Notwithstanding anything contained in this section, it shall only be competent for a local authority to make an order in respect of such portion of a forest area or railway land as abuts on, and is in the immediate vicinity of, a farm (other than a forest area or railway land) in respect of which such local authority has made or is making an order of a similar nature."

In other words, if this amendment is carried, the position will be then that all forest areas and railway lands come under the jurisdiction of a local authority in the same way that an ordinary farm does.

Therefore I would suggest to the hon. Members for Nairobi North and Nyanza that, if they are willing, they withdraw with the leave of Council the second part of the motion, and I am authorized by His Excellency to say that if that is done this amendment will be proposed, and that will leave outstanding the question of the crops.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I am grateful to Government for accepting the second part of my amendment which really deals with a matter of principle.

ARCHDEACON BURNS: If I may be permitted, I think the amendment proposed by the hon. Member for Ukamba (Sir Robert Shaw) would meet my point, provided that when the contract was signed the employer told the man that if he had more produce than he needed for himself and his wife and family and wanted to sell it he should come and tell him. I accept that and withdraw my opposition.

MR. LOGAN: I am authorized by Your Excellency to intimate that Government is prepared to accept the amendment to the effect that if a native wishes to sell surplus produce he should notify his intention of so doing to the owner of the farm.

The question of the amendment to the amendment was put and carried.

MAJOR CAVENDISH-BENTINCK, by leave of Council, withdrew the second recommendation contained in the first minority report.

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

MR. WALLACE moved that subparagraph (19) of the select committee's report be amended—

(1) by deleting the word "and," which occurs at the end of paragraph (*i*) thereof;

(2) by adding a semi-colon and the word "and" immediately after the inverted commas which occur at the end of paragraph (*j*) thereof; and

(3) by adding thereto immediately after paragraph (*j*) thereof the following new paragraph:—

"(*k*) by adding thereto at the end thereof the following new sub-clauses:

'(5) For the purposes of this section 'farm' shall include railway land.

(6) Notwithstanding anything contained in this section it shall only be competent for a local authority to make an order in respect of such portion of a forest area or railway land as abuts on, and is in the immediate vicinity of, a farm (other than a forest area or railway land) in respect of which such local authority has made or is making an order of a similar nature.'"

MR. STOOKE seconded.

DR. DE SOUSA: Your Excellency, I am opposed to this amendment for one reason alone, that it was made very clear in select committee that it was necessary these forest areas should be kept as they are at present under the complete control of Govrnment.

The fear was expressed by representatives of the occupiers that the policy as regards resident labour as conducted in connexion with farms might be nullified by Government allowing squatters in forest areas, but an assurance was given by one of the technical advisers to Government that the policy of Government had always been to fall in line with the policy for natives on farms in the settled areas adjoining the forests.

I cannot believe that this is a very necessary amendment, because it is the custom for Government to fall in line with the squatter policy on adjoining

[Dr. De Sousa]

farms. I see that these areas are being gradually handed over for what is called white settlement. To-day it would be only to prevent squatters in forest areas, tomorrow it may be another thing. It is the thin end of the wedge. You are allowing what is left in the control of Government in the highlands to pass into the hands of the white settlers.

A case may arise some time or other when part of the forest areas may be required for the settlement of these natives whom the venerable and hon. member described as landless Africans. I consider it very unwise and improper for Government, after the question having been threshed out in select committee for some hours, to come here and upset the labours of that committee. Over and above that, I feel this is giving in to the attempts of a section of the community.

MAJOR GROGAN: I just want to ask if there is not some little mistake in the terminology of this amendment: "abuts on, and is in the immediate vicinity of". If it abuts on and is in the vicinity of, are both phrases necessary? Perhaps I may have heard wrongly.

MR. WILLAN: Your Excellency, with regard to the remarks of the hon. member Dr. de Sousa, it is quite evident he has not read the proposed amendment properly because, according to his remarks, one would infer that the whole of the forest areas in this Colony are brought under the jurisdiction of local authorities. That is not so, because it is limited by the words "such portion of a forest area as abuts on and is in the immediate vicinity of". The amendment must be read subject to those words.

Turning to the comments of the hon. member Major Grogan, a forest area can abut on, but if it abuts on the area concerned must be limited. Therefore the part that abuts on and is in the immediate vicinity is correct.

The amendment was put and carried.

Council adjourned for the usual interval.

On resuming:

ARCHDEACON BURNS: Your Excellency, I propose the following amendment:—

"That the report of the select committee be amended by the deletion of sub-paragraph (12) of paragraph (3) on page 7."

The reference is to clause 15 of the Bill, which reads as follows:—

"An occupier shall provide every resident labourer with a labour ticket, in such form as may be prescribed, showing the number of days worked by every such resident labourer. Such labour ticket may be retained by the resident labourer, if he so desires, but shall be surrendered by him to the occupier on payment to him of his wages by the occupier."

I do not want to prolong the debate, but I think it is only fair to the labourer that he should be given a ticket. If it were only a matter of signing his *kipandi* and he worked for the whole of the twelve months, there would be no difficulty about it, but as expressed by the hon. the Chief Native Commissioner it lays down in this Bill that a man is expected to work for 180 days. The time when those days are to be completed depends, I presume, on the occupier of the farm.

I happen to know, and I have had cases brought to my notice, when it has been difficult for a native to get his wages from some class of employers unless he has something to show. I want to say here, and say it very whole-heartedly, that I believe the vast majority of employers in the Colony of Kenya are perfectly fair and straight with their labour. I believe that. On the other hand, we all know (I certainly know) that there are those who try to do their labour down and it is very difficult to get wages from them.

I have known cases where a boy worked for 26 days, or something like that, and a case was trumped up against him; he was threatened with the police, and the next morning the boy could not be found, so that the employer benefited by 26 days' work without having to give wages. Therefore, to give a boy a ticket which he can have signed daily or weekly, whatever the arrangement may be, is only just and fair to the boy.

In so doing we shall eliminate any possibility of an unscrupulous employer of labour doing a boy down. A boy has a right to have something by which he can,

[Archdeacon Burns]
if brought to a court, or if he wants to bring a case to court, show the magistrate that he has worked 28 or 30 days, otherwise he will have nothing to show. I think it only fair that a boy should have a ticket signed or given to him by his employer, so that if an unscrupulous employer wished to do the boy down he would have his ticket which he could show the magistrate.

I do hope my amendment will be accepted.

I do not know whether I can speak now to a second amendment that I wish to move?

HIS EXCELLENCY: If you want to move more than one amendment to the motion you must put them all now, for otherwise you will not be able to speak again.

ARCHDEACON BURNS: I am asking now for an amendment to the report of the select committee, and I move:—

"That the report of the select committee be amended by adding to sub-paragraph (c) of sub-clause (2) of clause 22 the following: 'due regard being had to the needs of such resident labourers expressed either through Government representatives or through representatives of their own.'"

My point here is that when a man comes to work for a farmer and brings his family with him, he should be allowed the use of two or three cattle, as the case may be, to provide for the needs of his family.

The Medical Department is urging and we are all urging that the children should be given milk so that they will grow up strong, healthy, vigorous children who will become a help to the Colony. According to the Bill as it stands at present, it rests entirely, as far as I understand it, in the hands of the local authority whether such labourer going on to a farm will or will not be allowed to have any cattle on that farm.

I am not asking, nor do I think it is right, that he should have 20, 30, 40, or 50 or 100 head of cattle, but I think when a labourer is on a European farm with his wife and family he should be allowed to have a couple of cows to provide milk for his children and for the use of his family.

COL. FITZGERALD seconded.

COL. KIRKWOOD: On a point of order, may I ask if it is the first or second amendment that the hon. member is seconding, or both?

HIS EXCELLENCY: I understand it is both. The venerable and hon. member has moved two, and I understand the hon. member is seconding both, which is quite in order.

COL. FITZGERALD: Your Excellency, I should like to say that the explanation given by the hon. and learned Attorney General when discussing the Bill yesterday for deleting this particular clause does not appear to me to be a reasonable one, in that he said it is too much trouble for an employer to sign up the employees' cards. I know——

MR. WILLAN: On a point of order, I never said anything of the kind. I said it was not practical, not that it was too much trouble.

COL. FITZGERALD: I contend that it is practical, because on several coffee *shambas* I know that this is actually done. Surely when this clause was put into the original Bill, there must have been some reason for it, and I cannot see why it should be cut out now.

As the venerable and hon. member said, one realizes that the majority of employers in this country are reliable and scrupulous men, but there are such people as unscrupulous persons in this Colony, or have been, and will no doubt be in the future. I also know myself of cases in this country where employers, when it is getting near to the end of the month, have frightened their employees to such an extent that they have run away and have consequently lost the whole of their month's wages by doing so.

Surely the natives should be protected from such people as these in a Colony of this sort. Unless the hon. and learned Attorney General can give some better reason for deleting this particular clause I should like to see it retained in the Bill.

I also second the second amendment.

DR. DE SOUSA: On a point of order, may I inquire if I speak on these two amendments I shall be debarred from moving an amendment myself at a later stage, because if that is so, I will move my amendment now.

MR. HARVEY: Your Excellency; I beg leave to move an amendment to the amendment which has just been proposed. It is in these terms—I will read it slowly as it must inevitably be slightly involved and requires a reefrence to the section of the Bill under discussion.

I should like to preface my remarks by saying that I am going 99.9 per cent of the way towards meeting the proposal put up by the venerable and hon. member, Archdeacon Burns, and sincerely trust that he will find himself able to accept my amendment, thus saving the time of the Council and arriving at a perfectly just decision.

I move:—

"That sub-paragraph 12 of paragraph 3 of the select committee report be deleted and the following sub-paragraph be substituted therefor:—

'(12) That clause 15 be amended by (*a*) deleting the words 'every resident labourer' in line 1 thereof and by substituting therefor the words 'a resident labourer, at the request of such resident labourer'; and (*b*) by deleting the word 'every' from line 3 thereof; and (*c*) by re-numbering this clause as sub-clause (2) of clause 14, inserting after the figures '14' in clause 14 the brackets and figure '(1)'.'"

First of all, I should like to thank the venerable and hon. member for his eulogistic reference to the attitude displayed by the overwhelming majority of employers in Kenya. Secondly, I should like to say that it is no more than their just due. His experience coincides entirely with my own in this connexion.

The main purport of my amendment is to the effect that if a boy wishes to do so he may demand a ticket from his employer, and, as my hon. and learned friend has indicated once or twice in the course of this debate, it is obviously impracticable for every employer on every occasion to give every resident native labourer a ticket. With special reference to people like myself sitting in Council, we obviously cannot conform to what the venerable and hon. member suggests, when we are 300 or 400 miles away from our farms. In any case, I suggest it is always wrong to introduce cumbersome, complicated, difficult procedure involvingv a vast amount of clerical work in order to deal with the cases of one or two alleged unscrupulous employers.

In my humble opinion, the case put up by the hon. mover of the amendment is amply met by my amendment to his proposal.

So far as his second point is concerned, about the necessity for resident native labourers having milk and requiring cows for that purpose, I would draw his attention to the fact that quite a large number of native employees favour that type of lactic fluid which is extracted from the popular goat!

SIR ROBERT SHAW: Your Excellency, I beg to second the amendment proposed by the hon. Member for Nyanza (Mr. Harvey).

I have very little to add to what he has said on the point. I should just like to remind the hon. and gallant member representing native interests (Col. FitzGerald) that this is a Resident Native Labourers Bill, and the cases he quotes of the comparative ease of signing a whole lot of tickets of a gang of labour on coffee, sisal and other plantations, is a very different thing indeed to this question of signing up tickets for resident labourers scattered all over a very big farm. It more or less follows that resident labourers in large number are only present on a large holding; on a small holding there is no room for them.

I would ask the venerable and hon. member to consider very carefully indeed whether this amendment does not, in fact, completely meet the case of the unscrupulous employer which, as he explained, is the only one worrying him. By this means you do provide a native with this ticket method of protection against an unscrupulous employer and of producing evidence which could be made proper use of by the labour officer who is representing him in any dispute in court.

[Sir R. Shaw]

I do think this meets the situation extremely well, and once more it is one of those happy compromises which suits everybody.

HIS EXCELLENCY: It will simplify the discussion if we confine ourselves to the one amendment, which practically means the reinsertion of a modified clause 15, and the question now before the Council is that the amendment proposed by the hon. Member for Nyanza, amending the first proposal of the venerable and hon. member, be adopted.

MR. MONTGOMERY: Your Excellency, I am authorized to say that Government accepts this amendment to the amendment, which makes it plain that there is no obligation to issue labour tickets unless an employee requests it. That, I think, is quite a reasonable suggestion.

It was my view originally that, as drafted, clause 15 could not be practical, especially on a big farm of some 40,000 acres where the labour may be working ten miles away from the employer's office; an employee would never ask for a ticket. On the smaller farms he probably would, and now he will be able to get it.

COL. KIRKWOOD: Your Excellency, I have very little to say, seeing that Government have notified their intention of accepting this amendment to the amendment, but I should like to say that there was no intention on my part or of my colleagues who sat on the committee to prohibit the issuing of a ticket in respect of a resident native labourer who was employed.

In many cases, for instance in my own, I keep all my tickets in the office on the farm, but my boys are perfectly satisfied and appreciate it, because they realize that if the tickets are issued to them their huts may be burned down, or if they have a ticket for thirty days and are at work in all sorts of weather, by the end of the month the ticket is non-existent or difficult to decipher. It is therefore much better to keep the tickets in the office.

I also appreciate the action of Your Excellency in separating the question of the tickets from the cows. It would be impossible to vote for the first part of the amendment if the two were coupled together, for I would have had to vote against both. It is impossible to vote on an issue when it involves questions of tickets and cows, and I am pleased that Your Excellency saw the difficulty and separated the issue.

ARCHDEACON BURNS: May I say, Your Excellency that, with the consent of my colleague, this amendment of the hon. Member for Nyanza meets our case in 99.1 per cent—(Mr. Harvey: 99.9 per cent!)—that it meets our case to a degree which justifies us in accepting his amendment.

With the leave of Council the amendment of the hon. member was withdrawn.

The question of the amendment of the hon. Member for Nyanza was put and carried.

The debate was continued on the second amendment moved by the venerable and hon. member.

DR. DE SOUSA: Your Excellency, I am supporting the amendment as I did in select committee, where it was put and lost. I did so not so much for the sake of the flow of lactic liquid from the goat, but more as a matter of principle.

As you will have noticed, Sir, the powers that are vested in a district council as the local authority include such powers as those prohibiting a resident labourer from having any cattle at all. That is a very big principle involved in this legislation, because it is a fact that you can only attract resident labourers, Africans, from their reserves to an occupied farm by giving them some sort of inducement to live as he lives in his own reserve. In other words, to actually transplant native life into another district far away from the native reserve. When you do that, you do it by certain concessions to the native.

The hon. the Chief Native Commissioner has said that the resident labourer was paid probably one-fifth or one-fourth of what a labourer in any other occupation would get. That is, a resident labourer is engaged at practically a nil cost, Sh. 2 or Sh. 3 a month. That is the price the native pays for facilities to build

[Dr. De Sousa]

his own house, grow crops necessary for his living, and also to rear cattle which he needs for his subsistence.

I have never conceived native life in Africa separated from the idea of live stock. Cattle, goats or cows are necessary for the milk for himself and his children. That is really a big principle involved. I appealed to the representatives of Government on the select committee to give in to my appeal. This legislation, you will admit, is mainly one-sided legislation.

Here you have the people who want to carry on with what they call white settlement, that is what actually comes in, and the native labourer is to some extent a party to it. The least we can do when transplanting native life from a native reserve to another part of the country is that we shall not sanction legislation which leaves natives entirely at the mercy of their employers.

I object to that, in principle, and do hope, if Government are honest about this legislation and the interests of the natives, that they will accede to this particular question wherein the parties most interested are thwarting native life when taken away.

SIR ROBERT SHAW: May I ask for a ruling, Sir? When I spoke just now I spoke to the amendment moved by the hon. Member for Nyanza and did not do any more. I may have forfeited my right to speak to the second part. If not I should like to say a word or two now.

MR. WILLAN: There is no objection to the hon. member speaking to that part of the amendment. He confined himself to one particular part, and, in my submission, there is no objection to him speaking on the other part.

SIR ROBERT SHAW: I do think that in this question of the reasonable needs of a native resident labourer on a farm there is an extraordinary amount of confusion of thought, and that is largely because people will not read both subclauses of clause 22 together.

In sub-clause (1) the local authority is empowered—as it must be if local option is to mean anything at all—to limit the number of resident native labourers on a holding and the number of stock. In that, they must be guided by the requirements of the farmer, the size of the farm, the power of the farm to carry stock, and consequently that has a very direct bearing on the amount of stock which a resident native labourer can have.

People also forget that sub-clause (2) has exactly the same force of law as subclause (1), and if the local authority made an order which, mark you, has to be submitted to the Central Committee and then to Your Excellency for final approval, if a local authority made an order which limited the number of stock to be kept by a resident native labourer below his reasonable needs, they would in fact contravene the law as indicated in (2).

I submit that such an order improperly made in that manner could not possibly pass the Central Committee, and if it did, I submit that Your Excellency would have no alternative but to reject it or send it back to the local authority as provided for in another clause.

I honestly do believe that all this anxiety as to whether under the clause as now drafted the resident labourer will or not have sufficient cattle for his reasonable needs is entirely superfluous. I believe he is absolutely and completely protected in the manner I have attempted to describe.

MR. LOGAN: Your Excellency, as the amendment stands, it appears as though the question of the reasonable needs of a resident labourer is entirely omitted from the Bill, because the amendment asks for an addition saying that due regard should be had to the needs of such resident labourers. That, of course, in fact is tautological, for clause 22 (2) (c) already reads:—

"In making any order as aforesaid the local authority shall have regard—

(c) to the reasonable needs of resident labourers on such farms."

Therefore, the only new provision for which request is made in this amendment is that these needs should be expressed either through Government representatives or through representatives of their own. There, again, I suggest with respect that that is slightly tautological, because on each of these district councils are two

[Mr. Logan]
representatives of Government. The district commissioner sits as a member of the council and to each district council a provincial commissioner has a right of access and a right of speech.

I suggest, therefore, that the expression of views of resident labourers through Government representatives is already provided for in the constitution of the district councils themselves. I would also suggest to the hon. member that a further provision that there should be an expression of view through the representatives of squatters would be an impossible thing to carry out.

The presence of these Government officers on district councils is largely for the protection of native interests in the district council areas. Those interests arise in very many ways, not only confined to this matter of resident labour, and I suggest to the hon. member that he can safely leave the interests of the resident labourers in this particular Bill and on this particular issue to the Government representatives.

It may be that the hon. member did not appreciate that in the institution of district councils those officers did have seats, and I trust, if that is the case, and having heard my explanation, he will agree with me that the native interests are sufficiently protected and that he will withdraw his motion.

ARCHDEACON BURNS: Your Excellency, my only reason for bringing this amendment before Council was that in select committee, if I remember rightly, the local authority which would deal with this matter had the right to prevent any resident labourer having any cattle on a farm.

It is not that I am asking for a large number of cattle or anything like that. All I am asking for, as the hon. member Dr. de Sousa has so ably described, is that it meant that where men were taken away from their own homes and brought on to a farm, that they should have their reasonable needs met. If, however, there are Government representatives on the district council who would, at least I hope so, see that those needs were met and dealt with in the right way, I would be prepared, with the permission of my colleague—and also of the hon. member Dr. de Sousa, who spoke so strongly—to leave the matter at that.

I would withdraw my amendment as long as a native has some means of appeal in case he is forbidden to have any stock whatsoever for the use of himself and his family. I would leave it in the hands of the Council. If a native has the means of appeal that satisfies me.

HIS EXCELLENCY: I understand that you wish to ask leave to withdraw the second part of your amendment?

ARCHDEACON BURNS: Yes, on the explanation given by the hon. the Acting Colonial Secretary.

The amendment was by leave of Council withdrawn.

DR. DE SOUSA: Your Excellency, I have an amendment to propose in two parts:—

"(*a*) That sub-paragraph (11) of paragraph 3 on page 7 of the report of the select committee be re-drafted to read: 'That clause 13 be amended by the insertion of the words 'or any labour inspector' between the words 'magistrate,' and 'or' in the second line thereof; and

(*b*) That part (*a*) of sub-paragraph (16) of paragraph 3 on page 9 of the report be re-drafted to read: '(*a*) by the insertion of the words 'or a labour officer,' between the words 'Services' and 'or' occurring in the second line of sub-clause (1) thereof.'"

This relates to a very small point which concerns the use of Asiatic members of the police force. As amended by a majority of the select committee, it is prohibited for the Police Commissioner to engage the services of any Asiatic police officer whenever a police officer is required to perform duties according to this Bill. I think I made it very clear to the chairman of the committee that this was a racial attitude and that the introduction of such legislation was quite unnecessary. The members representing the interests of the occupiers, the four unofficial European members, quite plainly, and I appreciated it, said, "We do not want anyone except a European police officer to come

[Dr. De Sousa]
and perform the duties that are allotted to the police under this law."

I thought that the Government members of the committee might have used their influence to avert what I call an unnecessary infliction on certain members of the community. I do not see in what respect an Asiatic police officer will offend the white man in the highlands; I cannot possibly see it. I do not think there is anything inherent in Asiatic police officers that would hurt the feelings of anybody.

The second reason why I opposed it is because it will inflict on this Colony additional expenditure. Whether Government agrees or not, I cannot be convinced that this Bill does not necessitate an additional European police force. The hon. mover said yesterday that the Commissioner of Police had said that by 1938 there would be enough police officers to do the work, and I ask in what manner is he making provision? Is he anticipating putting any additional items in the forthcoming budget? In what manner does he anticipate that these duties, which are very comprehensive in the whole of the highlands, do not necessitate an increased police force? Why does the Commissioner anticipate that? Has he found that Asiatic police officers are incapable of being trusted with these duties, which are to see that the natives are properly registered and so on, the same kind of duty they perform in other parts of the Colony and townships?

We are always appealing in vain, and whenever these questions are brought up we are told they are racial issues. But I consider that this amendment is necessary, and that there was no justification for the Government members on the select committee to agree to this change. "Sub" means an Asiatic. No reason at all was given why this was inserted in the first instance and why it was subsequently changed. It is most unfair, and not in the interests of the administration or the goodwill that should prevail between residents of the Colony, and it is absolutely pampering to the racial whims of a section of the community.

MR. MAINI seconded.

MR. WILLAN: Your Excellency, as a member and chairman of the committee which considered this Bill, I am surprised and disappointed to find that my hon. friend Dr. de Sousa views this from a purely racial standpoint.

He has asserted that by deleting the word "sub" from the two clauses to which he has referred, it will make it impossible for the Commissioner of Police to engage Asiatic police officers to carry out the duties under this Ordinance. The hon. member knows as well as I do, and everybody else, that the Commissioner of Police does not engage police officers to carry out duties under one Ordinance. It is for general duties, and for duties imposed under various Ordinances that they carry out, but they are not engaged to carry out duties under one particular Ordinance.

As the hon. member himself has stated, the duties which police officers have to carry out under this Bill are comprehensive. If they are comprehensive, and I agree they are, why should we not, if we have responsible officers, put those duties on the most responsible officers we can get? And we have been assured by the Commissioner that at the beginning of 1938 there will be sufficient assistant inspectors to carry out the duties under this Bill.

Therefore, why put the duties on to sub-inspectors when you have sufficient and more responsible officers to carry out these duties?

The question of the amendment was put and negatived.

MR. WALLACE: Your Excellency, as an amendment with regard to the inclusion of forest areas and railway land has been carried and an amendment with regard to labour tickets has also been carried, several consequential amendments are necessary. I move:—

"(1) That sub-paragraph (21) of paragraph 3 of the report of the select committee be deleted and the following sub-paragraph be substituted therefor: 'That clause 24, now re-numbered 23, be deleted, and the following clause be substituted therefor:—

'23. A labour officer may institute or appear or both institute and ap-

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pear on behalf of any resident labourer in any civil proceedings by such resident labourer against an occupier in respect of any matter or thing or cause of action arising out of the contract between such resident labourer and such occupier.'

(2) That sub-paragraph 27 of paragraph 3 of the report be deleted and the following sub-paragraph be substituted therefor: 'That the following new clause be inserted as clause 29:—

'29. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force in the Colony, on a complaint or suit against an occupier in respect of wages due to more than one of his resident labourers the magistrate may permit one complaint or one plaint to be made or filed by a labour officer or by one of such resident labourers on behalf of all such resident labourers and their claims to be proved by such labour officer or by such resident labourer accordingly:

Provided that the complaint or plaint shall have annexed thereto a schedule setting forth the names of such resident labourers, their addresses and descriptions and the details of wages due to each such resident labourer.

(2) All such claims shall rank equally between themselves, and shall be paid in full, unless the amount recovered from the occupier be less than the total amount of the claim with costs, in which case, after payment of the costs, all such claims shall abate in equal proportions among themselves and be paid accordingly. Costs given against the resident labourers shall be paid by such resident labourers or by any of them in such proportions as the Court shall direct.

(3) The provisions of section 203 of the Criminal Procedure Code shall not apply to any proceedings instituted under this Ordinance in respect of the non-payment of wages to any resident labourer.'

(3) That sub-paragraph (28) of the report be deleted and the following sub-paragraph be substituted therefor: 'That clause 31 be deleted and the following clause be substituted therefor:

'31. (1) The Governor in Council may make rules for the better carrying out of the provisions of this Ordinance.

(2) All rules made under this section shall have the same force and effect as if they had been enacted in this Ordinance, and shall be laid as soon as conveniently may be before the Legislative Council; and if a resolution is passed within forty days of their being so laid before the Legislative Council praying that any such rule shall be revoked or amended, such rule shall thenceforth be deemed to be revoked or amended but without prejudice to anything done thereunder.'

(4) That sub-paragraph (29) of the report be deleted and the following sub-paragraph be substituted therefor: 'That the following new clause be inserted as clause 34 and that the present clause 34 be re-numbered as clause 35:—

'34. It shall be the duty of every occupier in any district or districts to which this Ordinance is applied, and who at the date of the application of the Ordinance to such district or area is a party to any contract made under the provisions of the Resident Labourers Ordinance, 1925, within one month after such date to give six months' notice of the termination of such contract:

Provided that such notice shall not be necessary if any such contract will expire by effluxion of time or by notice before the expiration of the said period of six months.'"

MR. MORRIS (DIRECTOR OF EDUCATION) seconded.

The question was put and carried.

The question of the adoption of the report as amended was put and carried.

SHOP HOURS (AMENDMENT) BILL

SELECT COMMITTEE REPORT

MR. WALLACE: Your Excellency, I beg to move that the report of the select

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committee on the Shop Hours (Amendment) Bill be adopted.

The committee recommend a few minor alterations; in fact, most of them are of a drafting character.

The first is on page 2 of the Bill, where the committee proposes in new clause 5 (5) that the term "a shop assistant" shall be substituted for the term "an assistant", the reason being that the expression "shop assistant" is defined in the Principal Ordinance and is used throughout this Bill.

The second amendment which the committee recommend is the deletion of the last line of clause 3: "and by re-numbering sub-section (1) thereof as section 3." This is to rectify a typographical error; the words should never have been inserted and are meaningless.

The third recommendation to which I wish to refer is the proposed amendment to section 11 (2) of the Principal Ordinance. The committee recommend that the word "closing" should be inserted before the word "order" in that sub-section. This is merely consequential on the amendment to section 11 (1), the object of which, as I explained in moving the second reading, was to confine the provisions of that section to closing orders.

Reverting then to the amendment suggested in paragraph 3 of the report, this possibly needs a little explanation.

Some hon. members may be aware that among the Hindu community a ceremony is held once a year on the occasion of the Diwali festival. It is of a semi-religious character, and on that occasion the priests and members of the community, as far as I understand, gather together in Hindu shops, the priests give a blessing and the books of account for the new year are opened.

It was represented to the committee that under the provisions of the existing Ordinance, as amended by this Bill, it would be impossible to hold that ceremony without infringing the law, as it took place after the hours for closing. We were requested to recommend to Council the insertion of a provision empowering Your Excellency to grant exemption to such shops on such occasions.

It is needless to remark that the committee viewed this request with sympathy, and have suggested the insertion of such a clause, with the proviso that no business shall be transacted in the shop on such occasions, and a further proviso that no shop assistant shall be required to work.

Since the report was laid, it has been brought to the notice of Government that, although the Diwali festival only occurs once a year, it lasts for four days, and it has been suggested we might amend the proposed new sub-section to read: "Notwithstanding anything contained in this section the Governor may permit a shop to remain open after the hour fixed for closing on not more than four days in any year on the occasion of a religious or ceremonial occasion." I have spoken to various members of the committee, and they personally have no objection to this amendment. As Government has no objection, an amendment on these lines will be moved in due course.

MR. WILLAN seconded.

MR. HOSKING moved:—

"That paragraph 3 of the report be amended by deleting the words 'one day' which occur in the third and fourth lines of the proposed new sub-section (8) of section 9 of the Principal Ordinance and by substituting therefor the words 'four days'."

MR. SHAMSUD-DEEN seconded.

The question was put and carried.

MR. MAINI: Your Excellency, I should like to know whether the proviso to paragraph 3 in the report of the select committee would cover the case where a shop assistant was required to attend the shop on the night of the Diwali festival for the purposes of starting the books of account and for the reception of the people who visited the shop? I should like to know the position of the clerks on that night.

MR. SHAMSUD-DEEN: May I explain to my friend, as a member of the committee, that it is not the intention that there shall be any work in commencing books that night; no work must be permitted in the shape of the shop assistants doing anything.

The question of the adoption of the report as amended was put and carried.

BILLS

THIRD READINGS

MR. WILLAN moved that the following Bills be read the third time and passed:—

The Native Hut and Poll Tax (Amendment) Bill,
The Trade Unions Bill,
The Resident Labourers Bill,
The Shop Hours (Amendment) Bill.

MR. WALLACE seconded.

The question was put and carried.

The Bills were each read the third time and passed.

PENSION AND GRATUITY: A. M. BRAGANZA

MR. STOOKE (TREASURER): Your Excellency, I beg to move:—

"This Council approves the payment of a reduced pension at the rate of £1-14-0 a year, with effect from the 14th July, 1937, inclusive, and a gratuity of £5-15-10 to Mr. A. M. Braganza in respect of his temporary service on the Military Establishment from the 16th January to the 30th June, 1915, both days inclusive."

During the war, certain services of a civil nature were performed by Government departments for the military, particularly the Audit and Post Office. Payment for those services was not made by reimbursement as is done nowadays, but the arrangement was that the military actually paid the salaries of the additional staff engaged. Under our pension law, of course, service for pension can only be counted if the emoluments are actually drawn from the public funds of the Colony. These officers were actually employed by the Government departments concerned, but their wages were drawn from the military; therefore that service does not count as pensionable.

Anomalous positions have occurred; for instance, two officers have joined the service, and one has been employed on civil work and the other happened to be allocated to military work. One is pensionable in respect of his service and the other is not. That anomaly has been recognized by this Council in the past and previous motions to this effect accepted, and the period of so-called military service has been allowed to count towards pension. These are precisely the circumstances which obtain in this case.

MR. WILLAN seconded.

The question was put and carried.

KENYA LAND COMMISSION RECOMMENDATIONS

MAJOR CAVENDISH-BENTINCK: Your Excellency, I beg to move:—

"That this Council recommends that an urgent despatch be forwarded to the Secretary of State for the Colonies, pointing out that accepted recommendations of the Kenya Land Commission, whose Report was signed on the 7th July, 1933, still remain unimplemented, and urging early promulgation both of the Order in Council recommended in Sections 1854, 1858, 1979, 2144, and 2152, demarcating the boundaries of the White Highlands, and rendering section 86 of the Crown Lands Ordinance, 1915, and section 31 of the Crown Lands Ordinance, 1902, inoperative both in existing and future leases, and of the Native Order in Council as recommended in Sections 364, 485, 1441, 1469, 1717, and 1816. The despatch further to stress that, owing to the delay in promulgating these Orders in Council, the position as regards claims based on an allegation of right which the Commission specifically came out to settle, is becoming daily more difficult, and the delay is handicapping development in many directions."

Before I speak to this motion, I would like to make an appeal, that this should not be treated as a purely racial issue. It is not put up in that sense. I feel personally that in this Colony we have to deal with certain things which affect various races. These matters must be made to fit into the general jig-saw puzzle as best they can, and there is nothing racial in this motion whatever.

I am afraid I am going to refer back to the history of the Carter Commission Report, and I must do that in order to substantiate the necessity which we allege there is for a motion of this kind now. I know that most members on both sides of the Council have heard a great deal of the Carter Commission Report. At the

[Major Cavendish-Bentinck]
same time, I think in order to stress the present position, I shall have to refer to what is common knowledge to a great many members.

The Carter Commission was appointed in order to deal with a number of long outstanding complications which were causing a great deal of inconvenience and a great deal of trouble to all concerned in this Colony. Its terms of reference were, shortly: To consider the needs of the native population with respect to land; to consider the desirability of setting aside further areas of land for present or future occupancy of natives and detribalized natives; "to determine the nature and extent of the claims asserted by natives over land alienated to non-natives"—I want particularly to lay stress on that—"and to make recommendations for the adequate settlement of such claims, whether by legislation or otherwise"; to examine claims asserted by natives over land not yet alienated; "to consider the nature and extent of the rights held by natives under section 86 of the Crown Lands Ordinance, and whether better means could be adopted for dealing with such rights in respect of (a) land already alienated, and (b) land alienated in the future;" "to define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923;" and, lastly, and to which I do not wish really to refer, to review the working of the Native Lands Trust Ordinance.

Those duties entailed a very complicated inquiry and a tremendous amount of work. The Commission was appointed by the Secretary of State in April, 1932, and notice of its appointment appeared in the Kenya Gazette in June, 1932. The Commission sat and reported, and sent its report in in 1933. It was an enormous report, and a very valuable report; indeed, I think everybody joined in congratulating the members of the Commission on the very thorough manner in which they carried out an extremely difficult task.

This report was acepted by His Majesty's Government in England in May, 1934, in which month a White Paper was published at the same time at which the report was published. I would just stress incidentally that that acceptance took place before anybody in the Colony had seen, and I believe I am right in saying, before even the then Governor himself, had seen the report.

The White Paper lays particular stress on the reasons why His Majesty's Government were accepting the conclusions of the Carter Commission, and it also lays stress on some of the major points which that Commission was sent out to elucidate. It mentions, incidentally, that "in Parts I and II of the report, covering 340 pages, an exhaustive review of all the claims legal, equitable, and historical, of every native tribe, and of their economic conditions and requirements, present and prospective,"—was to be found. It mentions that "the Commission have been careful to consider the prospective needs, not only of natives living within the reserves, but of natives now living outside the reserves who may return to the reserves.

It mentions that "the Commission have defined the boundaries of the Euorpean Highlands and His Majesty's Government propose to accept their recommendations in regard to this." It mentions that "the Commission recommend that the boundaries of the reserves and of the Class G lands (native leasehold areas), and of the Highlands, should be declared by Order in Council", and adds that that recommendation was accepted in this White Paper. "This will give an added sense of security, in that these boundaries could not thereafter be altered by local ordinance. His Majesty's Government approve of this recommendation and propose that in due course these boundaries should be declared by Order in Council."

Lastly, one more extract from this White Paper:—

"It will be seen that the recommendations contained in Parts I and II of the Commission's Report constitute a comprehensive settlement and satisfaction of all native claims which on careful inquiry they hold to be well founded on legal, equitable, or historical grounds. As already stated, His Majesty's Government propose that full effect should be given to these

[Major Cavendish-Bentinck]

recommendations. It follows as a necessary counterpart that the Order in Council should declare that all claims have been satisfied and extinguished by the settlement which is now recommended and approved."

That merely refreshes—probably unnecessarily, but it is just as well—hon. members' minds as to what happened in the year 1934, the early part of it. Now I will turn for one moment to the report itself of the Carter Commission.

I will read first of all what they say in their Summary of recommendations:—

"Before closing our report, we wish to make a final recommendation. In regard to all claims based on an allegation of right, the public of Kenya, both native and non-native, is looking to us for recommendations which will secure finality. These we have striven to provide, and we hope that, if our recommendations in this regard are accepted by Government, steps will be taken to ensure that these claims will not be reopened. We consider that no other safeguard could be so effective as an Order in Council."

I will not weary the Council by quoting a great deal of the following sections, except part of No. 2146, in which they stress that—

"The essential point is that there should be no hang-over of further claims in the areas for which we have recommended a settlement on tribal lines."

They go on to recommend the protection by the Orders in Council as regards their various recommendations, and end by saying:—

"We consider that it would be invidious if the native reserves were to be protected in this manner and no similar security be given to the European Highlands."

I admit that both we and they did visualize that there would be a certain delay before these things could be implemented, but I did not believe that four years ago. I then happened to stand in this particular place and speak on a very similar motion to this, dealing with the report, and I did not believe that in four years' time we should still be in very much the same position as we were four years ago.

It happened at the time the report was debated our Chairman was absent, and I was acting Chairman. It fell to me, therefore, to make on behalf of elected members a rather lengthy speech on the Carter Commission recommendations, which we all felt at that time were of fundamental importance to everybody in the country, as indeed they were and still are.

In that speech I alluded to this question of the Order in Council. I said:—

"We now turn to that part of the report which deals with the definition of the European Highlands . . . It is an accepted fact that although it has, at any rate since 1905, been agreed that there was an area within which European privilege obtained, nevertheless the exact boundaries of that area have never yet been defined. Various declarations on this question were made, both by the Land Commission which sat in 1905, by Sir Frederick Jackson, by Lord Elgin, as Secretary of State, and in the White Paper of 1923; and by the Commissioner of Lands in 1924 (proposals which were modified in 1925), by His Excellency the Governor in 1928, and by a special sub-committee of Executive Council which submitted two reports in 1928. In the opinion of the Commissioners the proposals as regards exact delineation of boundaries which give the fairest interpretation as to what might justifiably be regarded as European Highlands were the recommendations of the 1928 Sub-Committee of Executive Council. The Kenya Land Commissioners have, however, recommended considerable modifications to this sub-committee's proposals, notably by suggesting the exclusion of the Leroki Plateau, to which I have already referred; also by making specific recommendations with regard to a small block of farms to the east of Muhoroni,"

and others. I went on to say:—

"The Elected Members have studied these recommendations with great care and with the definite exception of the somewhat vague recommendation made with regard to Leroki we are prepared

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to accept the recommendations in their entirety, in spite of the fact, which is admitted by the Commissioners themselves in section 1978, that acceptance does entail very considerable sacrifices on the part of the European community."

I did say that our acceptance depended on one thing, and every single elected member who spoke in that debate and every single elected member repeated this: it depended on one thing, that we were going to get our Order in Council and at last going to get finality and security within a reasonable period of time.

After we had spoken in that debate, we were favoured with the intervention of only one member on the Government side, and that was by the hon. member who is now Acting Colonial Secretary. He made, with characteristic caution, a very very carefully prepared reply. I think he had to, I quite admit that he could not commit the Government.

In connexion with these Orders in Council, and more especially the Order in Council as regarded the European Highlands, he said, roughly:—

"That, although he admitted a diminution of the area previously known as the White Highlands had been recommended in order to meet the needs of the native population, present and prospective, with regard to land, ample compensation for that diminution was made by the fact that we secured finality and security against further diminution from the same cause."

My reply to that, Sir, was to repeat what I had said previously in my speech, that I had—

"to add that apprehension does still exist amongst Europeans that the extent of the Highlands may again be diminished, either by the Government of Kenya, or possibly, should another party come into power, by the Imperial Government in England. We have always understood—and our wholehearted acceptance and support of the recommendations contained in the Report entirely hinges on this understanding—that the main object of the Commission has been to frame recommendations which would instil a sense of absolute and permanent security in the minds of both the natives and the Europeans, and we therefore demand—and I think on this occasion we have a right to demand—that the boundaries of the European Highlands should be finally safeguarded by a suitable Order in Council."

I repeat that, because you will see from that that in the reply given by Government it was admitted that the recommendations made by the Carter Commission did very much curtail what we had always imagined was the area in which European settlement had a privileged position but that that was amply compensated for by the security which we were going to obtain.

We replied that we quite realized that, but wanted to see the security.

Now, Sir, what is the position to-day? The position to-day is, I maintain, far worse than it was four years ago. (Hear, hear.) We have not got that security nor, incidentally, does the African know exactly where he stands. I maintain that if any business house or large corporation had had to make adjustments similar to those which we were called on to make as a small Colony, that those adjustments would have been made certainly within a year, and here we are, four years, nearly five, since the Commission came out, no further forward than we were before!

You will see from the wording of my motion that I have suggested that with the delay in promulgating these Orders in Council the position as regards the claims which the Commission had specifically come out to settle was daily becoming more difficult and that the delay was handicapping development in many directions, and I propose on this occasion to substantiate that statement. It may be said that it is sometimes unwise in public to bring out these various difficulties, that it is wiser to go quietly to Government behind the scenes and see if we cannot get adjustments made and difficulties smoothed over. I have been personally, and most of us have been, on this particular question to Government on many occasions, and if we cannot get anything done within a reasonable period of time then I think that sometimes it is only fair

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to come out into the open so that everybody can see what the precise position is to-day.

I am not going to suggest, when I refer to these difficulties, that the natives concerned have not got legitimate claims or have. That, Sir, is not my business. My business to-day is merely to show what the existing position is, and when I have shown that I think everybody in this Council, if they have got a conscience, will agree it is the duty of Government to put the position straight and should have done so long ago.

I said just now that security to know where we were and exactly what the position was, was why we wanted these Orders in Council and these alterations in the Crown Lands Ordinance. What is the position to-day?

A gentleman in May of last year, who was, incidentally, a new settler whom I came in some contact with through the Kenya Association, came out here and decided that he liked the country. He therefore started negotiations for the purchase of the portion of an estate not very far from this town. The portion of the estate which he purchased was about 184 acres with 77 acres of bearing coffee. He went on to the estate and found there were a number of gentry we now call resident native labourers. He did not particularly want these gentlemen, and he therefore proceeded to give the bulk of them notice in due form.

He then discovered that there were a number who had a considerable quantity of cattle and goats who alleged that they had a right to this particular property which, incidentally, he had bought on a freehold title. He could hardly believe that, and he went to see the district commissioner. The district commissioner, in August of last year, informed him that there were, certainly in the case of six families, claims or alleged claims of right. He said, "You cannot turn them off, but in due course something will be done and, in the meantime, tell them to cultivate where you want them to."

This gentleman did not want to make trouble, as none of us do, so he went back, and he sent notice to the natives to cultivate land where he told them, in order to keep the peace for some time. But he was now told by the natives that he could not even tell them where they should cultivate, and in one of the more recent laws is the most extraordinary proposition I have ever heard of, that if a native has established a prima facie claim of right and gets notice to move to another part of the farm, he is quite in order not to do so. The next thing suggested to him by the district commissioner was that, on the freehold farm which this wretched man had bought, "I suggest that you put a fence around that part of the land you require for your own use."

I ask you, is it fair to ask people to come to the country where that position has been allowed to persist for the last five years?

I have another case here of a similar nature, concerning land No. L.O. 237/2/7. I do not think it necessary to bring people's names into these things, but the farm was purchased by clients of the people who wrote this particular letter, in 1920. Of the eleven families said to be residing on it, three only were there when the owner took it over, and the remaining eight came on to the farm as labourers and also to reside and cultivate small areas while in the employ of the occupier. In the year 1936, and what I would draw your attention to is that this is two years after the adoption of the Commission's Report, most of the natives refused either to work or to leave the farm and there are, in fact, only four individual natives working out of a total of thirty resident on the farm.

Apparently these people, it has been proved, have no right, and, as far as I can read, without going into the details of the case, which do not really matter, it was proposed to take legal or criminal action against them. But the position today is that the case has never been heard, the natives have been released and have now resumed occupation on the farm. On the 27th July several heifers were taken ill and subsequently died, due to arsenical poisoning. The attitude of the natives has been for some time intensely insolent, both towards the owner, the occupier of the farm, and even towards the police.

[Major Cavendish-Bentinck]

We think it must be admitted that settlers in this country have been most patient.

I am not going into the rights or wrongs of native claims, but what I think we have a right to ask is that the recommendations of this Commission, which came out to settle these claims—which, in fact, it did its best to—should be implemented, and we have a right to ask Government to see that these kind of instances do not persist in the future. (Hear, hear.)

If they do not, it is only Government's own fault if people take the law into their own hands, and I sincerely hope that will never happen in this Colony while I am alive.

I therefore suggest, without going into the rights and wrongs and the details, that you, Sir, perhaps would be good enough to write mentioning this debate to the Secretary of State for the Colonies and really see whether we cannot get this Order in Council.

What is really required is an Order in Council demarcating the White Highlands, the Order in Council demarcating the native reserves and the C and D areas, and to render the relevant sections of the Crown Lands Ordinances of 1902 and 1915 inoperative. That, we think, ought to be done within a very short space of time.

I know it will be argued, "Oh, yes, we have done the best we can, but it is very difficult; there are various readjustments, the maps were not right which the Commission gave us, and there are various interminable adjustments between tribes, we have had to find some land here and there for those people who may or may not have rights." I know it is very difficult, I know it is a complicated business, but I do not believe we are anywhere near the final solution yet.

We had a meeting the other day at which I hoped all these outstanding questions were going to be settled, and now I discover that there is still some talk of trying to take away or buy somebody's farm. The long this goes on the worse it becomes; the more we allow these people to imagine they have claims, the more difficult it will be to settle them. In that connexion I should like to draw Government's attention to a section in the Carter Commission Report, because I think it amply supports my contention that if all this had been settled with reasonable promptitude we should not be in this position to-day. In section 1857 it says:—

"The necessity for the recommendation has been sufficiently illustrated in the part of our Report which deals with the Kikuyu. It is not too much to say that relations between the races were becoming embittered because of the extravagant pretensions of this tribe."

(That was in 1932.)

"Our investigations have satisfied us that, as a tribe, they have certain legitimate grievances which we have been at pains to rectify. But their claims and pretensions were exaggerated out of all proportion to the truth, and we find it essential to the future well-being, both of the tribe in particular and of the country at large, that the settlement now proposed should be definite and final, and therefore it was absolutely essential to be rid of such potential fruitful sources of trouble as section 86 of the Crown Lands Ordinance. Moreover, if we are to consider what facilities natives ought to have in respect of land outside the reserves, it is essential that we should start from a firm basis and not be encumbered by the existence of ill-defined and nebulous claims.

"1858. We believe that the final settlement of this matter would preferably be effected by Order in Council."

That is what the Carter Commission said in 1933, and in 1937 I claim that by this ridiculous delay, which is grossly unfair both to natives and more especially to us, these ill-defined and nebulous claims have been increased a hundredfold. (Applause.)

MR. WRIGHT: Your Excellency, I beg formally to second, and claim the right to speak at a later stage.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, the 12th August, 1937.

Thursday, 12th August, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 12th August, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

COMMUNICATION FROM THE CHAIR

REORGANIZATION OF EXECUTIVE COUNCIL

HIS EXCELLENCY: As hon. members may know, I was instructed by the Secretary of State before I left England to formulate a plan for the reorganization of the Executive Council as soon as practicable after my arrival in Kenya.

My proposals were sent to England on the 26th June, and last Tuesday I received a communication from the Secretary of State to say that these proposals were agreed to in principle. The Royal Instructions will require amendment before the proposals can be put into execution, but the Secretary of State informs me that he will take the first opportunity of recommending the changes for His Majesty's consideration.

The Executive Council is an advisory body to the Governor. A member of the Executive Council must not be regarded as representing any particular section or interest, but rather as envisaging the whole of the interests of Kenya. But each one will view those interests from a somewhat different aspect, and thus as a corporate whole the Executive Council will be able to obtain a true and complete picture of every problem.

The main object of the reorganization is to make the Executive Council a more convenient body for working, and to associate unofficial opinion more closely with the work of Government.

At present the Executive Council, apart from the Governor, consists of twelve members: eight ex-officio members and four unofficial. This, as I believe has been felt for some time, is too large a body. In its essence, the reorganization consists in reducing the number of ex-officio members from eight to four, those who will remain being the Colonial Secretary, the Attorney General, the Treasurer and the Chief Native Commissioner.

I wish to emphasise here and now that the taking of the other four ex-officio members off the Council does not indicate in the slightest degree that the importance of their functions has become less, nor that this importance is no longer realized. The Secretary of State wishes me to express his appreciation of the services which have been rendered by the four heads of services who will now, in due course, leave the Council.

And I wish to pay a tribute to the work of the individuals concerned. Their help and advice has been invaluable in the past, and that help and advice will still be available and still be freely sought in future, though they will attend the Executive Council not automatically as members, but as experts ready to be called upon when matters which affect their special knowledge are being discussed.

It has always been a principle that the freedom of the Governor in choosing unofficial members of the Executive Council shall be unfettered; this principle remains unaltered.

The unofficial members will in future be appointed for a definite period, and it is proposed that this shall be four years, which corresponds to the life of the Legislative Council. This number and composition remain as at present.

Two will be selected as being specially qualified to look at Kenya's problems from the point of view of the European population, and as at present will normally be chosen from among the elected members of this Council. There will be another member who will be able to regard these problems from the point of view of the Indian community, and there will be one specially selected for his knowledge of native matters, knowledge if possible not confined solely to this country.

I have used somewhat long phrases in describing these matters, because I wish again to emphasise that none of these four unofficial members must be regarded as representing any particular community or class; each one has the duty of thinking of the whole of Kenya and all its peoples.

[His Excellency]

I hope that in future the Executive Council will be able to devote its time to a greater extent than in the past to working out a policy of constructive development in its widest sense. I believe that an important step towards this is to regard Kenya and its peoples as one whole. But, in the same way as the soil of Kenya differs and we cannot grow the same crop in all parts of the country, so different sections of our population have separate functions, each contributing in its own way to the prosperity of the whole.

And I am convinced of one thing, that unless we set our ideals so high that they are apparently out of reach, we are not aiming high enough. We may not attain our objective, but at least we can start hacking a path through the difficulties that lie before us, so that our successors may start further ahead than we do and can reach the goal, and that Kenya can attain to a degree of peace, prosperity and welfare which we at present can see but dimly.

MINUTES

The minutes of the meeting of the 11th August, 1937, were confirmed.

PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

BY MR. LOGAN:—

Report of Standing Finance Committee on Schedule of Additional Provision No. 2 of 1937.

BY MR. WOLFE:—

Department of Agriculture Annual Report, 1936, Volume I.

BY MR. GARDNER (CONSERVATOR OF FORESTS):—

Forest Department Annual Report, 1936.

MR. WOLFE: Your Excellency, Volume I of the Department of Agriculture Annual Report for 1936 contains the economic and statistical sections, as well as the departmental section, and also a précis of the investigational work for the year. Part II is in the hands of the printer now. That contains reports of special and scientific conferences.

ORAL ANSWERS TO QUESTIONS

No. 49—SISAL FIBRE SOFTENING EXPERIMENTS

MR. BEMISTER asked:—

What is the position with regard to the advance or loan of £10,500 to test experiments in sisal softening?

MR. WOLFE: In August, 1935, assistance to the Government of Kenya to the amount of £10,500 was sanctioned from the Colonial Development Fund for the construction of a factory in the United Kingdom to carry out a new process for softening sisal fibre. No financial liability in this connexion attaches to this Government. The progress of the experiment is confidential.

COL. KIRKWOOD: Your Excellency, may I inquire the meaning—of course, any ordinary school boy would know—of the phrase "no financial liability"? That money was advanced by the Colonial Development Fund to the sisal industry, to this Government, and was to be repaid by the industry under certain conditions.

MR. WOLFE: The answer is in the negative. The Secretary of State has given Government the assurance that no financial liability attaches to this Colony at all.

COL. KIRKWOOD: Further to that again, I quite realize there was an advance. I maintain the advance was made to the industry and not to the Colony, but there is the liability on the industry.

MR. LOGAN: On a point of order, the hon. member is entitled to ask supplementary questions but not to make statements.

MR. SHAMSUD-DEEN: I would ask the hon. the Director of Agriculture if he knows of his own knowledge that the progress of the experiment is absolutely nil? (Laughter.)

MR. WOLFE: To that again the answer is in the negative!

MR. MAXWELL: It is not a fact that the mony was not advanced to the sisal industry as an industry but only to an individual to carry out certain experiments?

MR. WOLFE: The answer is in the affirmative.

No. 50—GOLD ROYALTY COMMITTEE REPORT

MR. HARVEY asked:—

1. On what date did Government receive the report of the Gold Royalty Committee?

2. Was such report unanimous?

3. When may an announcement of the attitude of Government to the recommendations be expected?

4. Will Government be pleased to lay the report on the table for the information of hon. members?

MR. LOGAN: 1. The Report of the Gold Royalty Committee was received on the 20th July.

2. The Report was unanimous.

3. Government has referred the recommendations of the Committee to the Standing Board of Economic Development for their advice. The Board will consider the matter at their meeting which, in fact, takes place this afternoon.

4. Government does not propose to lay the Report on the table for the present.

MR. HARVEY: Arising out of that answer, as this is a matter of life and death to the mining industry, which is such an important contributor to the Colonial and railway revenue, will Government do everything humanly possible to accelerate the decision of Government?

MR. LOGAN: Government's decision on this matter will be taken as soon as possible and directly after it receives the advice of the Standing Board of Economic Development.

No. 51—VOTERS ROLL: REGISTRATION DATE

MR. WILLAN: Your Excellency, with regard to Question No. 31 asked yesterday by the hon. Member for Mombasa (Mr. Bemister) and his supplementary questions thereon, I now propose to answer those supplementary questions, and copies of the answer I propose to give have been laid before each individual member of Council.

The answer is as follows:—

1. The position with regard to the Voters' Registers can best be appreciated by bearing in mind that the existing registers of Europeans, Indian and Arab voters will lapse on the dissolution of this Council early in 1938. It has been necessary to keep alive and revise existing registers during this year purely as a precautionary measure in the event of By-Elections taking place during the life-time of the present Council.

2. As to the new registers, which are the registers on which the persons entitled to vote at the general election in 1938 will be based, the position is as follows:—

A—European Voters.—On the 2nd March, 1937, a notice was published in the Gazette calling upon all persons desirous of having their names inserted in these new registers to forward their claims not later than the 17th April, 1937. This date was extended by a later notice to the 25th May, 1937.

On the 6th April, 1937, the Rules made under the Legislative Council Ordinance, 1935, were amended declaring that every European whose name appears on the present registers shall be deemed to have forwarded his claim for insertion in the new registers. These new registers are now nearing completion and will include all the names appearing in the present registers, together with any new names forwarded in accordance with the notice in the Gazette referred to above.

At the present rate of progress it is anticipated that these new registers will be gazetted by the end of September, 1937, and notices to that effect published in the Press at the same time. Claims on account of names omitted and objections to names included in these new registers must be made within four weeks of the date of publication, and that period of four weeks will lapse about the end of October, 1937.

Claims and objections are heard and determined after a ten days' notice has been given to each claimant and objector, and these new registers are again gazetted in their amended and final form. A further period of ten days is allowed for appeals and the results of such appeals are also gazetted.

It is anticipated that the new registers in their final form and the results of any appeals will be finally gazetted before the end of 1937.

[Mr. Willan]

B—Indian and Arab Voters.—Owing to the alterations of the Electoral Divisions it has not been possible to carry forward names in the existing registers to the new registers, and therefore the names included in these new registers will be those of Indians and Arabs who have forwarded their claims by the 25th May, 1937, in accordance with the notice in the Gazette mentioned in sub-paragraph *A* above.

The procedure and periods for claims, objections and appeals are identical with those set for in sub-paragraph *A* above, and it is anticipated that the new registers in their final form and the results of any appeals will be finally gazetted by the end of 1937.

MAJOR CAVENDISH-BENTINCK: Your Excellency, in regard to the answers to these questions, may I ask, in view of paragraph 2*A* referring to Europe[illegible] voters, which states that the claims had to be made by the 25th May, and in view of the fourth line on page 2, that the claims on account of names omitted must be made within four weeks of the date of publication, does that mean that, in spite of the fact that somebody has not registered their name by the 25th May, they will have a further opportunity of doing so after the publication of these new registers?

Furthermore, does that mean that if they make a claim after the publication of these registers, they have to appear in person under paragraph 2 of page 2 to substantiate their claim before the registering officer?

MR. WILLAN: Your Excellency, with regard to that supplementary question asked by the hon. member, the position is this.

These registers will be first published, it is anticipated by the end of September of this year. When these are published, they will appear in the Gazette and at the same time notices will be published in all the principal newspapers circulating in the Colony. Within four weeks of the date of that publication, any person whose name has been omitted can send in his claim to have his name included in the register. That claim he will have to substantiate by appearing before the registering officer and, if the claim is substantiated, his name will be inserted in the register and will appear in the register published in final and amended form, it is anticipated, before the end of 1937.

MR. BEMISTER: Arising out of that, am I to take it that a man who is entitled to a vote on the 1st June, that is, he has resided here for twelve months previous to that, but not having been able to register before the 25th May, is disfranchised from voting in the elections of 1938 because his name will have been omitted? that he cannot claim to have been an eligible voter before May 25th and therefore is disfranchised?

MR. WILLAN: The answer to that question is in the negative.

If his name did not appear on the register which it is proposed to publish before the end of September of this year, he will have a further four weeks after the publication of the register in which to forward his claim, and if he is able to substantiate his claim his name will then appear in the final and amended register which it is hoped to publish before the end of the year.

MAJOR CAVENDISH-BENTINCK: A further supplementary question.

Would it be possible for Government to say whether it could be arranged that persons who register in the normal way and to whom no objection is made, need not appear in person before the registering officer, because it seems impossible to make them do so!

MR. WILLAN: According to Rule 4 (4)—

"The registering officer shall inquire into all claims and objections in open court and shall give ten days' notice of such inquiry by posting a written hearing notice to each applicant and to each person objected to, and by affixing a similar notice on some conspicuous part of the court."

That, Your Excellency, and hon. members, is the law.

MR. BEMISTER: Arising out of that, if there is no objection there is no necessity for a personal appearance. Is

[Mr. Bemister]

that so? If a man registers in the ordinary way and sends in Form A and there is no objection given to the registering officer, he does not have to personally appear, but it automatically follows that he gets a vote.

MR. WILLAN: The answer is in the affirmative.

MAJOR GROGAN: Would it not be better to have this described as a measure for the disfranchisement of the world's population? because in my particular part of the world I am afraid that a voter would have to travel at least 100 miles there and back before he had any chance of appearing in person on one of these occasions!

MR. WILLAN: I am not quite sure whether the hon. member is asking a supplementary question or making a statement?

MAJOR GROGAN: Chancing my hand! (Laughter.)

COL. KIRKWOOD: Further to that answer, may I ask if it is not possible in future to devise ways and means of compiling the voters roll from people who pay their taxes automatically, instead of going to the very large expense which voters have to be put to in most outside districts in Kenya?

MR. WILLAN: That is not a supplementary question on the main question.

COL. KIRKWOOD: May I ask if, on page 2, the word "omitted" on the fourth line should not be defined or altered? Omitted conveys to my mind a name that had the right to appear on the voters roll but does not appear, whereas I understand from the hon. and learned Attorney General that notwithstanding no claim has been put in for registration one can still be put in by the date given in that paragraph. I am sure that this will be misinterpreted by many administrative officers in this Colony.

MR. WILLAN: The word omitted means omitted from the first register, the one it is hoped to publish by the end of September, by, say, the inadvertence of the registering officer or because the person omitted to make his claim to be included in that first register. Also, according to Rule 4 (1) (*b*)—

"the words 'omitted from such register' shall be deemed to include the name of any person who is registered in one electoral area and who has qualified by residence to have his name inserted in the register for another electoral area."

But, his name having been omitted from the first register to be published by the end of September, that does not mean that a person cannot apply to have his name in the final register, provided he makes application within four weeks after the date of the publication of the first register; if his claim is substantiated his name will appear in the final register.

No. 52—VOTERS ROLL: REGISTRATION

DR. DE SOUZA asked:—

Will voters registered on the existing Legislative Council electoral roll and absent from the Colony while new rolls were being compiled, be allowed to register themselves on arrival in the Colony after the publication of the new registers and before the 1938 elections?

MR. WILLAN: I presume the hon. member is referring to Indian Voters and would refer him to sub-paragraph *B* of paragraph 2 of the paper laid this morning in reply to Question No. 51.

Any Indian absent from the Colony, who wishes to vote at the 1938 election must arrive in this Colony in time to make his claim in accordance with the procedure described and within the period set forth in such paper laid.

DR. DE SOUSA: What is that period?

MR. WILLAN: If he arrives after the 25th May, he must substantiate his claim within four weeks after the end of September, that is, the date on which it is hoped the new registers will be first published.

DR. DE SOUSA: Is he entitled to make a claim if he is absent from the Colony after the first publication?

MR. WILLAN: He is entitled to make a claim within four weeks of the

[Mr. Willan]

date of the first publication of the registers, and, as explained a few moments ago, it is hoped that date will be the end of September of this year.

No. 53—VOTERS ROLLS, INDIAN AND ARAB

MR. SHAMSUD-DEEN asked:—

Is Government aware that there is a great deal of confusion as regards the preparation of new voters registers, the changes that have taken place, and the publications that have appeared in the local papers as regards the necessity for registering for certain sections of the voters being obviated?

Is Government aware that there is a very large number of Indian and Arab voters who cannot read, write or understand the English language, and are therefore unaware of the changes that have recently taken place necessitating altered constituencies and preparation of new voters registers?

Will Government take the necessary action to publish the translation of the altered arrangements and extend the time for registration of voters on the new registers to enable as many voters as possible to participate in the 1938 general elections?

MR. WILLAN: With regard to the first part of the question Government is aware that certain misapprehensions arose regarding the preparation of new registers and took immediate steps to allay these misapprehensions by issuing a communique to the Press.

With regard to the second part of the question steps were taken to issue personally copies of enrolment forms to all voters whose names appear on the existing registers, intimating the necessity to re-register and the date for re-registration has already been extended from the 17th April, 1937, to the 25th May, 1937.

As to the final part of the question, in view of the action already taken by Government, the answer is in the negative.

MR. SHAMSUD-DEEN: Arising out of that answer, will Government please take steps to extend the time for at least four weeks, in view of the fact that all Indian voters have to re-register themselves as against the European voters who have had the facility or privilege they have under the Rules?

MR. WILLAN: The answer is in the negative. Government has already extended the time from the 17th April to the 25th May, and all Indians have a further four weeks in which to make claims when the first register is published, some time about the end of September, 1937.

MR. SHAMSUD-DEEN: I have no objection to it being extended from four to eight weeks. After all, these people have to understand, and four weeks is rather short.

MR. WILLAN: The answer is that four weeks is prescribed in the Rules, and Government will not extend that for a further four weeks.

SCHEDULE OF ADDITIONAL PROVISION

No. 2 OF 1937

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

"That the Report of the Standing Finance Committee on the Schedule of Additional Provision No. 2 of 1937 be adopted."

The committee have considered this schedule item by item, and recommend approval of the expenditure set out in it.

When I moved that this schedule should be referred to the committee, I invited the attention of hon. members to the fact that the net additional expenditure to which their approval is sought is comparatively small; the net total is £6,799. Of that sum, £3,500 is due to the liquidation of liabilities contracted during the Colony's worst years of depression and it was agreed by the Committee that it was a desirable thing that, owing to the financial condition of the Colony showing such signs of improvement, these financial commitments should be liquidated.

The necessity of providing the new meat factory at the Athi River with adequate telephonic communication accounts for a further sum of £500, and increased expenditure of £1,000 on printing paper and sundries could not be avoided largely in

[Mr. Logan]
view of their present greatly increased cost. The balance of the schedule is made up of small items to which I do not propose to refer individually.

MR. STOOKE seconded.

MR. HARVEY: Your Excellency, I propose to support the motion subject to a satisfactory explanation being adduced in respect of Item No. 30. The memorandum tells us under the heading of "Compensation; £5":—

"*Compensation £5*

Of this amount £2 is required for making an ex gratia payment for a cat which died as a result of an attack made by *siafu* ants, whilst under treatment at the Quarantine Station, Maseno, and the balance for making a similar payment to Mr. D. L. Malcolm-Smith for damage, etc., done to his car while crossing the Nyando Suspension Bridge at Ahero."

As this occurred in my constituency, I think it only right and proper that we should be given some little information about this unfortunate cat and the sort of cat it was and to whom it belonged, and who succeeded in getting away with the compensation! I am by no means sure, Your Excellency, that the attention of the hon. and learned Attorney General should not be drawn to the possibility of an action against the authorities in charge of the Maseno quarantine station under the cruelty to animals legislation!

MR. LOGAN: Your Excellency, the cat in question was a pure bred Siamese cat. (Laughter.) The owner was a Mrs. Penfold. The cat was put into quarantine under the Suppression of Rabies Ordinance, as being suspect to that disease. It was confined in an enclosed pen, and unfortunately succumbed to an attack of *siafu* ants. It was therefore thought fair that the owner should receive compensation, and the sum of £2 was paid to liquidate that responsibility.

The question was put and carried.

KENYA LAND COMMISSION RECOMMENDATIONS

The debate was resumed.

MR. WRIGHT: Your Excellency, as seconder of the motion before the Council I want to associate myself with the speech made by the hon. mover yesterday, a speech, may I say, uttered with such high-toned moderation that I will do my best to emulate the example set by my hon. friend the Member for Nairobi North (Major Cavendish-Bentinck).

We on this side of Council view the security of our White Highlands as a terribly important matter. We look on the land of our White Highlands as our only permanent irremovable asset, and we are accordingly jealous of any activities that will whittle away any of it at any time. Some three years ago, when the debate on the Carter Commission Report took place, all of us on this side of the Council agreed to a further whittling away process, and it was not an inconsiderable one—it is always happening in the history of Kenya—whereby no less than 430,000 acres of land were given away, but we accepted it unanimously. That was quite apart from the area of the present Leroghi Plateau, and we agreed that it should be given away to a native tribe who, as the evidence well showed at the time, scarcely warranted it.

I want to emphasise that, because the debate on the Commission's report was probably one of the most remarkable that had ever taken place in recent times in this Council. Led by the same hon. mover of this motion, one by one the elected members dealt with the case affecting his own district, and all were unanimous that at least in respect of Leroghi Plateau the Carter Commission had reached a fatuous answer, and that it was the only indeterminate chapter in the whole of the report. A few days ago, in answer to a question put by the hon. Member for Kiambu, I saw recorded in the *E.A. Standard* next day that the Samburu had got Leroghi, or words to that effect, and to this I want to utter my solemn protest.

That was not the implication, and I hope Government will confirm it, of the answer to the question. It means simply, as I view it, that the Samburu are allowed yet a while to contine tenure of that grazing, under the recommendation of the Commission that they should be allowed to do so, for such time as may be necessary. I have good

[Mr. Wright]
reason to believe that the time has come when, in respect of that tribe, their tenure is no longer necessary.

It is a well known fact that their cattle count is obviously less now than the figure given at the time of the discussion. It is also known that they are now well-disciplined to a degree that they have never been before, and in that respect I would pay tribute to the Provincial Commissioner of the Rift Valley Province. These natives, at one time truculent, are much more chastened. Their tendency is to go north, and in that respect a new question arises about the whole of Leroghi.

It is a most important strategic place, it is a healthy place, rich in grazing, once rich in timber and perhaps may be again, but, when the Abyssinians drove the natives down, and in turn the Turkana drove the Samburu further south, a pusillanimous Government urged them to go further south in spite of the decisions and findings of previous Governors, committees and commissions in respect of Leroghi Plateau.

Now that peace and prosperity reign in the north, now that th eItalian people have taken charge of the Abyssinians, now accordingly that there is a tendency for less raiding into our own territory, the Samburu, finding things pleasant, are moving north into the vast areas they have held as of right for very many years. I do say that with so many landless applicants, as the hon. the Acting Colonial Secretary called them in the Council the other day, with so many people in this country, before we talk of new white settlement or more settlement there is great scope for putting some of the more virile of our race and other races—but most emphatically white—on these highlands as a place of tremendous future strategic importance, and that cannot be doubted by anyone who knows the country.

In this country to-day you have young men who, by virtue of the bad years that the country has gone through, have grown up in this country but have no positions but do have a definite instinct for making good on the land. Farming is about the only thing they can do. The hon. the Acting Colonial Secretary referred to such as those yesterday, and with all seriousness I suggest that some of these young men with the pioneer instinct in them, Dutchmen from South Africa, young colonial South Africans, who are shouting aloud for land, ought to get the chance they deserve.

Leroghi Plateau affords a certain measure of scope where they can be put wisely and well. Otherwise if something of this sort is not done it will be a bad thing for this country. In this connexion a scheme has been evolved by a body called the East Africa Farmers Union, comprising mostly young men, which was discussed and approved by the Convention of Associations when it last sat, young men who have very little capital but have the pioneer instinct of the sort who would go in covered wagons from north to south, east to west and make a living, but they have no—

MR. LOGAN: On a point of order, we are discussing a motion to send a despatch to the Secretary of State, and details of settlement do not arise in this connexion.

MR. WRIGHT: Am I to accept that as a ruling, Sir, that I am out of order? I acknowledge the soft impeachment but, à propos of the despatch, I wonder what despatches mean in any case? After the Commission report a despatch of some sort was sent home. I went to the Colonial Office last year, unofficially, and had the good fortune to meet two of the high Panjandrums of the Colonial Office. I asked for information about the Leroghi Plateau in respect of which we had long awaited an answer, and in regard to a Rongai land transfer. This is a propos of despatches. They seemed to know nothing about it; never seem even to have heard of it. I greatly fear that these despatches go into a pigeon hole or into the "Never-never" file and are never read.

I should like to feel that, on an occasion like this, in a matter very vital to the welfare of this country, this despatch notwithstanding, and in view of what Your Excellency said in regard to the new constitutional advance, or a hint of it this morning, that the time has come when,

[Mr. Wright]

in matters of this sort, decisions will be left to the man on the spot instead of despatches. In this Council hon. members opposite have grown up with the settlers and most of them know the ins and outs of the problems. It would be an advantage in settling these problems if they were allowed to throw off the shackles that bind them to the chariot wheels of Downing Street and allowed to exercise the dictates of their own conscience and vote freely on an issue of this sort.

I said I would try to be moderate, or I should be called to order, but the question of land does lead one all over the place because it is so very vital to us. As a supporter of this motion, I would press that if the despatch is sent, if Government will accept this motion (as I think they properly should), that an answer be pressed for, because it is a fatuous state of things that in three years we have no declared answer to one of the most important discussions affecting the Highlands that took place some three years ago.

It is a grave matter, Sir. It seems incredible that in a debate occupying 190 pages of Hansard at that time, with one very clever reply by the present hon. Colonial Secretary on behalf of Government, with a case unassailable in its issue, with logic and reasoned argument in support, and presumably a despatch sent to the Colonial Office, that no response whatever at this late date should have been made. While supporting the suggestion that another despatch be sent, I would ask that a very urgent request be appended asking for an answer.

Your Excellency, we are always ready and very willing to co-operate with Government, but only so long as they give us a measure of their confidence.

MAJOR RIDDELL: Your Excellency, the hon. mover in his speech to this motion has covered the ground for elected members in a way which I do not propose to alter in any respect. I am entirely in agreement with him, and I do not wish to alter one word of what he said.

But I wish to make a few remarks supplementary to his, because in actual fact the questions that have been raised by him have come to a head in the constituency which I have the honour to represent. Like him, I do not mean to go into the rights or wrongs of those questions in detail, because emphatically that is the job of Government, but I wish to point out to this Council that these questions have arisen from one cause, and one cause only, and that is the entirely unjustifiable and unwarrantable delay in the gazetting of our White Highlands.

All the way through the Commission, which the hon. mover has told us was inaugurated in 1932, reported in 1933, its report being in our hands in 1934, at the start of the life of this Council, consistently through their report runs the question of urgency, urgency! It is the keynote to the report on the Kikuyu, which occupies a very large part of that report. Time after time it is stressed that it is necessary to act at once, that the position admits of no delay.

There has been that delay, on what the Carter Commissioners anticipated is now, as regards Limuru area, an *au fait accompli*. It is a regrettable fact.

When a settler in Limuru or any other area comes up against what we know as a native *shauri*, what is his procedure? to go off to the district commissioner. He goes to the district commissioner as he would go to a friend. He is never in that respect wrong. He goes to him as he would go to his own family physician: he goes to him as a friend, and expects that friend to cure his complaint. That is the procedure that is always adopted.

The district commissioner in this particular instance, or in all these instances that are cropping up throughout the country, although his attitude to a settler is that, of course, of a physician and a friend, finds himself under this most unwarrantable delay not in a position to cure the disease. Therefore he is driven to expedients such as were read out to you by the hon. mover yesterday, expedients which really are extremely undignified in an administrative officer.

I would say in passing that I do not know who the administrative officer is by name at Limuru, and I have been particularly careful not to find out so as

[Major Riddell]

to be able to make my remarks impersonally.

The settler, having failed to get any satisfaction from the local administrative officers, usually the next step he takes is to ask for a meeting of his local farmers association; generally that is in conjunction with the member, or he is invited to attend and state a case on the position as he sees it.

That, Your Excellency, is the procedure adopted throughout Limuru, and so far as I am concerned—I am the member for the district—I have been at pains to explain to my constituents that the worst thing that could happen was any form of direct action, because direct action in these respects in a country of mixed races and the state of development we are in at the present moment is, as both sides of this Council must agree, nothing but a ghastly tragedy. At the same time, I should like to say that I am in sympathy with these people, and I think, as far as the Limuru people are concerned, that they deserve the respect of the whole community, unofficial and official, for the tremendous moderation they have shown under these three years of tremendous stress. It cannot, of course, continue indefinitely, and that is one of the reasons why this motion is tabled and one of the reasons why I am speaking to it.

Another aspect of the delay in the formulation of this White Highlands is the aspect raised by the hon. seconder of the motion. That is with regard to Leroghi Plateau. In the Carter Commission debate three years ago, at the start of the life of this Council, we fought the question of the Leroghi Plateau as a reasoned argument. So far as I am aware, we were making this argument not to the Government here but to the Secretary of State, insomuch as the report was issued to us in conjunction, as the hon. mover told us yesterday, with a White Paper which accepted these findings before ever Government here or we on this side of Council had heard actually what the report contained.

Therefore we were using our reasoned argument, and we understood—I did, and all elected members—that there was a promise from the then Governor that the arguments we adduced with regard to Leroghi Plateau should be submitted to the Secretary of State and a due answer given us in due course. That was the reason lying behind the question I asked two days ago, and the answer came to me as a complete surprise, because we were told that the answer was that Government had no reason to recede from the findings of the Carter Commission. Of course they have not, because the White Paper had, and we had, accepted it.

I suppose the decision for that was arrived at. A despatch was sent home to the Secretary of State in Executive Council, but Executive Council meets in secret and we know nothing about that, and for three whole years we were under the delusion—I certainly was—that we were awaiting a ruling from the Secretary of State as to the ultimate destination of Leroghi, in the terms of our reasoned argument put up while at the same time accepting gratefully, although doubtfully in certain respects, the rulings of the Carter Commission report. Surely that is the position as I see it and all elected members see it.

I myself gave reasoned argument in this Council as to the retention of Leroghi, because I happen to be one of the people who were directly concerned in the movement of the Masai at that time. It must be remembered that this was a long time ago; to give you some idea, our present Acting Colonial Secretary was not even in this country on his first appointment! But promises made by a Governor, even though long ago, still stand, and I produced evidence that I was myself moved from the Southern Masai Reserve, and Sir Percy Girouard, our then Governor, made a direct promise to us. I myself could have taken up land on Leroghi as an integral part of the White Highlands, there is no question about it, and that evidence was produced and it is in Hansard.

Our acceptance of the Carter Commission report as a whole took from us a very large area of the country which we considered at that time to be in the White Highlands, and our acceptance of that, as the hon. mover has told you, qualified our acceptance of that and made it conditional on our receiving the security that

[Major Riddell]

the Order in Council was to give us in the White Highlands. I beg that the Council will allow me to read the final sentence in my speech at that time:—

"I have only one further point. Everything I have said and the evidence I have offered to this Council is meaningless to me and I cancel it, unless we are given under the report the full security of the White Highlands in a form which is acceptable to ourselves."

We still await it. So far as I am concerned and Leroghi is concerned, after waiting three years I hold myself free from the reasoned argument that I used in that debate, and I await further developments accordingly.

Council adjourned for the usual interval.

On resuming:

MR. LONG: Your Excellency, I wish to express my entire agreement with the opinions voiced by the three hon. members who have already spoken, and, in particular, with the hon. mover.

I put it that way, as it appears to me, that the main issue regarding this motion is the delineation of the White Highlands, and that the question of Leroghi is a subsidiary one but, as Leroghi has been introduced into the debate, I should like to give my views on it.

The first thing I wish to emphasise is the right of the white community of this country to the Leroghi Plateau and the surrounding country. In order to illustrate my point of view, I will not take a very long time, I must go back to the early history when the Masai, before the Masai move, occupied the Laikipia Plateau. Laikipia Plateau did not mean the country between the Aberdares and Rumuruti as commonly accepted to-day, but the whole of the country from Aberdare to Karissia, including Leroghi, Kissima, Kelele, Marmar, Mugie, Gerimuin, and all that country.

Government, for a very good reason, considered that it would be preferable to have the Masai in one block instead of two blocks, with a white area between them. Eventually, a covenant or treaty was come to with the Masai by Government, whereby the Masai agreed to move from the Laikipia Plateau, which includes Leroghi, to what is now know as the Southern Masai Reserve. In order to accommodate all these Masai from what I would call the Northern Masai Reserve —that is, the people on the Laikipia side of the reserve, the northern side of the country—it was necessary to turn out quite a number of white settlers who occupied land in the southern area already referred to by the hon. Member for Kiambu (Major Riddell).

In particular, and I think he will agree with me, there was the Lernie Valley area and South Uaso Nyero, and the people there were told they must clear out of that area and that they would be allowed to take up land anywhere on the Laikipia Escarpment, which was thrown upon to white settlement.

That was all right, the Masai started off, and it took about 5 or 6 years to move them. I forget exactly how many years, but the movement finished at the beginning of 1912. After that came the war, and after that came the Soldier Settlement scheme. With the latter, farms were drawn on the map, and for some reason or other which I have never discovered there was a hiatus of 50 miles left between the northern boundary of the soldier-settlement farms and the northern tribes such as the Turkana, Samburu, and all raiding tribes from the north.

That occurred in 1919 or 1920. Before 3 or 4 years had gone, this 50 miles buffer was turned into a buffet by the Samburu for the grazing and watering of their cattle, etc., in the dry weather, when grazing and watering were scarce. There was an inquiry, objections were made by the white community, and eventually a commission was appointed to go into it. That was in 1924.

I was not a member of that commission, but was asked to go with it as interpreter, because I happened to know the country and Masai and Samburu languages fairly well. The Director of Agriculture was a member, the Commissioner of Lands, and Chief Native Commissioner, and I think there were three or four other people. I remember perfectly well every detail.

We went through by motor cars and arrived at Kissima, and encamped at the

[Mr. Long]

[illegible] of the Leroghi plains. The next day the Samburu came in and asked what we wanted, and we explained to them that Government had come to make an [illegible]. They were full of apologies for [illegible]. They said they quite realized [illegible] ought not to be there, that the land [illegible] not belong to them, and they would [illegible] next day and go away sooner [illegible] into trouble. As far as the actual [illegible] of cattle and sheep were concerned, I can remember particulars [illegible] well. I went with the Director of Agriculture myself in one car the whole [illegible] of the Leroghi Plateau: there was [illegible] sheep, goat, or cow or Samburu [illegible] whole place. There were quite a [illegible] of Dorobo and quite a number of [illegible] underneath the Leroghi Plateau, on [illegible] E Olmoridgio. There were a [illegible] sheep at Kelele, and three or four [illegible] cattle at Kissima. When the [illegible] asked what they were doing [illegible] they said they were coming back [illegible] inoculations done by the Veterinary [illegible] at Gerimuin, and were going [illegible] their own country; never for [illegible] did they suggest the country [illegible] to them or that they ever had [illegible] it.

[illegible] stayed four or five days going into [illegible] of interrogating chiefs and all [illegible] Samburu available, and eventually a [illegible] was got out. That report was [illegible] I think, by everybody, and was [illegible] to Sir Robert Coryndon, then [illegible]. Suddenly, and regrettably, he [illegible] at the time of this report. I do [illegible] what happened to it, or where [illegible] It disappeared, and the subject [illegible] brought up again until Sir [illegible] Grigg came out.

[illegible] went into the matter, and later on [illegible] there to the Samburu country as [illegible] called. In actual fact, it was [illegible] country, as I will prove to you. [illegible] up there, and either by accident [illegible] design, I cannot say which, I understand the whole place was covered in [illegible]. I saw him when he came back, [illegible] him what his impressions were, [illegible] said that, having asked the [illegible] various questions, he was quite [illegible] that the country did not belong to [illegible] but that it was quite obvious there were so many of them there that som[illegible] where must be found to put them befo[illegible] the white settlers could be allowed [illegible] there, and that he was looking for a pla[illegible] to put them. I think Isiolo was suggeste[illegible] but objections were made on account [illegible] fly, etc., with the result that nothing real[illegible] happened at all.

A point of interest as far as provi[illegible] what I say that it was always Mas[illegible] country, was that I had for years workin[illegible] for me Masai boys who were born on th[illegible] Leroghi and were recruited from Narol[illegible]. They were moved from Leroghi to Naro[illegible] as children, and came back to work o[illegible] Soysambu Estate as moran. These sam[illegible] people to-day are living where they wer[illegible] born, on Leroghi with the Samburu although in actual fact Government gav[illegible] the Masai land in what is called th[illegible] Southern Masai Reserve to replace what was the Northern Masai Reserve, and, I must again point out, took away land from the white community in the southern area to enable them to do so.

COL. KIRKWOOD: Your Excellency, I rise to support this motion before Council, and I should also like to pay a tribute to the hon. mover for the concise and precise manner in which he has put up this motion.

I personally regret that many details in connexion with the Leroghi Plateau have entered into this debate. The essence of the motion is:—

"That this Council recommends that an urgent despatch be forwarded to the Secretary of State pointing out that accepted recommendations of the Kenya Land Commission still remain unimplemented,"

and so on.

Now, Sir, I would point out that in 1934, when the debate on the report took place, the whole of the European elected members accepted the Commission's report in toto. It was accepted with the White Paper which the hon mover quoted, and we also accepted the demarcation of the White Highlands, which was one of the recommendations. The report was also accepted by the House of Commons which, I presume, means that it had previously been accepted by the Privy Council at home, or otherwise by the British Cabinet.

[Col. Kirkwood]

Three years have passed, much water has flown under the bridge since then, and nothing has been done regarding the demarcation of the European White Highlands of the Colony, and that is the only point I wish to emphasise in this debate. I spoke at some length in 1934, and I propose to quote one paragraph, on page 613 of Hansard, 19th October, 1934, that is the last paragraph of my speech on which I finished:—

"It is also appropriate if I quote the terms of reference:—

'(6) To define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.'

They propose in paragraph 1979 that the European Highlands shall be demarcated, and that Europeans should have the same security there as the natives in the reserves. I am agreeing to the implementation of these recommendations on the understanding that that paragraph will be implemented also and that it will not be a one-sided affair as has been the case on many occasions in the past. There would be very serious opposition to this report if such a recommendation had not been included."

That is the essence of this motion and, as I stated before, I regret that the debate has been carried somewhat beyond it. I do hope that the motion will be accepted, that the despatch will be sent, and that the time that has elapsed in implementing the promise will be drawn to the attention of the Secretary of State in the very near future.

MAJOR GROGAN: Sir, the purpose of the motion is a perfectly clear one. It is to point out to the Secretary of State the urgency of immediate action in order to avoid ever increasing complications that are derived from the inaction of the last few years.

My own excuse for intervening in this debate is that I believe I can add a certain amount of historical fact to clarify the really vital issue which has been raised during this debate. Much the most important matter to my mind is, what is going on in the Kikuyu and Limuru districts? Those people there were some of the earliest people in this country, and their holdings were known at that time as freehold homesteads. They were specially designed in order to provide homes for the small man as distinguished from the large areas which were being given out in other parts of the Colony.

They were all issued under the Land Ordinance of 1902, which includes a provision protecting native interests in respect of land being dealt with at the time the titles were issued. There was no mention of a specific payment to natives, of course, in the titles, but those titles can only be interpreted to-day in conjunction with the procedure that was imposed upon people, who took this land, by Government at that time. I forget whether it was prescribed in the form of rules or whether it was merely a practice enforced or devised or defined by administrative officers of the day; but what, in effect, happened was this.

When you took one of these holdings—and I am speaking with knowledge because I had two of them—every native who had a hut on one of those properties was deemed to be entitled to compensation at the rate of Rs. 4 per hut. As far as I know, in every case Rs. 4 per hut was paid to natives at that time. It certainly was in respect of the areas of which I have any particular knowledge.

Therefore, quite clearly, the recognized native interest in the land at that time was assessed at Rs. 4 per hut, and if it was not paid at the time it presumably would now be due to the successors in inheritance from those who were on the land at the time. I think I am correct in saying that nearly all these old homesteads at that time were forest and were not occupied by the Kikuyu. There might have been a village here and there or an odd hut of natives who were not closely connected with the tribe, hidden away possibly in the clear parts, but I should think it extremely unlikely, because I remember the logging and fuel process that went on to clear that land before those large quantities of wattle, still a conspicuous feature of the country, were planted.

[Major Grogan]

I think I am safe in assuming that the vast proportion of the land was at that time in no sense of the word Kikuyu country. It was Dorobo country, covered with forest, and no cattle of any description were there. Therefore, no native could have held grazing rights because there was no cattle to graze. It seems, therefore, quite clear, that none of those people to-day have any right in law or equity in respect of these areas, unless they can prove they are the direct inheritors of a right to Rs. 4 for any hut there was at that time.

The simple facts of the position are—I want to be very careful how I put it because I am liable to be misunderstood sometimes and misinterpreted, therefore, with your permission, Sir, to depart from the proper procedure, I will read exactly what words I want to use in this matter:

The simple fact are: Certain sections of the natives have usurped the authority of Government with the admitted connivance of administrative officers. The central Government's intervention in respect of this open and insolent defiance of law and order consists of begging us to assist in the pretence that nothing of any significance is afoot. Surely, if the orthodox regime of law and order ceases to function, it becomes incumbent upon law-respecting citizens to provide their own adequate substitute to combat the direct action of the defiant parties.

If orthodox protection is not promptly provided, the traditional reaction is inevitable. We trust, therefore, that Your Excellency will urge the Secretary of State to recognize the loss of prestige amounting to contempt of authority which has long since derived from this pitiful failure to govern, and to take immediate action to remedy it.

MR. SHAMSUD-DEEN: Your Excellency, the debate on this motion is extremely interesting, and instead of there being explained any good reasons for an immediate despatch being sent to the Secretary of State we have been treated to the past history of the colonization of this Colony. I almost fancied that one hon. member was going to give us something of what happened in the last Russo-Japanese war! because all that we have been told is quite as irrelevant to this motion as the history of the last few wars. I will try my best to remain within the wording of the motion.

We have got to consider as to why the Colonial Office did not express their intention of promulgating an Order in Council as far back as 1935 and why they have not been able to do it up to this moment. Before I do that, I wish to remind Council that this small Colony is not watertight in itself: it is part and parcel of a very vast Empire, called the British Empire, and before the British Government takes any such action as to issue or promulgate an Order in Council it has got to take into consideration the views of other important parts of the British Empire. I believe I shall be able to explain to a certain extent the reasons why this Order in Council has been delayed up to now.

The whole method in which this Land Commission, or at any rate certain parts of it, have been handled by the chairman of that commission gave rise to certain misgivings as far back as December, 1932. On December 12th Mr. Morgan Jones, in the House of Commons (I am quoting from the *Manchester Guardian*), asked "whether Sir Morris Carter's announcement had the approval of Government here." That shows that as far back as December, 1932, there was a member of the British Government who knew that all was not right that was happening in this Colony regarding this commission.

Then, Sir, the "Summary of Conclusions reached by His Majesty's Government," Cmd. 4580, appeared on May 14th, 1934. Before there had been any public access to this report in England, His Majesty's Government issued this command paper, before even the Governor of this Colony knew anything about it or the British public had any knowledge of it. That is one of the reasons why the British public became quite alarmed as regards the conclusions of this report.

Therefore, since there have been quotations and references to debates, although I think most hon. members of this Council must be quite aware of what happened in the House of Commons it

[Mr. Shamsud-Deen]

is just as well to enlighten some of my hon. friends who have not had the opportunity of reading the House of Commons' Hansard.

On the 14th February, 1935, the following questions were asked as regards this Very Order in Council which is now being pressed for:—

"Major Milner asked the Secretary of State for the Colonies whether the correspondence which passed with the Government of Kenya and/or the chairman of the Morris Carter Land Commission in December, 1932, with reference *inter alia* to the right of natives to acquire or occupy certain lands in Kenya, may be published as a White Paper?

"The Secretary of State for the Colonies (Sir Philip Cunliffe-Lister): It would be contrary to well established practice to publish confidential correspondence between the Secretary of State and Governors. But the facts are as stated in my answer to the hon. member on the 18th of December.

The sixth term of reference to the Land Commission was as follows: 'To define the area generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.'

In December, 1932, the Governor informed me that the chairman of the commission had experienced some difficulty in interpreting the term of reference, owing to the absence of any definition of the 'privileged position' which persons of European descent are to enjoy within the area of the 'Highlands'. The chairman had requested that in order to enable the commission fully to consider this sixth term of reference in all its bearings a definition of the 'privileged position' might be supplied.

I authorized the Governor in reply to inform the chairman that the 'privileged position' in question involved:

(1) the right of Europeans to acquire by grant or transfer agricultural land in an area now to be defined and to occupy land therein;

(2) that no person other than an European shall be entitled to acquire by grant or transfer agricultural land in such area or to occupy land therein.

In communicating this decision to the Governor I stated that the area as defined by the commission would no doubt need reconsideration and possibly adjustment by Government in the light of their recommendations under paragraphs 2, 3 and 4 of the commission's terms of reference. This statement was also communicated to the commission by the Governor.

Major Milner: Does not the right hon. gentleman appreciate that his instruction completely vitiates the report of the commission and, in these circumstances, does he not think that the correspondence might be placed in the library for the information of members?

Sir P. Cunliffe-Lister: There are two perfectly distinct points. The first is, as the whole House will agree, that confidential correspondence between the Secretary of State and Governors should obviously be treated as confidential; otherwise, no Governor and no Secretary of State could have any correspondence at all. As regards the second allegation, there is not a vestige of truth in it. The definition of the White Highlands, which is the same definition which has been accepted for 30 years in practice, can no more be held to be prejudicing the issue before the commission than if somebody said how many horses there ought to be in a field and you were asked to define a horse, and you gave an accurate definition of a horse."

Before I go further, I want to point out that this statement by the Secretary of State of the definition of the White Highlands being the same which has been accepted for the last 30 years, is absolutely wrong, because, if hon. members will follow the report of the Commission, they say that as late as 1928 and 1929 there was a sub-committee of Executive Council appointed to recommend the boundaries of the Highlands. More than one subcommittee was appointed. At one time a committee recommended that the defini-

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tion should be a line between Kiu and Kibigori. Another committee said that was much too far, that it should be to Muhoroni station. Another committee sat and said it should be fixed to Chemagel. So that up to 1929 the areas, even in the minds of Government, were absolutely uncertain matters.

It must be on the records of the Hansard of this Council that, as far back as 1903, I asked Government again and again to define what the Highlands was, and I had no answer, because they told me they were not in a position to define it. For the Secretary of State to say that the definition of the Highlands was the same as had been accepted for the last 30 years was obviously wrong, because there had been changes up to 1929 as regards boundaries. Not only that, but the commission itself included in its definition of the boundaries of the Highlands certain farms that were already in possession of Indians, and said although those farms were in the lowlands and in possession of Indians, they recommended that as soon as they came into the possession of Europeans those farms should be put into the Highlands, so that it was not true that the definition had been the practice for 30 years as the Secretary of State wanted to inform the British Government.

MR. HOEY: On a point of order, is it not a fact that Sir Philip Cunliffe-Lister when Secretary of State accepted the findings of this commission, and also stated that the Cabinet were in agreement? I think that was a fact, so that I think the hon. member is entirely wrong in suggesting anything indefinite at all concerning the Secretary of State.

MR. SHAMSUD-DEEN: That is my point. The House of Commons was extremely dissatisfied with the high-handed action of Sir Philip Cunliffe-Lister in accepting the recommendations of the commission without giving an opportunity to the British public to express an opinion, or the House of Commons. I think one hon. member said the report was accepted by the House of Commons; I do not think that is correct, but it is at any rate certain that members were extremely dissatisfied with the Secretary of State who dealt with the matter.

MR. HOEY: I suggest that the hon. member refer to the House of Commons Hansard which he has been quoting.

MR. SHAMSUD-DEEN: I have not finished. I only wanted to give an explanation of what the Secretary of State said was a definition of the Highlands accepted for 30 years. It was not; it was in the melting pot up to 1929. To continue:—

"Mr. Paling: Is it not a fact that by the terms of reference Europeans should be in a privileged position, and that now, owing to the right hon. gentleman's interpretation, no one but Europeans has any right to land at all?

Sir P. Cunliffe-Lister: The position is perfectly simple. For 30 years the White Highlands have been an area in which Europeans have had a privileged position. The case is perfectly fair, and since it was re-stated in the White Paper of 1923 every Government has always accepted it, and there has been no change in that position."

In 1923 the Highlands was not what the commission recommended.

"Major Milner: Will the right hon. gentleman say why it was that these secret instructions were either not mentioned in the report or communicated to the House until they were extracted a month ago?

Sir P. Cunliffe-Lister: The hon and gallant gentleman is very suspicious. If I had been asked any questions about it I should have been perfectly willing to state it at any time. There is nothing in the least secret about the matter. The chairman of the commission asked for a simple definition of the privileged position. He was given a definition, which anyone in the House acquainted with the situation for the last 30 years will agree is a perfectly correct statement of what the position has been. I do not know what else could be wanted."

Before I go further with the debate in the House of Commons, I wish to point out that the commission themselves were perfectly clear in their own mind what that definition was. Such an eminent lawyer as Sir Morris Carter would possibly require no more instruction on

[illegible] terms of reference were [illegible] a man with an [illegible] of the English [illegible] understand it.

[illegible] reference says:—

"[illegible] generally known [illegible] within which persons [illegible] are to have a [illegible] in accordance with [illegible] of 1923."

That [illegible] perfectly clear, but [illegible]

[illegible]: On a point of [illegible] member has quoted [illegible] it was not an ex[illegible] of Sir Morris Carter.

[illegible]: What I was trying [illegible] that the terms of [illegible] they did not re[illegible] guidance from the [illegible], as I can show from [illegible] later on, they [illegible] own minds as to [illegible]

They say [illegible] 1945:—

"[illegible] of 1923 dealt with [illegible] the Indian com[illegible] Lord Elgin's de[illegible] the initial grant [illegible] the Highlands, [illegible] so as to pre[illegible] from Euro[illegible] The White Paper [illegible] practice must be [illegible] initial grants and transfer."

[illegible] was the "priv[illegible] with the White [illegible] and they them[illegible] explanation of what that [illegible] Not only that, but [illegible] again say what [illegible] is:—

"[illegible] is possible to [illegible] in the area [illegible] asked sanction [illegible] other hand, if the [illegible] the area are re[illegible] rather than indi[illegible] their corporate [illegible] such action [illegible] infringement of privilege."

That is one place where they make reference to what was in their mind and what that privilege meant.

They go on further, without making any reference to the subsequent instructions received from the Secretary of State as regards the definition of privileged position, in section 1970 to say:—

"We are now in a position to define the Highlands. We first took as our basis the map illustrating the proposals of the 1929 sub-committee of Executive Council. Although the map did not agree at all points with the resolution which it purported to illustrate, we found it generally preferable, as showing a closer correspondence with existing facts."

They go on to define the Highlands. Again, in 1973, they say:—

"The land in which the Kipkarren and Kaimosi farm blocks are situated is native reserve, and therefore in a territorial sense cannot be said to be European Highlands. But we are asked to define the area within which persons of European descent are to have a privileged position, and since we hold that Europeans should have the same privileges in respect of initial grants and transfers of land in these two blocks as they have in the Highlands proper, we include them in the area."

There was no doubt in the minds of the members of the Commission as to what that privilege was. The request to the Secretary of State for a definition of privileged position was not necessary. If there was the slightest mention in this report or in the House of Commons or Press that the Secretary of State for the Colonies had given any subsequent instructions to the Commission as regards this so-called privileged position, I am quite certain that this Council, when we were discussing this very report, and the public in general would have taken a very different stand.

Hon. members seem to be impatient. I have never interrupted anyone when speaking of the irrelevant past history of the colonization of the land to the time of Sir Robert Coryndon, but if members are getting bored I will not keep them long. I think, however, it is very import-

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ant that I should carry on and quote what happened in the House of Commons from where I left off:—

"Dr. Addison: The second term in the right. hon. gentleman's explanation does in fact constitute a serious alteration in policy in that it prevents natives from continuing in occupation of land of which they may before have been in occupation?

Sir P. Cunliffe-Lister: It does not do so in the least. If the right hon. gentleman will make himself acquainted with the policy followed out by his own Government, and will compare the definition given with the White Paper of 1923, he will see that the statement I made is merely a statement of the position which has existed for thirty years."

That also is not true, because the Commission made some drastic recognition as regards the rights of natives, so that it could not be said to have existed for thirty years. The Commission recognized that whereas in the Land Ordinances of 1902 and 1915 Government in the first instance could not sell and subsequently they altered that and said, "All right, you can sell the land, but we will exclude the areas occupied by natives," so that there was no one consistent policy for the last thirty years as stated here.

"Major Milner asked the Secretary of State for the Colonies whether he has asked, or intends to ask, for the comments of the Government of India on the text of the proposed Order in Council defining native reserves and European Highlands in Kenya?

Sir P. Cunliffe-Lister: I shall, of course, be prepared to consider any representations which may be received from the Government of India, but I think it well to point out that the effects of the proposed Order in Council, so far as the White Highlands are concerned, will be merely to confirm what has been an administrative practice for the past quarter of a century. This practice was formally reconfirmed by His Majesty's Government on the White Paper of 1923, Cmd. 1922, and has not been challenged by any successive Government."

I submit that this is one of the most important points as to why the Imperial Government are reluctant to rush into this Order in Council which they are now being asked for. Briefly, the history of all this privileged position is given in the report of the Commission itself, which says:—

"The history of the matter is as follows: In May, 1905, a Land Commission, consisting of Mr. Justice (now Sir Robert) Hamilton, Mr. J. W. Barth (now Sir Jacob Barth), Lord Delamere, and Mr. Frank Watkins, reported in favour of the maintenance of a European Reserve"—

(They did not call it Highlands)—

"and accepted Kiu to Fort Ternan as a suitable definition without wishing to bind themselves too closely to that area or to restrict its limits."

That was the recommendation of the committee of 1905.

The Indians had nothing to say about that, and I make it clear now that the Indians here and elsewhere had more or less acquiesced in this extended definition of the Highlands and were watching the development with great interest for some time to come, but it is an entirely different thing. If Indians were denied the privilege of holding land in these Highlands, it would be an entirely different matter if they were statutorily prohibited. Even the hon. Member for Kiambu (Major Riddell) said he wanted the boundaries of the Highlands to exist. There would be no objection to that, but if you ask for an Order in Council I hope I shall be able to prove to the Council that it would be an absolute breach of faith and an insult to the memory of a previous minister of His Majesty's Government and would violate the most solemn terms of an undertaking given.

I have shown what was the idea of a commission which sat in 1905. Section 1942 says:—

"In September of the same year, Sir F. J. Jackson (then Commissioner) wrote: 'I am not aware if a definite ruling was laid down or not, but it has always been understood that no large grants of lands between Kibwezi and Fort Ternan could be taken up by Indians, and you can act on this understanding.'"

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The Commissioner of the Colony then said: do not give any large grants to Indians. I hope hon. members will follow closely the metamorphosis that has taken place since 1905. The Commissioner said in September that the policy was that no large grants of land could be given to Indians. That left still remaining the larger areas of 40,000 or 50,000 acres held by European farmers uncultivated and undeveloped which must not be given away.

In section 1943 is the first most important pledge given to Indians by Lord Elgin and is the most important point which you are now trying to violate:—

"In July, 1906, Lord Elgin, as Secretary of State for the Colonies, expressed his approval of the practice then in force of limiting land-holding by Indians (outside townships) to the areas east of Kiu and west of Fort Ternan. Since settlement at that time was still confined to the general vicinity of the railway, there was perhaps no great occasion for a more precise definition at that date."

This was, of course, broken, because it was extended not only to Fort Ternan, a station just below Lumbwa, but goes almost as far as the Lake; in other words, the definition of the Highlands given by this Commission is wherever a European holds land is Highlands.

Section 1944 says:—

"Lord Elgin confirmed his decision in 1908, stating that, while it was not consonant with the views of His Majesty's Government to impose any legal restrictions upon any section of the community, grants in the Highlands should not, as a matter of administrative convenience, be made to Asiatics."

It is still there, the process of metamorphosis.

Even if there were nothing wrong in that, although it was an injustice to some of His Majesty's subjects, it was an administrative convenience.

That principle should be borne in mind, that it was as regards first of all said that no large grants should be given; it was then said, do not give any grants; then, in 1923:—

"The White Paper of 1923 dealt with an objection raised by the Indian community that, whereas Lord Elgin's decision only related to the initial grant of Government land in the Highlands, it has since been stretched so as to preclude the transfer of land from Europeans to Indians. The White Paper ruled that the existing practice must be maintained as regards both initial grants and transfers."

That is to say, all the land in the Colony was to be had for the asking and had been taken up by Europeans, but was not even to be transferred.

We acquiesced very reluctantly in that decision also, and that was the final one, in 1923. We said, "All right, we will submit and subject ourselves to this humiliation, that we shall not be able to get any grant or transfer in the Highlands." But now it is being asked that that shall become the law, in contradiction to the solemn pledge given by Lord Elgin, when he said, "It was not consonant with the views of His Majesty's Government to impose any legal restrictions." An Order in Council has statutory power, as everyone knows.

If I may be permitted to go on:—

"Major Milner: Will not the proposed Order in Council abrogate the gentleman's agreement of 1923, and should not the Government of India be consulted?

Sir P. Cunliffe-Lister: Surely, the simple question is: What is the practice? The practice for over twenty-five years has been that the allocation of agricultural land in the White Highlands should be confined to Europeans. Every Government, including two Labour Governments, have been pledged to that practice, and to alter it would be a breach of faith."

That is exactly the point. We say: Don't alter it, continue the practice, but do not make it law.

Then Mr. Paling said:—

"Is it not a fact that, however favourably the right hon. gentleman promises to consider any Indian suggestions, the Order in Council definitely excludes Indians from having any rights in the White Highlands?

Sir P. Cunliffe-Lister: Certainly, and that is the policy which the hon. gentleman's two Government constantly carried out.

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Mr. Paling rose.

Mr. Speaker: The House cannot debate this matter at question time."

Later on:—

"Major Milner asked the Secretary of State for the Colonies whether his action in giving secret instructions to the Morris Carter Commission additional to those contained in the report and published at the time, was taken with the knowledge and approval of His Majesty's Government?

Captain Peter MacDonald: On a point of order. Before this question is answered, may I ask if it is in order for an hon. member to make allegations against a Minister such as are contained in this question without having the statement confirmed beforehand?

Mr. Speaker: I do not see any particular allegation in the question.

Captain MacDonald: The question contains a statement, whether his action in giving secret instructions to the Morris Carter Commission. Does not that presuppose that he has taken such action, and my point of order is to ask if an hon. member is allowed to make allegations of this kind, which may have serious consequences in Kenya as well as in India, without having them first confirmed?

Mr. Speaker: I do not see what is the allegation.

Sir P. Cunliffe-Lister: As the hon. member was informed in reply to his question on the 18th December, no supplementary instruction, secret or other, was issued to the Land Commission. If he is referring to the definition of the term 'privileged position' of Europeans, the answer which I have just given shows that in complying with the chairman's request for a definition, I was studiously careful to avoid anything which could possibly be construed into an instruction to the Commission regarding the recommendations which they were charged to make."

I want to say to the Council that the Secretary of State said he never gave any further instructions, although we know very well his definition of privileged position was construed in an entirely different light, but he consistently says he gave no further instructions to the Commission at al. Therefore, we come back to the same position: Had the Commission in its terms of reference any right to suggest the promulgation of an Order in Council which was not included in the terms of reference at all? That is the whole point.

If anybody reads this sixth term of reference they will come to that conclusion. In the case of natives I will say, "Yes, they were asked." For instance, the fifth term of reference is:—

"To consider the nature and extent of the rights held by natives under section 86 of the Crown Lands Ordinance (Chapter 140 of the Revised Edition), and whether better means could be adopted for dealing with such rights in respect of—

(a) land already alienated; and—

(b) land alienated in the future."

There the Commission were asked definitely to suggest if there were any other recommendations as far as natives were concerned. As far as the definition of the Highlands was concerned, they were never asked for anything of the kind at all, but it can be shown that this last paragraph in their recommendations about the European Highlands, and clearly shown, that it was merely an afterthought. That is contained in paragraph 1979:—

"These recommendations may perhaps give rise to a natural apprehension among Europeans that the extent of the Highlands may again be diminished. One of the main objects of our report has been to frame recommendations which would instil a feeling of security in the minds of the natives with regard to their lands. If, in doing so, we had only transferred the feeling of insecurity from the natives to the Europeans we could not feel that we had succeeded in our task. We therefore recommend that the boundaries of the European Highlands should be safeguarded by Order in Council, so that the European community may have the same measure of security in regard to land as we have recommended for the natives."

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It is an entirely different thing to safeguard the interests of the natives and to extend the same principle to Europeans.

What we are being asked this morning is, in the case of Europeans, to believe that the major portion of the European population of the Colony are strictly intellectual and intelligent people. They have government by their own kith and kin; they have nothing to fear. On my left-hand side in this Council are the heads of departments of Government, their own kith and kin as I have said. There is not a single native or Indian sitting on the Government benches. The head of Government is of their own blood, and the people in England who are administering this Colony are also of their own kin.

It simply comes to this: They have no trust in the local Government, in the Colonial Office, or their own fellow settlers. That is what they are asking, that you, by their own hands restrict their liberty in such a manner as not to be able to dispose of their property! Certainly that is not to the advancement of the natives.

It is the duty of Government and the Commission and all the authorities that they must do all they possibly can to help people who are not able to help themselves, but certainly this Commission has recommended that the Europeans are also in the same stage and want similar protection. I submit that that is a poor compliment to their own people.

If I may be permitted to finish, and to show why the Colonial Office are in a very difficult position. They cannot go on with this Order in Council as presumed by hon. members in this Council; it is not an easy matter.

"Major Milner asked: Is not this an instruction? 'I caused the chairman to be informed ... that no person other than a European shall be entitled to acquire by grant or transfer agricultural land in such area or to occupy land therein.'

Sir P. Cunliffe-Lister: No, Sir. If the hon. and gallant member, instead of making careful selections from my answer, will read to the House the whole of the answer that I gave on the 18th December, and the answer that I have given to-day, it will be seen that what was given to the chairman of the Commission was a simple definition in view of thirty years' practice, and that there was no sort of instruction given.

Major Milner: Are we to understand that it is the practice of this Government to lay down terms of reference, or to give a definition in regard thereto without making them public?"

This is a most important question, and that is really what is troubling the minds of people in England and also in India, as I will show presently.

"Sir P. Cunliffe-Lister: There was no possible question of altering the terms of reference, and it is a gross misrepresentation to continue to allege that, in view of the statements that I have made.

Major Milner: Will the right hon. gentleman say why it was that nothing was made public about this instruction, or this definition, if the right hon. gentleman prefers that term, for over two years after it had been given?

Sir P. Cunliffe-Lister: There was no question about it. If the chairman of the commission asks for a definition of a particular privileged position and the definition which was given, as must be perfectly plain to the House, is simply a repetition of what has been the thirty years' practice, how on earth can there be any question of giving secret instructions?

Mr. Speaker: We cannot debate this matter further."

That is briefly the debate that took place in the House of Commons in one week. Then again, this is not all. On the 21st and 27th February, 1935, Sir Robert Hamilton, who was, I believe, the chairman of the commission appointed as early as 1905, asked again in the House of Commons:—

"Whether the Secretary of State for the Colonies was satisfied that what he proposed to do by Order in Council was in conformity with the reasons for Lord Elgin's ruling in 1908?

Sir P. Cunliffe-Lister replied: that the Order in Council would merely confirm a policy which had not been

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challenged by any Government in this country since its inception in 1906.

Sir R. Hamilton: It the right hon. gentleman aware that the ruling of Lord Elgin was based on the undesirability of excluding British subjects from access to any area within a British Colony, and that therefore he made an administrative order vis-a-vis Indians who were then British subjects, but now that Kenya has become a British Colony the natives of this Colony are also British subjects?"

So that the matter was not quite so simple as some seemed to think it was.

Now, if I may be permitted to refer to the feelings in my own part of the British Empire equally as in Kenya Colony, I will try to show as briefly as possible, again quoting from Hansard, what the feeling on the question in India is.

On the 25th March, 1935, the following question was asked in the Legislative Assembly of India—if the hon. members will bear with me it will also show them the unreality of the accusation that the Government of India often interferes in Kenya matters, and shows them what the position of the Government of India is when faced with persistent questions. But——

HIS EXCELLENCY: I do not want to restrict the hon. member in any way, but I would point out that I cannot see that the opinion of the Government of India regarding proceedings in Kenya has any direct bearing on this motion we are discussing. (Members: Hear, hear.) If the hon. member is going to bring it up he will have to proceed, but there are limits to the extent the debate can range.

MR. SHAMSUD-DEEN: Your Excellency, I was trying to show that the Imperial Government has taken stock of the repercussions this Order in Council will have on other parts of the British Empire, and especially India, and India is a country with 360 millions of British subjects. This being a British Colony, the pledges of previous Ministers such as Lord Elgin are broken, and instead practice is turned into law, which is an injustice to the whole of India.

Therefore I wanted to show the debate that took place, and the difficult position Government is put in. However, if Your Excellency thinks it is rather stretching the thing I will refrain. But I may say that the same year after the issue of this commission's report, a motion was brought in the Legislative Assembly at Delhi—where I happened to be present—and I think for the first time in history of India, a unanimous feeling was expressed condemning the attitude of the commission in going out of their terms of reference and recommending an Order in Council. It was the unanimous opinion not only of the Government of India but the whole population of India, including the Congress wallahs, Hindus, Mohammedans, and also the European group in the Legislative Assembly. Even the European group said it was a definite injustice.

I should like to quote a very small part of the opinion expressed by one of the semi-official members, as regards this debate in the Legislative Assembly of India concerning this particular Order in Council. The quotation is from the "Civil and Military Gazette" of Lahore of the 29th March, 1935:—

"The fact has to be recognized, indeed, that where racial interests clash owing to economic antagonism due to different standards of living—and that is the fundamental cause of the objection to Asiatic immigration in countries under Western rule—it is the most difficult thing in the world to arrive at a satisfactory adjustment. The Government of India has achieved more by the method of argument and persuasion than it could have done by flourishing the big stick or indulging in provocative language. In the case of the Highlands of Kenya, which provided the subject-matter of the debate in the Assembly on Wednesday, the Government of India has a strong case in objecting to the extension and permanent legislation of a restriction which has hitherto been only a matter of administrative arrangement. The grievance of Indian settlers in being debarred from the Highlands is, no doubt, sentimental in the main, since in practice the great majority of Indian residents would prefer to stay in the coast regions where

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their trade interests lie, but their objection to the proposal to give statutory force to the ban is perfectly legitimate. No dissentient voice was raised in the Assembly on this issue and Mr. James gave the blessing of the European group to the Indian demand."

This quotation is from a European owned semi-official paper and shows the feeling on this particular question in India.

I am trying to show that it would be very impractical on the part of the local Government to send any despatch whatever. It would embarrass the Imperial Government by a demand of this sort. They have not a small body called Kenya Colony but so many other interests, and have got to look at the feelings of the British people themselves.

I have carefully listened to the speeches of hon. members, who give no good real reason for such an Order in Council being asked for. I thought there were cases which, for the lack of an Order in Council, made Europeans nervous of continuation of the present practice. All I could hear was that there were certain cases where somebody got a piece of land and found natives on it.

The law on that matter is perfectly clear. We passed the other day the Resident Labourers Bill, making it perfectly clear that if there are any squatters or resident native labourers they have no right to the land at all, and the commission itself makes it clear. The law itself says that if there were any natives on the land prior to the Crown lease, then certainly they cannot be removed only by agreement or consent.

I fail to see where any disquiet comes in at all. If there are natives on European land where they have no right, Government is showing weakness in not removing them. I say that they do not need any extra law to do that. If they are weak and afraid of the natives, though satisfied they have no right to be there, it is the weakness of Government, and I am in full sympathy with the European settlers in that position.

I hope I am wrong, and I shall be glad to be corrected if so, but this racial madness has passed all reasonable limitations. Only recently a plot of land was acquired by an Asiatic in a place near Nairobi, about 12 miles away, on the Karen Estate, Ngong, and the person who bought was no less a person than the Aga Khan, who is of Asiatic origin but, so far as British citizenship is concerned, is next to none either in this Colony or England. His services are too well known and his personality to refer to in detail. Here is what I was going to say, and I hope somebody will contradict me.

I am told that strong representations were made to Government against the sale of these 25 acres of land on the Karen Estate, Ngong, to His Highness the Agha Khan. This sort of racial madness, as I call it, is causing a great deal of perturbation. It is often said that the Indian population of the Colony comes only from coolies, karanis, and fundis of the Uganda Railway. That cannot be said of the Aga Khan.

MAJOR RIDDELL: On a point of order, Sir, as the hon. member has asked for contradiction, the land, as far as I understand, was not bought by the Aga Khan at all but by the Begum Aga Khan, who is a lady of European extraction.

MR. SHAMSUD-DEEN: I beg the hon. member's pardon, but he does not know the law. Where a European wife marries an Asiatic husband she has the status of the husband and is no longer a European.

MAJOR RIDDELL: The statement made I do not agree with. The definition of the status of a European cannot be altered by the fact of marriage.

HIS EXCELLENCY: I do not think this discussion on the status of a certain lady is really relevant to this discussion.

MR. SHAMSUD-DEEN: What I was trying to elaborate was that if there was an Order in Council or definite law Government would not have sanctioned the transfer of this particular piece of land, but if a free hand is given to Government as at present and they can use their discretion, there is no reason why a transfer could not take place in certain cases where Government is satisfied the privileged position of Europeans does not suffer.

One of the reasons which has been given all along for a reservation of these European Highlands was the close prox-

[Mr. Shamsud-Deen]

imity of various races such as Asiatics and that Europeans were likely to catch all sorts of ethical and other troubles. That argument was advanced before the 1923 White Paper removed the restrictions; even in the towns they wanted to have them, even in this town as far as the Parklands and Hill areas were concerned. Fourteen years have now elapsed, and I am proud to say that not a single case of any untoward happening of this kind so much talked about by Europeans has come to the knowledge of anybody. Europeans and Indians are living together perfectly happily and there is no cause for alarm.

There are cases quite close to Nairobi where a European was in a very straitened position by the exhaustion of all his money in the development of his land, and he wanted to sell. His European neighbours would not buy, or wanted it for next to nothing. He could not sell to an Indian, but Government saw the hardship and gave their sanction. The result was that that particular settler received quite a good price from the Indian purchaser. I am referring to Dondora Estate, about 8 miles from Nairobi. The Indian settler is getting on quite well and making use of his land.

I submit, Sir, that by insisting upon making this present practice a law it will be a very great hardship for Europeans themselves, and they will find in the long run that their own liberty has been restricted, and they will have done a great deal of harm to themselves.

I think I have taken up enough time, and will conclude by saying this: that you cannot ask the Imperial Government to perpetuate a disability that has been suffered merely as an administrative practice by turning it into law. It is decidedly a matter in which the commission exceeded their terms of reference, though the Secretary of State said he did not alter the terms of reference and did not entitle the commission to make any such recommendation as regards the Order in Council.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 9.30 a.m. on Friday, the 13th August, 1937.

Friday, 13th August, 1937

Council assembled at the Memorial Hall, Nairobi, at 9.30 a.m. on Friday, 13th August, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 12th August, 1937, were confirmed.

KENYA LAND COMMISSION RECOMMENDATIONS

The debate was resumed.

MR. LOGAN: Your Excellency, the keynote of this motion is that there is an urgency in carrying out the recommendations of the Kenya Land Commission Report and, in his opening, the hon. mover (Major Cavendish-Bentinck) built up his case point by point in logical sequence, taking the general position of the Kenya Land Commission Report.

In a motion which comes before this Council dealing with the Land Commission Report, it follows inevitably that it opens up the way to a discussion of particular recommendations in that report. That way was followed by the three hon. members who followed in the debate, they each of them took the broad road to Leroghi, and between them they recited to us a great many facts in regard to that position.

They were subsequently mildly rebuked by the hon. Member for Trans Nzoia (Col. Kirkwood) for irrelevancy, but I submit that there was a definite incongruity between their support of the motion and their observations in regard to the Leroghi Plateau.

The terms of the motion are that representations should be made to the Secretary of State that an Order in Council should be issued without delay implementing the recommendations of the Land Commission in the sections dealing with the demarcation of the boundaries of the White Highlands, 1854, 1858, 1979, 2144, and 2152.

[Mr. Logan]

Reference to the report will show that in section 1954 the commission made the following statement:—

"The most controversial points in this definition——"

(and there they are referring to a definition made by a sub-committee of Executive Council in 1928)——

"are the northern boundary, which excludes Leroki, indisputably an upland area; and the western boundary in the neighbourhood of Muhoroni. We have already expressed our opinion in Chapter VI of Part II of the report that Leroki has been rightly excluded, because of the extent of the native interests involved."

In section 1971 of their report they say:—

"we therefore call the area, in round figures, 16,700 square miles; their position is shown on the map which we present at the end of this chapter as our definition of the European Highlands."

That map does not include the Leroghi Plateau.

I therefore assume, and I know hon. members feel deeply in this matter, and therefore I trust I shall not wound their susceptibilities if I say I assume that in this debate they have made a stand in the last ditch, because if this motion is approved the motion is definitely to ask the Secretary of State to issue an Order in Council demarcating the Highlands in such a manner as to exclude Leroghi.

In his interesting speech, the hon. Member Mr. Shamsud-Deen made three points. His first point was that the term of reference in the commission's report dealing with the White Highlands had been altered. In that contention he is perfectly correct. It was altered. If hon. members will turn to the opening paragraph of Chapter IX where the term of reference is recited and compare that with the term of reference as recited on page 2 of the report, they will observe the extent of the alteration; to wit, that in the first recital there is one comma, and in the second recital there are two!

The art of punctuation, as many of my hon. friends will agree, is very much a subjective art. I for many years had thought that I was a master of the art of punctuation, but I have yet to find a single typist who agrees with me! Many even of our literary celebrities are inclined to splash commas over their pages; others are more sparing in their use of them. I might perhaps give a variation of a well known Latin tag and say: *Quot sententiae tot commae.* (Laughter.)

Taking the passage as it appears with one comma, I feel that the commission might have expected to have found in the country a general body of opinion—because, as it then read, it was that they were to define the area generally known as the Highlands—so they might have expected to have found some generality of knowledge. But what they did find, with acknowledgment to my hon. friend the Member for the Coast (Major Grogan), was a high ratio of dissentient particularity of opinion on the subject.

It therefore appeared to them, and quite rightly, that they were not required to state what the area generally known was, but they were required to define the area within which a certain privileged position was to be exercised. They, therefore, without more ado, inserted a comma after the word "area" to make it perfectly clear that the words "generally known as the Highlands" were to be parsed as an adjectival parenthesis to the word "area". They did that fully on their own responsibility. They referred the matter neither to this Government nor to the Secretary of State nor, as far as I know, to any other further or higher authority.

But, having done that, they wished to know what exactly the privileged position was in respect of which they were called on to define an area. They therefore asked the Secretary of State to give them an indication as to what that position was, and they received from the Secretary of State a statement as to the privileged position which, as a matter of administrative practice, had been in vogue in this Colony since the year 1905.

The hon. gentleman's second point was that the commission overstepped the bounds of their terms of reference by recommending an Order in Council which would create a legal disability against Asiatics in one part of this Colony. The hon. member has evidently studied the report carefully, but I am unable to find in that report any foundation at all for that statement. When they were dealing with this matter, in sections 1978 and 1979 what they said is as follows:—

[Mr. Logan]

"It has to be admitted that the provision which we have recommended for natives will entail some sacrifice on the part of the European community. Reluctance to make the concession would be natural, since it was generally believed that the gazettement of the native reserve boundaries in 1926 would settle the matter of native claims and requirements in respect of land for many years to come, and a certain exasperation will naturally be felt that substantial alterations have to be made so soon. But exhaustive inquiry has satisfied us that these modifications are necessary, and we consider that, when the evidence has been studied, the need for them should be generally realized.

These recommendations may perhaps give rise to a natural apprehension among Europeans that the extent of the Highlands may be again diminished. One of the main objects of our report has been to frame recommendations which would instil a feeling of security in the minds of natives with regard to their lands. If, in doing so, we had only transferred the feeling of insecurity from the natives to the Europeans, we could not feel that we had succeeded in our task. We therefore recommend that the boundaries of the European Highlands should be safeguarded by Order in Council, so that the European community may have the same measure of security in regard to land as we have recommended for the natives."

It was clear yesterday that the hon. member has compiled a lengthy dossier of papers composed of extracts from debates of the House of Commons, the Legislative Assembly of India, and various newspapers circulating in India and elsewhere. I think he read us the great majority, the great bulk, of his dossier yesterday. I would therefore suggest to him that he might add to his dossier an extract from the *E.A. Standard* of July 17th, 1936, which contains a report of a debate on Colonial Office policy in Kenya in the House of Commons. In that extract he will find the following words given by Mr. Ormsby-Gore, Secretary of State for the Colonies:—

"I want to make clear that the existing administrative practice which was first laid down by Lord Elgin is to be continued. I wish that to be understood clearly both in India and elsewhere. The existing administrative practice of the Kenya Government which has been followed since 1908 will continue. In the area demarcated as the European area, not by law, not by anything in the Order in Council, but as a matter of administration, that practice will continue in the future as in the past."

His third point was that there was really no necessity for an Order in Council dealing with this matter of the European Highlands at all. I think that that point was probably based on his second point in regard to the legal disability. The point generally will no doubt be taken up by the hon. mover in his reply, but so far as Government is concerned the necessity is to have a definite area clearly defined once and for all in which the administrative practice of the past will continue to be maintained in the future.

Coming, Sir, to the opening speech of the hon. mover, he accuses Government of inordinate delay in carrying into effect the recommendations of the Kenya Land Commission. He said that the people of Kenya had represented that these recommendations should be carried into effect with reasonable promptitude. He said that he imagined he would be told, and he already realized, that many variations had to be considered, many adjustments made, and there were difficulties to be overcome, but he considered that all that should have been done within the space of a year. Incidentally, by a slip of the tongue, the hon. member referred to a delay of four years when he must have meant three, since the last occasion when the commission's report was debated was October, 1934.

I would like to look for a few minutes, if I may be permitted to trespass on the time of the Council, at what had to be done in order to carry out the recommendations of the report.

[Mr. Logan]

There were three legislative measures which were in contemplation—two Orders in Council and one local ordinance.

For the Native Lands Trust Order in Council and Native Lands Trust Ordinance there had to be one and the same schedule, a schedule which would describe the land which, under the commission's recommendations, would for the future be known as the "Native Lands." The Order in Council dealing with the Highlands required to have another schedule specifying the lands to be defined as European Highlands. These schedules are interdependent, because under the commission's recommendations certain lands now Highlands are to be "Native Lands", and certain lands now Native Lands or Reserves are to become Highlands. It is therefore necessary that all the negotiations to carry out the detailed land recommendations of the commission should be carried to their completion and enable the simultaneous issue of the schedules to these legislative measures. The detailed land recommendations involve three processes.

Firstly, there were a number of land acquisitions to be put through. At one time it was thought, even by the commission themselves, that in order to get these acquisitions through on a fair and proper basis it might be necessary to have recourse to the provisions of the Land Acquisition Act. I cannot say how happy it makes me to be able to inform this Council that no occasion for the exercise of any compulsory powers has arisen, and I should like to make a generous acknowledgment of the way in which the individual land owners concerned have conducted their negotiations with Government.

But it must be clear that, in order to arrive at financial figures which one could advise Government were fair and reasonable as the cost of the acquisition of the various properties, extensive investigations had to be carried out by experts attached to the various Government departments in order to arrive at proper valuations, for it was not only a question in many cases of acquiring undeveloped land, as to which there might not have been very diverse opinion.

We had in the case of Wundanyi to acquire a fully going coffee concern. In the case of Njugu Estate we were required to take over a part of a fully going coffee concern, and that involved a good many difficulties as to the effect that the acquisition of such a part of that particular farm would have on the resultant value of the balance of the farm. In the case of the Saba Saba acquisition there were a number of points of difficulty, involving water and power questions and light. In the case of the Esageri farms there was first of all protracted negotiations with the owners of farms near Eldama Ravine which the commission recommended should be leased to Government. When those negotiations broke down, the next step was to negotiate with the owners of the Kisimani property.

I do not want to labour these points, but I am claiming that it is fair and reasonable that these negotiations should have taken a considerable amount of time on the part of the officers concerned, those who made valuations and conducted negotiations which required on both sides a considerable amount of tact.

That was one line we had to follow.

Secondly, there were a number of variations in the commission's report. It is not to be expected that, after a period and process when recommendations had been under discussion for some time, it would not have occurred to administrative officers and others that in some details the recommendations of the commission might be improved upon. That happened in the case of the removal of the natives from Tigoni, in the case of the Chepalungo forest area where a portion was cut out for white settlement and a portion reserved for native use. It happened in the case of the Kasigao where the commission recommended the establishment of a native reserve in the middle of alienated land, and it happened in the case of the Mukogodo, where a new boundary line had to be arranged between the area of North Nyeri and the future native reserve.

The procedure we had to follow in dealing with all these situations was initial local discussions with the provincial administration. From that point, where native interests were concerned, there had

[Mr. Logan]

to be discussions with local native councils and local land boards. Where European interests were concerned, there were local discussions with district councils and with accredited representatives of the Highlands.

Having reached that point in agreement, the next step was to put each proposition before the two resident members of the commission still in Kenya and obtain their approval. Then the matter was submitted to the Executive Council, and at that point was referred home to the Secretary of State for his consideration and approval. It will therefore be realized that in the case of each of these operations a considerable period of time had necessarily to elapse.

The third point we had to deal with was the question of survey. A number of areas in various reserves were to be cut out of the reserves and added on to native lands; that involved a considerable amount of survey work. In the case of some native areas where they bounded on European areas and hitherto proper boundary lines had not been fixed or additions were proposed by the commission, extensive survey work had to be done in little known country. That applies to the survey of the Kittermaster Line and in the Churo area, and Njemps, some surveys in the Nandi area in regard to what is familiarly known as the Cogle Line. Also in the case of Kasigao, where a new reserve was created in preference to the recommendation of the Commission and considerable survey work had to be done.

In 1931, when the Expenditure Advisory Committee sat, and in 1933, when the Select Committee on Economy sat, considerable inroads were made by each of these committees on the staff of the Survey Department. When it became apparent that it was necessary to do a good deal of survey work initial to the preparation and completion of the schedules to which I have referred, we indented to the Secretary of State for two surveyors. One of these surveyors arrived in the country in April, 1935, and the other in September, 1935, and from that time onwards they have been employed on Land Commission survey work.

It might be said that the surveys could have been done with a great deal more expedition. I am prepared to agree that, if I had given instructions that all the survey staff had to be turned on to Land Commission work and that all the people who come in close contact with the Survey Department in their day to day business were to be given the reply that nothing could be done in their case because all the staff was engaged on the commission work, this work would have been done more quickly. If the fact that I did not give those instructions, because the general inconvenience and expense to the public had to be considered, is to be considered a fault of judgment, then the responsibility for that fault rests on my shoulders, and on my shoulders alone.

The fact, however, is that we have to have these schedules completed, because the whole basis on which the commission recommended that native rights to certain lands should be extinguished was that other lands were to be added to the tribe as compensation.

A further task that had to be undertaken was the preparation of a new Lands Trust Ordinance. The hon. mover, in the course of his opening speech, recited the terms of reference which were given to the commission but, when he came to the term No. 7—"to review the working of the Native Lands Trust Ordinance, 1930"—I understood him to say that he did not particularly wish to refer to that term of reference. Well, I wish particularly to refer to it, because it is a matter of considerable importance, and it is a matter which has involved a very great part of the alleged delay in dealing with the commission's report.

The importance of the commission's recommendations in regard to the new Ordinance cannot be lightly set aside, for in their recommendations they propounded an entirely new conception of the status of native lands. They propose a new administrative machinery to deal with the administration of the native lands. Their recommendations on the subject are to be found in many, many pages, and in many paragraphs, of the report, and without saying more than this, I might say that in some particulars their recommendations involved some intricacy,

[Mr. Logan]
and certainly they did raise certain, and not a few, questions of importance and of general principle.

It is one thing to make recommendations in a report; it is an entirely different thing to translate those recommendations into legal clauses which will stand the test of time. It is easy to say that it is a simple matter to draft an ordinance or this or that and produce clauses or laws that will not involve amendments. I suggest to hon. members that they have only to look at that table to see the effects of what, in some quarters, might be considered as hasty and ill-digested legislation!

From time to time in this Council we are invited to pass amending ordinances to ordinances which have not had many years life, and it is a common thing here for us, somewhat lightly, to enter into amending legislation. That position cannot for one moment be considered to apply to a document which is of the importance and status of an Order in Council.

The whole purpose of an Order in Council in this connexion is to get, as far as we humanly can devise, finality, and if an Order in Council were enacted which permitted of criticism and demanded amendments within a short period, then one of the great points of value in having an Order in Council at all—namely, finality—would be largely destroyed.

For that reason there has been a necessity for dealing with the legal side of this matter with great particularness and care, and Your Excellency has recently been informed from the Colonial Office that that aspect of the problem is engaging their close attention. The general conclusions of the commission have been accepted by the British Government and will be implemented, and we have an assurance from the Colonial Office that they will be in a position to produce drafts in this connexion in the autumn.

In his concluding remarks, the hon. mover referred to the state of affairs which exist on certain farms in Limuru, and I am bound to say that I was sorry to hear him give expression to one remark to which he did give expression. I think I can, with a full measure of responsibility, say that Government realizes to the full the difficulties under which a few farmers in the Limuru area have been placed and are placed owing to this question of the extinguishment of native rights on European farms.

These farmers have met the position with considerable forbearance and great patience, and I take this opportunity of expressing appreciation of the attitude which they have adopted. Equally, Sir, the administrative officers in the district have been faced with a position of considerable difficulty and they, too, deserve all the thanks we can give them for the way in which they have met that position and have endeavoured to assist the farmers in question.

If anything were to transpire owing to a breakdown of forbearance and patience, it would not only be a calamity to the farmers concerned, but would raise a question of considerable difficulty in regard to a settlement of this position, and one can only hope—and express that hope as fervently as possible—that the forbearance and patience which has been exercised in the past will continue to be exercised in the future until this matter comes to a successful conclusion.

These points have been realized by this Government and a number of despatches have been sent to the Secretary of State emphasising the difficulties with which certain people are faced. I think I am correct in saying that one of the first despatches Your Excellency was asked to sign on assuming office in this Colony, was a despatch on this subject. The Secretary of State is fully aware of our difficulties and the position generally.

I think I have Your Excellency's authority to say that a record of this debate will be sent to the Secretary of State with an urgent despatch as soon as the record can be conveniently transcribed and, as that indicates, Government have no objection to accepting the motion proposed. (Applause.)

ARCHDEACON BURNS: Your Excellency, it was not my intention yesterday to take part in the debate on this question, because I knew that there were those who were much better fitted to deal

[Archdeacon Burns]
with this matter than I am. But the question was introduced by the hon. Member for Aberdare (Mr. Wright) of Leroghi, and I feel that I could not allow that to go without some word about it.

This morning my fears have been allayed by the words of the hon. the Acting Colonial Secretary with regard to that matter, and therefore my remarks in this debate will be very few indeed.

This thing was discussed at very great length and the position was definitely laid down by the commissioners, after most careful scrutiny and consideration and, on page 240 of their report what they recommend everybody can read for themselves. Therefore, having had the assurance from the hon. the Acting Colonial Secretary that in any question that is brought up before the Secretary of State, Leroghi does not come in for the present at any rate, it takes away practically all I had to say with regard to it.

There is just one other point that I should like briefly to mention, and that is the matter referred to by the hon. Member for the Coast (Major Grogan), with regard to the farm in Limuru. The hon. the Acting Colonial Secretary has also dealt with that from a certain point of view, but I would like to draw the attention of the Council to one statement which I think I am correct in saying my hon. friend made yesterday, and that was with regard to the matter of compensation.

He said that when the farms were taken over every hut was paid for at the rate of Rs. 4, I think that was his statement.

MAJOR GROGAN: On a point of explanation, the statement I intended to make was that Government at that time prescribed that the proper compensation due to the natives if in occupation of these farms was at the rate of Rs. 4 per hut. In the majority of cases, of course, it was paid.

ARCHDEACON BURNS: Thank you. I did not understand the hon. member to say that Government had made that regulation, that it was prescribed by Government.

I do with all humility submit to this Council that natives cannot live on huts, and when you speak of Rs. 4 being paid for a hut to the occupier of that hut, if you want to send him about his business off your land, what is to happen? Take a farm of a 1,000 acres where there are 40 huts, with perhaps 200 people living in them. They would receive for each hut Rs. 4, and if the occupier wanted them they would have to leave. That would be about Sh. 160 or something like that for those huts as we count them now.

After they have left the huts or taken them down, if they are not burnt or taken away, they have to search about and find another place in which to erect their huts. The point I want to make particularly is this.

In this report it has been recommended that certain farms, as already explained by the hon. the Acting Colonial Secretary, are to be bought back and added to the native reserves. If one of those farms where there were 40 huts for which Sh. 200 or something like that had been paid in compensation, a farm of say 1,000 acres, what would be the position to-day? The position would be—I am not criticising the occupier for trying to get as much as he could for the land—that the occupier in the Limuru District at the present time would want for his land at the rate of £10 to £12 per acre, so that in place of compensation paid to the natives of Sh. 160 or Sh. 200 at the most, the present occupier, if he wants to sell that land or Government was trying to negotiate with him for it to add it to the native reserve, would expect to get from £10 to £12 an acre, or £10,000 to £12,000.

If we are going to have finality, and I do long for it as much as any hon. member in this Council, with regard to the relationships existing as between Europeans, Africans and Indians, we must take all these factors into account.

I am not throwing bouquets or anything like that, but to expect Government to negotiate such a tremendous task as this is a year or two years is expecting more than can reasonably be required of them. We have not only the white settlement to think of but also the Africans as far as they can be satisfied to be made happy and contented with the arrangements that are made, and we have the Indians also to have their share in the matter.

[Archdeacon Burns]

If, therefore, this request is sent home, it must be sent home for an Order in Council not for the Europeans alone but also for the Africans, so that their share of the bargain may be finally settled and the Africans settled down in a contented way to do their work in their own country.

MAJOR CAVENDISH-BENTINCK: Your Excellency, in view of the undertaking which the hon. the Acting Colonial Secretary gave at the end of his speech, I normally would have very little to reply to, but the debate has extended over a very wide range, a much wider range than I intended, and therefore one or two matters have been raised which I think I should comment upon.

The first one, of course, is the question which my hon. friend opposite (Mr. Logan) raised at the beginning of his remarks, Leroghi. I gather that he wished to hear from me a categorical statement as to whether the purpose of my motion was to include Leroghi within this Order in Council or not. Well, Sir, Leroghi, strictly speaking, did not come within the terms of my motion. On the other hand, I think I should make it quite clear what the majority of us think on that subject.

At the time of the Carter Commission debate I alluded to that vexed quesiton on behalf of all elected members, and I believe our standpoint to-day is precisely the same as it was then. I said, in concluding my remarks three years ago:—

"In concluding my remarks regarding this question, I must therefore emphatically protest against any further action being taken towards inducing a further infiltration of Samburu into the area between the Kittermaster and the Coryndon Lines and on behalf of the European elected representatives I must, in no unmeasured terms, press our claim that the Leroki Plateau be regarded as land which in future will still be available for white settlement."

I said nothing about our non-acceptance of the boundaries proposed or of the inclusion of this area in the Order in Council at that time. The Carter Commission also left the question open, because you will find their recommendation is:—

"That the 'Kittermaster Line' be kept as one of the boundaries of the Northern Frontier Province subject to any minor adjustments which Government may consider necessary, and that all the land to the north and east of it, including the Leroki Plateau, be reserved for native use and occupation for such a time as may be necessary. We do not at present recommend that the area be declared native reserve for reasons which we state."

That, coupled with my remarks, which I now repeat, remains at any rate my attitude, and I believe is that attitude of most of us on this side of the Council. (Hear, hear.) I noticed that even my hon. friend Archdeason Burns hoped that nothing more would be done for the present at any rate. Those were his words, and that is exactly what we feel. For the present, this subject remains in the air. We claim that one day, if necessary, and if it can be done, we may have the right to reconsider the question of Leroghi. The commission did not make a very definite statement, and I certainly do not on this occasion want to bring the Leroghi question into the orbit of the Order in Council.

Incidentally, before I leave that subject, I would just mention that it does rather look, if you read in between the lines of two answers given by Government on Monday last to two separate questions, as though possibly one has got to look a little bit more carefully into what is happening in that part of the world, because I gather that a number of Turkana are now in the Samburu country, and at the same time we are told that the Leroghi is required for the Samburu.

That is the beginning and cause of all these troubles, and one of the reasons why we want this Order in Council. The tribesmen are not controlled and keep moving and pushing other tribes south or north as the case may be, and back we come to the old trouble. It is a question of control.

The hon. member for Indian interests gave a very long and complicated argument, and I am afraid that I had some difficulty in following it. I do not wish to deal with many details. He quoted the views of two gentlemen whom I know

[Major Cavendish-Bentinck]

personally on this particular question. I do not think their views are those of the majority of the House of Commons, but their views, and we most of us know what they are.

But he did mention one reply of Sir Philip Cunliffe-Lister's, as he was then, who stressed that he had made the same reply six or eight times, referring on each occasion to an Order in Council. We have again heard this morning from another hon. Indian member that last year Mr. Ormsby-Gore referred to what was being done by this Order in Council. I can only say that we are capable of reading those remarks also, and the fact remains that we are still waiting for the Order in Council, and that is one of the reasons why we brought forward this motion.

The hon. member also suggested that it would be unfair and unreasonable to rush such an Order in Council. Well, whether you take the date as from the first occasion on which people might have read this report, which would give us four years, or the date on which it was debated here, which is three years—I am referring now to the Colonial Office—I do not believe that even Colonial Office officials need have got very out of breath by having drawn up that Order in Council in that period of time. I think four years, or three years is ample time.

In general, my reply to the hon. member is this. I have never, I think, raised this as a question affecting European interests versus Indian interests. I certainly never intended to do so. If he reads my motion, he will see that I do not only ask for the Order in Council as regards the White Highlands area but I also ask simultaneously for the Order in Council to be made dealing with the native areas; the two hang together and must be produced at the same time. He suggested that there was no real need for the latter, and the difficulties to which I have alluded could have been dealt with under the Resident Labourers Ordinance. Of course that cannot be done for, as I read out, actually in some cases due notice to quit has been given under the existing law dealing with resident labourers and nothing could be done.

For that reason, for the reason that the whole of one's security and title to land for which one has paid and being able to know where one is rests on having these Orders in Council, we are asking for them.

Finally, I would like to refer to a few remarks made by my hon. friend opposite.

He, as usual, made an extremely capable apologia for the delay that has taken place. He pointed out that the recommendations of the Carter Report entailed a tremendous amount of work in connexion with the acquisition of certain lands, that there were variations to the report which had to be dealt with, that surveys had to be made, and lastly, there was the preparation of the Native Lands Trust Ordinance.

With regard to the acquisition of land, I do not think that need have taken as long as it has. I admit the difficulties, and should like to pay tribute to the way in which those difficulties were faced and the negotiations carried through. At the same time, I do not think undue haste was noticeable.

As regards the variations in the report, it brings me to a rather important aspect of the whole question. Admittedly there have been numerous variations to the recommendations made by the commission, and a lot of them are owing to the fact that every time after they recommended a boundary there was—I will not say every time but on many occasions—a water hole or salt lick or something of the sort desirable from the native point of view on the European side of the boundary a variation was suggested.

I believe we have met many of these demands in a generous way. I myself have sat on inquiries on these re-adjustments again and again, and on nearly every occasion we have given in; but as we have gone on we have had more and more requests for alterations; unless we come to an end of these suggested alterations some day there will be no finality at all to the settlement of these boundaries.

I also noticed that the hon. member used the past tense with regard to everything he quoted regarding the removal of natives from certain places. I wonder whether it might not have been the future

[Major Cavendish-Bentinck]

tense that should have been used in one or two cases which he quoted, because the natives are not yet moved.

As regards the preparation of the Lands Trust Ordinance, I purposely skimmed over it at the beginning, not because I meant to minimize its importance but because I treated this more as a legal and administrative matter than as an executive matter. At the same time, I realize that it is a very complicated thing and has to be very carefully gone into, but I still think that three years should have enabled the necessary inquiries and examinations to be made.

The hon. member regretted a remark which I made in my opening speech, and he said it would be a calamity if the forbearance of certain farmers wore thin. I think he must not have understood or misheard what I did say, because what I said was precisely what he did, that I trusted in my lifetime I would never see people taking the law into their own hands, and that is practically the same thing.

Our forbearance, I think, is remarkable, and a just tribute has already been paid by two members of the Council. But I would point out that the forbearance has all been on one side. I have no doubt that it will continue, but at the same time, in common fairness, Government should take steps to put an end to this period of tension, and it is for that reason we have brought forward our motion on this subject.

All we ask for is what we consider fair play within reasonable time. The Carter Commission came out and made recommendations, many of which it was admitted by the commissioners themselves were to the disadvantage of those whom we represent. We accepted them, and we accepted this map. The map is altered considerably since we accepted it. We accepted all on the sole condition that the commission's recommendations concerning the native reserves and Class C land and the Highlands would be declared by Orders in Council and that His Majesty's Government having approved the recommendations would see that in due course those boundaries should be so declared by Orders in Council.

The whole question is, what is meant by "in due course"? and that is the real reason for this motion. We maintain that the position is getting worse day by day, daily more and more claims are made, more and more variations suggested, and we think when the words "in due course" appeared in paragraph 10 of the White Paper dated May, 1934, the period of time suggested would be a reasonable period. The delay that has taken place since we consider to be unreasonable.

We therefore urge, and urge with all the strength we have got, that some real move be made now in order to try and get these Orders in Council and these innumerable re-adjustments finally settled within the next few months. (Hear, hear.)

The question was put and carried.

INDIAN SECONDARY EDUCATION

DR. DE SOUSA: Your Excellency, I beg leave to withdraw the following motion standing in my name:—

"This Council requests Government to hold an inquiry into the education in Government Indian Secondary Schools and into the working of the Indian Secondary Schools in Nairobi."

Since I gave notice of the motion, I have had an assurance from the hon. the Director of Education that he would institute a departmental inquiry into the subject of the motion, and that he would also be good enough to appoint as a member of the committee someone who was not a member of any educational authority. I think the hon. member will confirm that, so that I do not think there is any need for me to persist with the motion, which I ask the leave of Council to withdraw.

MR. MORRIS: Your Excellency, I am very pleased to hear that the hon. member wishes to withdraw his motion, because the inquiry which he intended to demand is already being conducted under the aegis of the Advisory Council for Indian Education. The question of the reorganization of the curricula in the Indian secondary schools was an item discussed at great length at the last meeting of the Council. As no final decision was arrived at on that occasion, it was decided to adjourn the discussion till the next meeting

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of the Council, which will take place in September.

It was my intention to appoint a sub-committee of the Advisory Council to go into this question and to inquire and report to that Council. There will be no objection to a member of the Indian community being co-opted to sit on that sub-committee to carry out the inquiry.

HIS EXCELLENCY: As the motion has not been put from the Chair there is no need for the leave of Council to be obtained and the motion can be withdrawn.

The motion was withdrawn under Standing Rule and Order No. 30.

KITALE NATIVE HOSPITAL

COL. KIRKWOOD: Your Excellency, I ask the leave of Council to withdraw the following motion standing in my name:—

"In the opinion of this Council an inquiry into the alleged overcrowding at the Kitale Native Hospital is advisable."

Since I gave notice of the motion I have become aware that the hon. the Director of Medical Services is well aware of the conditions at the hospital mentioned in this motion, and in view of the close approach of the budget session I have been assured by the hon. member that this matter could be more properly dealt with under the general head of requirements of native hospitals. Realizing that, with your permission and the permission of Council I ask leave to withdraw the motion.

HIS EXCELLENCY: As the motion has not been put from the Chair, it can be withdrawn.

The motion was withdrawn under Standing Rule and Order No. 30.

SHOPS ON FARMS

COL. KIRKWOOD: Your Excellency, I beg to move the following motion standing in my name:—

"In the opinion of this Council an amendment to the Shops in Rural Areas Ordinance, 1933, and the Local Government (District Councils) Ordinance, 1928, is desirable in order that the Trans Nzoia District Council may be appointed the Licensing Authority for shops on farms in the Trans Nzoia District."

It will probably be asked why I have not moved that an amendment be made in respect of all district councils to be local authorities. My answer to that is that I have been requested by the Trans Nzoia District Council to move the motion in the terms I have just read.

The reason for moving it is that section 3 (2) of the Shops in Rural Areas Ordinance says:—

"Before issuing a licence under this section, the licensing officer shall take the opinion of the District Council or Committee, if any, within whose area such shop is situated."

He is bound to take their opinion, but not to accept it.

Under section 6 (1) a licensing officer may revoke a licence—

"Provided that before revoking any such licence a licensing officer shall obtain the consent of the District Council or Committee within whose area such shop is situated to such revocation: And provided further that no licence shall be revoked until the District Council or Committee (as the case may be) and the licensing officer have given the owner or occupier of the land on which such shop is situated an opportunity of being heard."

It will be seen that while under section 3 a licensing officer is bound to take the opinion of the district council regarding the issue of a licence, he is not bound to accept it. In clause 6 he is also bound to take the opinion of the council but cannot revoke a licence until the council agree.

That is what I want altering, and I suggest that the Ordinance should be amended, and that it should be provided that no licence be granted or revoked without the council's consent, or words to that effect.

I have been told that Government is prepared to circularize the district councils and the local authorities to ascertain their views on the question, and if that is so, if I have an assurance to that effect, I am prepared to withdraw this motion also.

MR. HOSKING: I am authorized by your Excellency to state that Government is prepared to circularize all district councils to obtain their opinions on this matter.

COL. KIRKWOOD: In view of that assurance, with the permission of Council I will withdraw the motion.

HIS EXCELLENCY: As the motion has not yet been put from the Chair it can be withdrawn.

The motion was withdrawn—under Standing Rule and Order No. 30.

Council adjourned for the usual interval

On resuming:

COMMUNICATION FROM THE CHAIR

REORGANIZATION OF EXECUTIVE COUNCIL

HIS EXCELLENCY: I understand that doubt has arisen on a part of my Communication from the Chair yesterday, where I referred to the unofficial members of the reconstituted Executive Council.

The composition of this Executive Council is legally governed by Instructions under the Royal Sign Manual, the relative portion of which reads as follows:—

"and further of such persons (if any) not holding office in the Public Service of the Colony as the Governor, in pursuance of Instructions from Us through one of Our Principal Secretaries of State may, from time to time, appoint".

To the best of my knowledge and belief, no alteration is going to be made in those words, the object of which, as I said yesterday, was to leave the Governor entirely unfettered in his choice of the unofficial members of Executive Council.

The only addition that may be made, or possibly in some later paragraph, will refer to the time limit, which again, if my recommendations are adopted, will be left to the discretion of the Governor.

I made that perfectly clear in my Communication yesterday.

Then I went on to take the Council into my confidence as to how I personally intended to exercise this discretion for my next Executive Council, and that was all I stated in my Communication yesterday.

There is one other matter I should like to refer to.

Tomorrow, Captain Nicholson, of the Prince of Wales School, resigns. I feel that the Council would like me to pay a tribute and to join with me in paying a tribute to the work that Captain and Mrs. Nicholson have done for the Colony by the work they put in at the Prince of Wales School, in founding and establishing very sound traditions formed on the best lines, which I believe will continue and be of lasting benefit to this Colony.

MAJOR CAVENDISH-BENTINCK: Speaking on behalf of the European elected members we would like to associate ourselves with the remarks Your Excellency has just made regarding the services of Captain Nicholson. The work of laying the foundation of sound education among those born in this country is, we realize, by no means the least important but is probably the most important part of the edifice we hope to build up here in due course.

COL. FITZGERALD: Your Excellency, I should like to associate myself also with what has been said of Captain Nicholson.

STANDING BOARD OF ECONOMIC DEVELOPMENT

MAJOR CAVENDISH-BENTINCK: Your Excellency, I beg to move the motion standing in my name:—

"That in view of the many calls that are being made on the financial resources of the Colony, the Standing Board of Economic Development should meet regularly and frequently from now until the Budget session, in order that proper investigations into the various proposals can be made and advice tendered to Government as to carefully considered lines of policy for conservation, consolidation, and further development."

You may perhaps wonder, Sir, as a newcomer why there has been this spate of motions from this side of the Council. The reason for it, I think, is fairly simple. We represent those who have made their homes out here and who have sunk everything they possess, in most cases, in this Colony, and we have done so through a

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series of years which one can describe almost as disastrous.

During those years we had occasion to criticize the Government for not foreseeing and not acting in a timely manner to meet the depression which we foresaw, I think to a larger extent possibly than our friends on the other side of the Council. We now, Sir, have passed that era, and we are all looking forward to a recrudescence of productive effort, prosperity, and development. Sometimes we are a little disappointed to feel that no very clear leadership or vision seems to be apparent as to exactly what are the important things to try and tackle, how far we can tackle them, and not be carried away by one particular stunt, shall we say, or at the expense of other matters, equally important, that may not be quite so popular or appear quite so fine in the Press.

That, I think, is the fault, without being critical of any anybody, of the Crown Colony system of Government.

The trouble is that the senior officers of Government, including, if I may have the temerity to say so, the Governor himself, have so much work to do and have so many detailed matters thrust on them, that really, however able, however intelligent, however hard working they may be it is difficult indeed for them to find time to pause a while and think out things in a calm and calculating manner. Certainly the senior officers of Government sitting in their offices, as I know very well, from morning to night, have file after file on a variety of subjects thrown at them until, stunned by the bombardment, they must often wonder whether they are not being utilized as that peculiar type of disappearing target called when I was in the Army a "bobbing Jimmy". They try and deal with this massed attack, and at night they take files home to work on them.

If such people work at pressure on matters that very often should not come near them—because they should be dealt with by the people junior to themselves—they have very little leisure left to see whither we are drifting and to get out any sort of long range policy.

From time to time we get a Communication from the Chair or an announcement of some kind or another, which one can only take as an announcement of Government's policy, and we often have listened to these and carefully considered them, and have often been a little bit disappointed, notably last year and towards the end of the year before, when we felt that something ought to be done about a whole number of matters.

At that time we suggested the possible creation of a body which would assist Government by being able to have questions of policy referred to it, by being able to keep in touch with what was going on in the country, and perhaps to a certain extent relate an effort in one direction with a similar effort on another subject in a parallel direction, and generally to consider proposals for the development, consolidation, or in these days conservation of people rapidly going under.

As a result, the Standing Board of Economic Development was suggested.

I have rather made the accusation that there has been a lack of constructive policy in Government's attitude for some years past, and I suppose I should substantiate it. I do not want this taken as a violent attack, because it is not meant as one. But, take the subject of the land conservation of this country.

It was thoroughly well realized in 1920 to 1925 and 1926 that things were not as they should be and that we were losing a lot of land, that overstocking had become a problem, and erosion was taking place. A commission came out, and a report was written by no less a person than Sir Daniel Hall. It was written in 1929. I know that latterly I have been told on one or two occasions that this erosion problem is a new one, attributable partly to locusts and drought, followed by heavy rains. But it is not a new one. We knew all about it before 1929, and if you read Hall's report you will see that he made precise recommendations for dealing with the situation.

Time lapses, and we come to 1932, when the Carter Commission sat. They found that half the troubles they had to deal with were from precisely the same

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causes, because in a chapter on this particular question their recommendations were no less precise and vehemently stressed than they were by Sir Daniel Hall. Here we are to-day, and we find in 1937 that this subject is being referred to the Standing Board of Economic Development.

We are glad it is at long last referred, and we hope it will not be dealt with in piecemeal fashion by experiments expensive for small areas, but fought with vision and dealt with properly.

I only quote this problem and the delay as an example of the sort of lack of policy which we criticize, and particularly to stress that nobody has attempted to deal with the thing or to get all the various interests together and see whether some long range plan cannot be formulated.

Again, the question about which we have had a motion this session, the question of settlement and publicity. There is a lot to be thought out. It is fundamentally an important subject, and I suggest that on the whole very little has been done. There are dozens of aspects about this question to think about: the question of attracting people, showing them what we have to offer, to arrange that they get transported here at reasonable cost, that when they arrive here seeing they are met and plans offered them, for instance, game, whether that fits into the book, and other attractions—as far as possible getting people to look at the country, then following that up with a proper settlement policy based on land, education, experience, and so forth.

That, again, is a thing which I submit nobody really has the time to go into as thoroughly as they should have. In a way I am criticising myself, because I have not done as much as I can on these lines, so that perhaps I am also to blame to some extent.

Another very important point (I only suggest them) is, how are we going to employ the young men now growing up, and educated at the institution the chief of which we have just been paying tribute to. I admit that we have been very fortunate. We have had, if I may be permitted to pay a compliment, two outstanding people as Directors of Education, and I believe this problem is going to be tackled. But, at the same time, I think we ought to have thought about it earlier than we have done.

There are a whole number of problems affecting the case—it is not my business to bring this up in this Council—both commercial and agricultural, and possibly they have not been quite co-ordinated with other endeavours to the extent they should. Take gold mining, an enterprise which has been the subject of a report lately. I venture to question whether anybody has really considered what the future of the industry is going to be in this country, whether it is tending towards becoming an industry of big companies or, it might be, tending to become an industry only profitable when indulged in by the small man. If the latter is likely to be the case, are we thinking how we can induce the small man with mining experience to come, what facilities we can give him, and how to make the best of the mineral resources of the country? or are we just drifting along wondering what will happen and hoping for the best?

I do not want at the end of a long session to bore this Council with a very long speech. We, Sir, as I said at the beginning, represent people who have great faith in this country, and they look to us to see that these problems are faced, dealt with and properly considered. And, when we have reason to believe that there is a possibility of difficulties causing delays and overwork preventing any real move in the right direction, I submit that it is our right to put forward our point of view in this Council and urge that some adequate body should be appointed that can have time, leisure, and be properly constituted to deal efficiently with these problems and give advice to Government.

I am not going to enter into a dissertation on the duties of this Standing Board of Economic Development, but I should like to pay a tribute to you, Sir, in that it has been quite obvious and, in fact, has been proved lately, from certain documents I have seen, that you—I do not say entirely share our views but at any rate you have reason to believe there might be some substratum of reason in the arguments I am putting forward. I

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have every belief, and it has been further substantiated by your remarks yesterday, that you intend the newly constituted Executive Council shall spend some of its time in thinking out these long range problems and not confine itself to mechanical executive actions which are part of its duties.

Whether that Council's deliberations may or may not overlap those of the Standing Board of Economic Development, or what the Board is meant to do, are questions which I think we should consider in the immediate future. But I would stress that the Board is not meant to be a convenient pigeonhole to which awkward questions can be referred by Government, and there has been a slight tendency in that direction. What I mean is that when an awkward thing comes up and there is a good deal of difference of opinion about it, the Board is not meant to hang it up a little bit longer. It is meant to assist Government to keep in touch with what is going on in various directions to try and see we do not spend all our money or rush madly into development on one thing while others are not done. It is meant to initiate schemes where there is no properly constituted body to do so.

I hope and sincerely trust that between now and the budget session this question will be carefully considered, because although we may have a surplus there are many calls on that money. But we do see money pushed out here and there, and wonder whether sometimes money is not being given to one party without any consideration of the claims that may be made for another purpose. I think that if we wait we shall lose the opportunity. Now is the time. We have turned the corner, things are getting better, and if the country is to develop now is the time to think out a fairly long range developmental policy on a whole manner of questions. Now is the time to think it out, how to pay for it, and put these various ideas into practice.

SIR ROBERT SHAW: Your Excellency, I beg to second.

I am very glad to have the opportunity of speaking in support of the motion for a number of reasons, but as we are approaching the end of a long and somewhat strenuous session I will confine myself to a few of them only.

I would first like to refer to a time a few years ago when, on the recommendation of Sir Daniel Hall, mentioned by the hon. mover, there was formed in this country an independent Board of Agriculture under an unofficial chairman which had for its functions almost precisely the kind of thing just outlined by the hon. mover. For reasons it is not in the least necessary to refer to now, the scope and functions of that board have been entirely changed, and its scope so narrowed down that I am justified in saying that it is no longer able to perform its functions as originally intended.

Since then the Standing Board of Economic Development has come into existence, in a time of depression when all sorts of emergency measures were hur[rie]dly put up to it for immediate discussion and report. Though I, for one, do not for one moment wish to disparage in any way the zeal and assiduity which the members of the Board brought to the performance of their task, I suggest that it can be developed and expanded to a very much greater extent still, and I hope, take the place of the Board of Agriculture, the modification of which I consider was a very grave loss to the Colony.

If that is so, and that is the principle which we propose to adopt now and in future, it gives me an opportunity of submitting for consideration one problem to which I think it is quite essential this Board of ours should give their attention without any delay whatsoever, and present a full picture of what it all means. That subject has already been referred to, and that is the question of soil erosion.

This general term has come into use now and covers of course a vast range of subjects: the question of overstocking, of faulty and primitive agriculture in native reserves, the economic development of the native reserves, the land on which the natives live—a whole range of subjects. But for the sake of convenience I will continue to refer to it all under the one term of soil erosion.

In the first place, I think it wise to review very briefly what evidence we have

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of the existence of this menace. We have, first of all, the evidence given personally by a large number of individuals, administrative officers, agricultural officers and others, constantly at work in the reserves among the natives. The same applies to a number of settlers of this country who live in the neighbourhood of these reserves and who have watched the process with horrified eyes for many years.

In addition, we have such things as Sir Daniel Hall's remarks on the subject in his report, and he spoke in no uncertain terms; the report of the Carter Land Commission, which was even more outspoken; furthermore, in recent months, reports have been made by officers of Government on the subject, carefully, properly studied reports and estimates, and particularly reports by one officer of the Agricultural Department, who has the happy facility of combining an excellent command of the King's English with keen and penetrating observation.

I would like to suggest what must happen in certain circumstances if this Board of Economic Development were to make a careful study (perhaps they have already done so, I hope so) of all these men's evidence, which discloses no imaginary conditions but actual facts which we all know are in existence.

Suppose for the sake of argument they have a plan on hand for the increased development of the native reserves, a laudable project which I hope they have. We all hope to see native agricultural development and increased production in these reserves to increase the general wealth of the Colony and bring material advantage to the natives, which must follow such increased industry.

If they do study that evidence in a full and comprehensive manner, they must, I think, inevitably come to the conclusion that they are hardly in a position to suggest any comprehensive scheme of increased native production, until satisfied that this process of erosion—largely due to faulty methods of agriculture, among other things—until they have satisfied themselves that this process has been so controlled that this increased native production will not, in fact, do natives a great deal more harm than good.

Some people, I am afraid, are rather inclined to think that the whole question can be dealt with very simply by drastic action on the part of Government, and that with a few peremptory orders cattle will be culled, goats removed, and so on, and that if that is done all will be well in a year or two. Unfortunately, it is not as easy as all that, as it has gone a great deal too far, but I do not think there is any question whatever that if a comprehensive policy dealing with the whole subject in any sort of comprehensive manner is to be adopted—and I submit that it is absolutely essential it should be without any delay whatever—I think that if the board examined it they will find that the economic significance of the whole thing is very great and, furthermore, that the financial implications of the thing are also very great and present another of those demands on the financial resources of the Colony referred to in this motion.

In order to prove that as far as I can, I am going to refer briefly to some of the conditions that exist in the reserve that I know something about, the Machakos-Wakamba reserve, already a byword in the Colony for this proces sof erosion and land destruction.

That reserve is about 1,300,000 acres with a population of some 250,000 Africans. I think that that, worked out, represents something in the nature of 25 to 30 acres of land per family, so that it is not what is called an overcrowded area. As a result of the careful examination of the problem in recent months, we have it that some 400,000 acres of the reserve, nearly one third of the whole area, have now reached such a condition that they can only be reclaimed and made capable of carrying permanently a human population with a reasonable proportion of stock and so on, by clearing the area completely of all population, human and animal, and then taking such steps as may be possible to stop the process of wash and erosion, replanting grasses, reafforestation, and things of that sort.

I will not go into details now, but these areas will take some years in which to recover. It so happens that it is possible

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in that reserve to carry out a plan of that sort, because in part of it where there is good land and an adequate rainfall it happens to be fly infested and not inhabited to any extent at the present time. Those areas could be cleared of bush and the population of the badly eroded areas moved into them bit by bit, possibly at the rate of 100,000 acres a year, or something like that, but that cannot be done for nothing. It must cost money to clear the land, move the population, feed them until they get their fresh shambas dug, and finally we have got to consider this: that if those areas are cleared and the process of reclamation is satisfactory and the population allowed to trickle back at the end of 4 or 5 years, are they going to be allowed to come back with cattle and goats as they are now, so that the process of destruction begins again as soon as they are get back?

I submit that is impossible, that cattle will have to be culled and the goats eliminated utterly, which will cost considerable sums of money. I submit that we cannot perpetrate on these natives the same sort of things we are sometimes guilty of perpetrating on ourselves. I refer to occasions when we woke up one morning and found all our beautiful rupees had been taken away and something of less value substituted instead. These cattle and goats are the bank balances of the natives, and we cannot confiscate them without compensation. But if the land on which it is proposed they should live in perpetuity is to be maintained in perpetuity it is absolutely essential the stock should be greatly reduced, in some cases eliminated altogether. Otherwise it becomes impossible.

Another small point worth considering. It is a fact that in that area most of the watering places on the lower lands come naturally from the higher and mountainous parts. In the old days, of course, those high hills were all covered with forests which maintained the sources of the springs and running rivers. That is all gone now, and all the normal water supplies of the lower areas have dried up. There is a little afforestation which has been achieved with great difficulty but is a credit to the Forest Department, and it has succeeded in re-establishing the forest on some of the hills in the last 10 or 12 years, but if the water supply of the lower areas is to be restored those hills must be completely reafforested down to a given contour line. That again will cost money, and quite a lot of money, and it has got to be done at once, because the water supply has already completely dried up.

Finally, coming to one other aspect of the matters in that reserve, the question of the primitive methods of agriculture. We have been told by an expert that in that particular type of soil on large areas of arable land the process known as broad-base terracing may be economical say up to something like a 10 per cent slope; beyond that the terraces become so close as to be completely unmanageable. I think Your Excellency is aware that if you get into a reasonably fast car you can in an hour's run from here see many examples of natives solemnly cultivating 50, 60, or 70 per cent slopes on the best land left, and without any anti-wash precautions taken. Inevitably, when the rains come, there are the most disastrous results to the fertility of that land, and to the possibility of producing not merely cash crops but sufficient food crops for the natives to live on. We have allowed the process to go on and have not stopped it, and I submit there is a pretty little problem in economics for the board to examine.

It is one question to increase native production and wealth in that way, and at the same time to realize that the very process, the very policy, we wish to adopt cannot but result under present circumstances in the most appalling destruction of native land. The fact is that we are forcing them not to live on legitimate income from vested capital but on continual and annual withdrawals of that capital until the time will come when they will have no land left to live on at all.

I shall not attempt to go into estimates of cost and what this might be, except just to mention for what it is worth that a carefully worked out estimate, no guess-work, suggests clearly that the badly eroded areas in that one reserve alone might cost as much as £120,000 during the next four years. If you add compen-

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sation for culled stock and afforestation it is an under-estimate.

At any rate, we want to know something about it and we want a competent body to advise us and examine and collate and search out all the evidence available, and tell us what the facts are and what we have got to face, and what provision we have got to make, because some provision has got to be made, and about that I do not think there can be any divergence of opinion whatever.

There is one more aspect I wish to mention, it is my duty. If you look north and east from here and take a line running roughly from Sultan Hamud through Machakos, Donyo Sabuk, and Makuyu to Fort Hall, that long line represents roughly the boundary between a large settled area comprising the greater part of my constituency, and these vast rapidly eroding areas. It is necessary to think what the effect of the gradual growth of the desert conditions in this reserve is going to be on the climate of that settled area, where practically every form of agricultural industry, with the possible exception of sugar, is in active operation, and in some places on a very large scale indeed. It is a fact that in that area already, on the borders of those eroded native lands, the settlers are already beginning to hold up their hands in despair, metaphorically speaking, and ask each other "What is the use of going on?" in view of the inevitable climatic disaster that must follow the approach of the desert conditions if they are not put a stop to.

It is a significant fact, but I hope that it is only coincidence, that last year for the first time in memory in that part of the world the November rains failed over a large portion of the area, in which connexion it is as well to remember that soon after September the north-east monsoon begins to blow and brings our rains in this part of the world.

These people feel that they are already in the position that King Canute was in when he tried to stop the flow of the tide, with regard to the steady approach of this desert condition. No effort on their part can stop it, nothing they can do will prevent the climatic disaster which must follow the denudation. There again is a matter on which we require the most adequate and expert advice from some properly appointed body. If I had no other reason for mentioning all this I would like to point out that it is a duty imposed on me directly and emphatically by the vast majority of my constituents to bring this matter forward here and try and explain some of its seriousness.

I do not want to be misunderstood when I suggest that the matter should be referred for examination to this board. I am not for one moment suggesting they are the body who should devise a policy and set out a programme of work and lay down how it is to be done and be responsible for carrying it out. I do not mean that in the least, and there is no confusion in my mind about it. But what has become absolutely essential is that some competent body, and I think this is the correct body, should tackle the whole subject, examine the whole evidence, set out in comprehensible form an estimate of the magnitude of the problem, its economic significance, financial implications, and give us a picture of what we have to face, and say "There is the whole thing, it is your job to get on with it." When they have done that I submit they have fulfilled their function.

When we have the whole picture, it becomes the duty of Government to formulate its policy, decide how that programme and policy is to be financed, with the possible assistance of this Council, which may have to be called in once more, because how it can be done without a considerable loan I fail to see. But that is merely an expression of opinion which we will not examine now.

After that, I want to make myself clear, after that it becomes an administrative problem, and the only people in the world who can carry out the task when Government decide on a policy and have made financial provision is our administrative staff. It is not a departmental task or further experiment. After all, when you are planning a battle you gather together all your experts, the heads of departments and auxiliary services, and work the whole thing out, give instructions and ask advice, but when the troops actually go into battle they go in under their own regi-

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mental, brigade, divisional, and corps commanders.

That analogy, I submit, applies precisely to the problem of tackling this soil erosion in the native reserves which we are now faced with. Little wonder, then, that I give the strongest support to the motion and the principle included in it. I hope the principle will be adopted, that this expansion and increased development of the board will not be limited only up to the next session of the Council but will become permanent, that they will be strengthened in every way, to enable them to deal with all these problems comprehensively.

I submit that the obvious and first problem on which it should be asked to advise us and give us a full and comprehensive picture is the appalling menace of soil erosion which is, quite literally, cutting the very land from under the feet of our native population of the country, the trusteeship of whom we talk so long and loudly.

MR. MAXWELL: Your Excellency, in rising to support this motion I had intended to say something about this problem of soil erosion, more especially from the aspect that it is spreading into lands which, up to now, have not known it but which are now beginning to see that their very best soil is going off by means of the river to Mombasa and elsewhere. In speaking of this, I do not intend to apologize in any way that, although I represent a town constituency, I should be dealing with what is an agricultural problem, because to my mind the fertility of the soil of the country is of equal importance to the townsman as to the agriculturist.

But since I have heard how ably the hon. Member for Ukamba (Sir Robert Shaw) has expounded this subject, I feel there is no need for me to do more than say that, having travelled over most of the country, both by car and aeroplane, I am now convinced that erosion is one of the greatest enemies we have to fight, one of the biggest menaces we have to contend with.

While the Standing Board of Economic Development has hitherto dealt chiefly with agricultural problems, yet I understand that one of its functions is to consider all economic problems that arise, whether agricultural, industrial or otherwise. If this is so, I would suggest to that Board that they consider whether the time has not come to inquire into the position of the commercial industries, as to whether some policy could not be got out to help them expand.

I am now referring more especially to the engineering and manufacturing industries, although others such as building and printing and so on are affected. I do not think that I need stress the importance of engineering and manufacturing industries to this country for, on such industries, do others depend to keep their plant in good order. I should hate to think of the condition of this country should any severe world crisis arise which would cut us off from the home markets and the normal sources of supply. Even to-day, during the present trade boom, industries have discovered how hard it is to get new machinery, new replacement parts, and so on.

I do suggest that if we had not a number of small but fairly well-equipped engineering firms in this country, most of the country's industries would have found themselves severely handicapped in these recent months, if not shut down.

While these industries are not handicapped in any one big way, yet there are a number of small disabilities which are preventing them from the expansion which is necessary in order that they may import such machinery to enable them to undertake fresh and important lines of work in this country. I have said that these disabilities are small but, added together, they do prove a considerable handicap to expansion of both engineering and manufacturing concerns. I do not want to take up the time of the Council in enumerating all of these, but I will just mention one or two.

Firstly, I should like to mention that it is almost impossible to obtain trained native artisans. I would suggest that consideration be given to some scheme whereby a bigger supply should be available both to industry and manufacture and to other trades. I need not stress the importance again both to industries and the natives themselves in the carrying out of some such scheme.

[Mr. Maxwell]

I would suggest that probably, although the basic training of such artisans can be supplied in training schools, yet before going into commerce these people should be given at least two years as apprentices with some business firm in order that they may realize that in commerce time, as well as work, counts; that they must be able to carry out the work of artisans within a reasonable time.

Another disability is that of Customs duties, which amount to 10 per cent on raw materials and on semi-manufactured materials such as pig-iron and so on. These are required to manufacture spare parts and repairs to the various industries of the country, yet imported spares come in duty-free.

Handling at the coast has proved again another problem, and has put up the cost of certain raw materials by as much as 25 per cent of their c.i.f. value. Railway freights again have proved a deterrent and an obstacle to expansion. Freights vary from 33 per cent over c.i.f. value to as much as 100 per cent on low-priced articles required by these industries.

I am not trying to criticize either Customs duties or railway freights on these articles, which probably take their place in the right category when considered with other articles that must be imported, but I do suggest that when framing a policy to help industries I have mentioned it might be advisable to lower both import duties and railway freights and so help those industries. As all these small matters taken in one form a rather big problem, and definitely affect the revenue of the country, I suggest that a policy of this sort should come within the purview of the board.

Now I come to another subject of considerable economic importance and one that is exercising the minds of members on this side of the Council. I refer to the legitimate exploitation and conservation of one of the biggest assets of the country—game. I wish to refer to-day more especially to the point of view of attracting a large tourist traffic to this country.

I do not think anybody in this Council can fail to realize how important it is that we do everything we can to attract tourists here. It is not only the money they spend in this country which is of importance, but the fact that they probably are by far the best advertisement the country receive, and in the wake of the tourists inevitably comes settlement, residential and agricultural.

I certainly think that the biggest factor in attracting tourists to Africa, certainly to East Africa, is the game of the country. One has only to look at what the Kruger National Park has done for South Africa to realize this to the full. Although this country has more than its fair share of game in East Africa, it has not by any means the monopoly. Tanganyika, Uganda, the Congo, all have vast quantities of game, and have realized the importance of it. Tanganyika with its Seregetti; the Congo with its National Park; and Uganda with its Murchison Falls. All have attractions for tourists and utilize them to the full.

What is the position here? We have two magnificent game reserves and, as far as I can see, we have nothing to open them to tourist traffic, and in certain places we have failed to keep the game within them. I refer to the Northern Game Reserve. In fact, it has often been said to me that while Kenya is very keen on obtaining safaris and specializes in them, it is not interested in the tourist traffic in any way in that it does nothing to attract it, more especially as regards game.

I refer at the moment to this subject from the point of view of tourists, but there are other points of view to be considered. To the inhabitant of this country the game provides a big source of pleasure and amenities, yet we have not provided facilities for such inhabitants to see them. I refer more especially to the people in the town of Nairobi, who cannot afford the time or money to go on long safaris, but who would be only too pleased to go off for a day or two to see the big game this country contains.

I do suggest very definitely that the time has come when we should open up parts of the reserves to attract tourists and supply these very pleasant amenities to our people.

I have also had tourists from time to time and people at home say to me that probably we have no type of country that

[Mr. Maxwell]

can compete with the Kruger Park, the Parc Albert, or the Serengetti, or otherwise we would open it up. That is wrong; we have. I feel that in saying so I must prove this statement to the best of my ability.

One has only to think of the Nairobi Commonage. It is a piece of land which contains some thirty or forty species of game and which is situated on the boundary of the capital of the country itself. I am quite certain that nowhere else in the world can one, within three or four miles of the town hall of the capital, see so many types of game, such as lion and even rhino. If one is not satisfied with the importance of this commonage as an attraction for the tourists and as an amenity to the people of the town, one has only to go out any evening or week-end and see how many people go there to enjoy the pleasures the game affords them.

It does seem to me that immediately, with as little delay as possible, this should be turned into a National Game Park, and in this connexion I was very glad to hear the hon. the Acting Colonial Secretary, in answer to a question, say that Government were considering making some sort of game sanctuary within that area. To my mind there is only one thing that should be done with it: it should be made into a national game park, handed over to trustees for ever. I understood from the hon. member that the only difficulty at present was the question of certain cattle. In my opinion, if the recommendations of the Carter Commission were carried out in connexion with this commonage, at any rate so far as the askaris living near, the problem will solve itself and the cattle will gradually disappear.

I also believe the question of grazing for the oxen employed by the Nairobi Municipal Council will shortly be solved, because I do not believe that any progressive council such as exists in Nairobi will continue to carry out its services with these beasts. I am only leading up to a suggestion, which I hope will be considered when the authorities dealing with this matter go into it. I understand that a proposal has been put forward that certain portions of this commonage should be excised for the benefit of this cattle, and that that should include the best of the water-holes at which the cattle could water. That would be a great mistake, and would tend to drive the game further away from Nairobi. I hope that no portion will be excised but that cattle will be allowed to graze therein with the game.

I would suggest that, when this national game park has been declared, attention should be given to the possibility of administering that country towards the Ngong Hills, and even the Ngong Hills, in connexion with it, because it would enormously strengthen such a park. But, wonderful as this park is, I do not think it is sufficient to attract tourists to this country purely from the game point of view. Those tourists want to be certain of seeing all the big game if possible within a day or two.

Luckily, there exists down in the Southern Game Reserve a small stretch of wonderful country which, to my mind, has every asset necessary to attract tourists from the game point of view. It is situated in a most beautiful spot underneath Kilimanjaro, and can be made easy of access so that it can be reached in three to four hours from Nairobi, and it has a natural landing ground for aeroplanes. The construction of approximately sixty miles of track would enable it to be reached under four hours by car from Nairobi. It is really healthy, and contains the most wonderful supply of game that I have seen, some that are not frightened of cars and do not disappear over the horizon. I have seen all the plains game in this part of the country, and a considerable amount of dry country game, as well as big game, in one day, and they have always appeared quite tame and as much interested in me as I have been in them; in fact, rather an embarrassment, because they always return any call made on them punctiliously, and usually in the middle of the night!

I suggest that if the country were opened up, and properly administered, it would prove one of the greatest attractions that exist anywhere for tourists, and one of the greatest amenities to citizens of this country we could ever wish to offer them.

[Mr. Maxwell]

However, owing to the wandering proclivities of some of the great game, a small area is not quite sufficient. This game wanders in the area contained between two main roads — Nairobi-Namanga and Nairobi-Laitokitok. A little money spent opening up the land and putting in 150 miles of track and a service of game scouts, would ensure tourists seeing almost every variety of game in a two-day trip.

I have suggested that it is necessary to administer most carefully an area such as this, and such administration would have to be carried out by the Game Department. I think, therefore, it is almost necessary to examine the position of this Department, and if one does one finds that it is far from satisfactory.

The position is that our game warden has been seconded to another colony, and I understand he is allowed until next January to make up his mind as to whether he returns to Kenya or stays there. The chief assistant game warden and the two assistants are due, I understand, to retire next year, when the department will apparently be left to the mercy of a newly appointed fish warden, unless the game warden returns.

Game wardens are not to be picked up anywhere; they are hard to obtain, and they have to spend a considerable time learning the job in such a country as this. I do not know what plans Government have for keeping the department alive, but I suggest that it is most necessary to get on to this matter at once.

I think I have said enough to show you how important it is to open up the game reserves to attract tourists without further delay and to ensure that we have a proper Game Department to administer such parts as are opened up. In lieu of any other committee specially interested in this subject, I do suggest this Standing Board of Economic Development should review the matter.

MAJOR GROGAN: Sir, it has been my privilege and misfortune to sit on most of the boards established since the year One, and I think I am the only member present who is connected with the particular board under discussion.

The motion before the Council, as I understand it, is to all intents and purposes a purely abstract one, and I will try to deal with it in terms of complete abstraction. The question really is, has it any particular function or not?

I think the past history of the country proves very clearly that at times of crisis or during periods of change in economic circumstances, there is a very useful function for such a body as the Standing Board of Economic Development, even a very serious need for such a body. It is only necessary to go into the past to quote the examples of the War Council and the Bowring Committee as two occasions when this country, in very difficult position, found it possible to a certain extent to short circuit all this ludicrous pantomime such as we have indulged in in the last few days, by getting half a dozen sensible people to sit around a table, without fuss, audience, or reporting, and discuss the affairs of the community as a whole and see if they could not find unanimity of opinion and if so, to send recommendations to Your Excellency, and get a decision the following morning, whereupon the departments concerned can be instructed to get on with that job. The Bowring Committee is the classic example, because the country at that time was in a state of complete flux. A very small body was appointed, of which I and the hon. member Mr. Shamsud-Deen, I believe, are the last survivors, and with the active and very generous assistance of the hon. member Mr. Shamsud-Deen we did in fact initiate and give effect to a very large proportion of the white settlement of the Highlands. To-day, if only the white community knew the debt of gratitude they owe to my hon. friend, it would be a very good thing.

This Standing Board of Economic Development has not been in being for very long, and its active period was confined to bad financial circumstances, when its activities were necessarily defensive rather than offensive and constructive. I do not mean offensive in the sense that some people may interpret it! In other words, the only thing it could do was to try and devise some means whereby citizens on the point of collapse might or might not be saved from complete catastrophe. Our

[Major Grogan]

efforts, although very earnest ones, were not very successful, because, when carefully worked out in this country, they went forward with very frigid approval from this side and died in the Colonial Office, as the most constructive of those do.

That rather chilled the enthusiasm of the board, and for a period it became an obvious and convenient midden on which any delicate matters requiring decision by Government might be conveniently deposited in the hopes that they would decompose and poison the members! (Laughter.)

The only thing that can be said for the board as a living organ or vital organ in the body politic at the present time is that it has in fact compiled a large amount of material in respect of this enormous problem of erosion, about which I do not propose to particularize at the present time; but the real utility of this board depends on one thing, and only one thing, and that is upon the will behind the throne.

If Your Excellency determines, as I have every reason to believe and hope, to make the country go ahead and take advantage of the rising tide which is now upon us, I believe the board has a real utility. Failing that, it has none at all, and I trust it will be extinguished at the earliest possible moment.

MR. LOGAN: Your Excellency, it is a matter of personal regret to me that this motion was not taken at an earlier stage of the present session before the hon. the Colonial Secretary (Sir Armigel Wade) went on leave, because he has been chairman of the board since the date of its establishment in October, 1935. I have merely come into sporadic contact with it on three occasions, and therefore he would have been in a much better position than I to deal with this motion.

I understand that the purport of the motion is really to secure from Government some indication as to whether it is proposed to utilize its services in the near future for the purposes for which that board was appointed. That, undoubtedly, is the case, but taking the letter of the motion as it stands I regret that Government is not in a position to accept it.

This board was appointed by Your Excellency's predecessor. It is not a select committee of this Council, and it would be a most unusual precedent to accept that this Council had any position in the matter of dictating to any committee which Your Excellency might appoint how often it should meet and at what intervals. Moreover, the board from its very name is clearly a board which has to deal with an economic policy of long range. Naturally, the translation of that economic policy into facts must involve financial provision, but the operations of the board are not necessarily connected with the budget of any year.

We have a number of other bodies which deal with budgetary provision, but fortunately, I think, for this board, the question of budgetary provision does not require to come within its immediate purview. For these, general, and perhaps rather technical, reasons, as I say, Government is not able to accept the motion as it stands. But the spirit of the motion being as it is, I can assure Council that the use of the board, and the purposes of the board, are appreciated to the full by Government, and it is intended to make suitable use of them in the future for proposals of development.

Time is short, but I feel that I must say something in regard to two remarks the hon. mover did make in connexion with the vital and important question of soil erosion. One would have assumed, I think, from what he said, that during the past ten years this Government has sat back and done practically nothing about it.

That accusation was brought up in this Council by some hon. member in October, 1934, when we had that long debate on the Kenya Land Commission Report. In my intervention in that debate I did attempt to show what measures had been taken at that stage to deal with overstocking and soil erosion. In Sir Daniel Hall's Report, one of the prime considerations which he advanced for dealing with the question was the culling of stock, and, in connexion with that, he made the perfectly obvious remark that no progress could be made in that direction until an arrangement had been made for a meat extract factory, or some other means of getting rid of the surplus stock.

[Mr. Logan]

Hon. members are perfectly familiar with the efforts Government have made during the last ten years to induce companies to come here and establish a meat extract or some other form of factory which would deal with surplus stock. At one time we considered the question of a fertilizer factory, and plans for that were advanced when, fortunately, Liebig's Ltd. came on the scene. They are now here. They are about to start work next year, and that has rendered possible the introduction of an active policy of cattle culling. In the meantime, propaganda, as members know perfectly well, has been carried on for many years in native reserves by administrative and agricultural officers and others who have had the opportunity of engaging the attention of local native councils to the problem.

Local native councils have made some provision for dealing with it. They have officers who have for years been dealing with the problem within the limits of the finances provided for them, and that, of course, is the secret of the whole thing. We have not been in a position in the past to have adequate finances to deal with the matter.

The hon. Member for Ukamba, in his most interesting speech, was not, I think, aware of the fact that the question of soil erosion has been before the board for the past five or six months. The special reports to which he alluded by one of the agricultural officers were put before the board at a meeting in February last, and the policy to be adopted was then considered. As a result of that, a further investigation, more from an engineering point of view, has been carried out, and yesterday afternoon, when the board met, it had an appreciation of the position as it stands to-day put before them.

The whole question of soil erosion is one of the subjects which is actively engaging the consideration of that board.

I was rather alarmed by the number of topics and questions proposed, even in the debate so far, as properly coming within the purview of the board. It seems to me we should carefully exercise some discrimination of function. We have boards for nearly every conceivable thing in this Colony. We have a Land Board, Kenya Advisory Committee, a Board of Agriculture, an Animal Industry Committee, a Sisal Committee, and so forth, and I think we do run the danger of finding that too many boards may spoil the broth!

The Standing Board of Economic Development is clearly not a board engaged in detailed investigation of every industry. One of the significant features, I think, of the development of industries of recent years is the way they have organized themselves. Each important industry now has its own board dealing particularly with its own interests, and where the function of the Standing Board of Economic Development comes in is where there arises a clash of interests between the various industries, or where the interests of one industry appear to come into clash with the interests of the community as a whole.

There are a number of other points to which, on general lines of economic policy, this board can properly direct attention, and I think one of the points brought up this morning by the hon. Member for Nairobi South (Mr. Maxwell) is one which might engage their attention in the future.

The board has its definite terms of reference, and while, as I said in my opening remarks, we cannot admit that their instructions must be related, or should specifically be related, to financial provision in a particular year, one point in illustration of that might be considered to be this: that the Treasurer of the Colony is not a member of the board and, provided there is reasonable exercise of discrimination in the functions put to this board, I see no reason to think but every reason to believe it has an important duty to perform in the future.

I am glad that the hon. mover did refer to the number of duties imposed on heads of departments. We, all of us, or rather the few, often find ourselves sitting on practically all of these boards, and it is utterly impossible, as the hon. mover generously recognizes, for us to carry on with our ordinary office work and at the same time attend seriously to all these points that come before these various boards. I think, Sir, that perhaps the proposals in the Pim Report will go some way towards meeting the difficulties of the situation. So far as the unofficial members

[Mr. Logan]

are concerned, it is often a puzzle to me how they are able to give the time and attention they do to official committees to the extent and the number those committees at the moment amount to.

I have said that it is the intention of Government to utilize this board to its full capacity in the future, bearing in mind its terms of reference.

As one last remark in regard to the actual terms of the motion, I must bring to the notice of Council the impossibility of getting boards of this sort to sit at frequent and regular intervals. We met yesterday, and we endeavoured to arrange for another meeting to deal with this important question of soil erosion. It became perfectly evident that, owing to engagements of other members, official and unofficial, it was impossible and impracticable to get another meeting day for three weeks. So that it is wholly impracticable to suggest that this board or any other should sit in permanent session.

However, it is the intention of Government to use the board within its terms of reference to the fullest capacity.

MR. SHAMSUD-DEEN: On a point of order, Your Excellency, I have been intending for quite a long time to comment on it, that when Government says it accepts a motion or that it does not, I cannot understand what is meant by that? I think the moment the President of the Council allows a motion to be placed on the Order of the Day and discussed, it is accepted, but what Government mean when they say they can or cannot accept a motion is either that they wish a set ruling or they are not going to. Whether I am correct or not I should like to know?

MR. LOGAN: It is a very common phrase, here or in England, to intimate whether the Government propose to vote for or against a motion. The phrase used when it is intended to vote for a motion is that they intend to accept it, and when it is intended to vote against the motion, to reject it! (Laughter.)

MAJOR CAVENDISH-BENTINCK: Your Excellency, this motion, as has been pointed out, really deals with a somewhat abstract question, and that was our intention. We one this side of Council, being in a permanent minority, are said to be only able to urge, or obstruct, or remain completely static. In other words, we either urge Government to do something or at best we obstruct Government from doing, or we sit still while nothing happens. I hope we never do the latter.

But I do believe that on some occasions we can sometimes initiate, and I have reason to believe, from a document that you passed round the other day, that there is a great possibility now that we shall be able to come together with Government and initiate plans for development. (Hear, hear.)

Government have declared their intention of not accepting this motion, chiefly on technical grounds, in that the Council has not got the right to order some particular committee when it shall sit. Well, I am not going to argue about that, but I hope Government will not make a habit of putting up these technical reasons.

What we want to do is to get on with a j-b which, at the present moment, appea.. to be nobody's particular business. All realize the difficulties and wish to get on, because nothing is being done. If I were on the other side of Council I realize that under the existing system I should be equally open to criticism. At the same time, the fact does remain that since I have been a member of this board some five months have elapsed and we have not met once. We sat for the first time at the last minute, or at any rate with short notice, with a difficult agenda, at a time when we were very tired, yesterday afternoon. Possibly, I will not say probably, the reasons why it was called together were not altogether unconnected with this motion. If so, we are very pleased indeed.

We do not want to criticize or to obstruct one another, but to co-operate, and we want to give any benefit we can of our experience on this side of Council.

Having said that, I would like, with the permission of my seconder, to withdraw this motion. I only hope that we shall see signs that that peculiar—I do not know exactly what it is—drug called Horsmone A, which I understand is now in the possession of the Agricultural Department, may be administered to this board to initiate ideas, and that by this time next year we shall be a great deal clearer as to what particular things we are aiming to do, how we are going to do them

[Major Cavendish-Bentinck]

and to pay for them, and that we shall not just drift along as we have done only too much in the past.

The motion was by leave of Council withdrawn.

ADJOURNMENT

Council adjourned *sine die*.

Written Answers to Questions

No. 12—NATIVE OCCUPATION AT CHEPALUNGU

BY THE HON. CONWAY HARVEY:

With reference to para. 1176, page 307 of the Report of the Kenya Land Commission, 1933, what steps are being taken to prevent occupation by Kipsigis of the 10,000 acres of Chepalungu, which is to be selected by the administrative authorities in consultation with the local European community?

Reply:

As explained in the answer to Question No. 13, the area in the Chepalungu to be set aside for European occupation is to be 8,800 and not 10,000 acres. This area is now being surveyed. During the last few years approximately 75 adult male natives have been permitted to reside in the Chepalungu area. They act as unpaid border guards in return for limited grazing rights, and should be in a position to report any unauthorized residence in the above area in the future.

No. 13—CHEMAGEL TOWNSHIP

BY THE HON. CONWAY HARVEY:

With reference to para. 1183 of the Report of the Kenya Land Commission, 1933, what is the present position in regard to the proposed Chemagel Township?

Reply:

The Land Commission's proposals in Section 1183 dealing with Chemagel Township are closely connected with its recommendations in Section 1185 on Sotik Post and Section 1176 on the reservation from the Chepalungu area of 10,000 acres for alienation to Europeans. The recommendations were:—

(*a*) Section 1183.—That two square miles should be set apart for a township at Chemagel.

(*b*) Section 1185.—That Sotik Post should become available for alienation as a farm, being no longer required for township purposes.

(*c*) Section 1176.—That 10,000 acres should be surveyed out of Chepalungu for alienation to Europeans.

2. These proposals have been discussed with all the parties concerned, and the following modification of the Commission's proposals has now been approved:

(i) 640 acres at Chemagel to be excluded from the Reserve and to become a township. The geographical position of this area is such that it would not be an island within Native Reserve.

(ii) 640 acres (Sotik Post) to be added to the Reserve partly in lieu thereof; and, as this area was not considered to be of equivalent value—

(iii) 1,200 acres from Chepalungu to be added to the Reserve, out of the European area of 10,000 acres, also partly in lieu of the township exclusion.

The survey of Chemagel Township will be commenced as soon as practicable.

No. 25—GOVERNMENT INDIAN SECONDARY BOYS' SCHOOL, NAIROBI

BY DR. THE HON. A. C. L. DE SOUSA:

1. How many pupils from the Government Indian Secondary School for Boys, Nairobi, appeared in each of the following examinations during 1936:—

(*a*) Preliminary Cambridge,

(*b*) Junior Cambridge, and

(*c*) London Matriculation?

2. How many candidates failed in each of the above examinations?

3. How many of the unsuccessful candidates in each of the above examinations failed in English?

Reply:

1. (*a*), 181; (*b*), 117; (*c*), 38.

2. The number of the candidates who failed in the examinations are:—

(*a*) 94,

(*b*) 54,

(*c*) 29.

3. (*a*) Of the unsuccessful candidates for the Preliminary Cambridge, 90 failed in English. Of these, six would have obtained a pass if they had not failed in English; of the remaining 84, a pass in English would not have affected the result.

(*b*) Of the unsuccessful candidates for the Junior Cambridge, 46 failed in English. Of these, 17 would have obtained a pass if they had not failed in English; of the remaining 29, a pass in English would not have affected the result.

(*c*) The detailed results of the London Matriculation are published for the use of the individual candidates only, so that the reply to this part of the question cannot be given in full.

No. 28—PANGANI AND PUMWANI VILLAGES

BY THE HON. SHAMSUD-DEEN:

1. Is it a fact that it was brought to the notice of the Nairobi Municipal Council and the Government several months ago that the villages of Pangani and Pumwani were dangerously overcrowded as a result of about 60 houses in Pangani having been demolished by force without any arrangements having been made previously for the housing of the natives thus rendered homeless?

2. Is it a fact that the Nairobi Municipal Council propose to proceed with further demolition of houses in Pangani village equal to the number of houses which are now being built on the south side of Nairobi without regard to the actual number of tenants who will be evicted and the capacity of the newly built houses?

3. Is it a fact that the Government or the Nairobi Municipal Council, having made an offer to the present house-owners of Pangani to purchase the newly built houses by easy hire and purchase system on payment of the compensation money due to them, have withdrawn the offer and propose only to rent the newly built houses to owners of such houses which have been and are going to be demolished in Pangani?

4. Will Government consider the proposal of granting plots of land to the owners of houses demolished in Pangani at some convenient site reasonably near to Nairobi in accordance with the Land Commission's recommendations, where the dispossessed owners of houses could build new houses according to their means with a reasonable subsidy from the Government in the form of a loan to be repaid by easy instalments?

5. Has the Government made any arrangements for building roads and public conveniences for the occupants of the newly built houses before the same are permitted to be occupied?

6. Will the Government make the necessary arrangements for the transference of the mosques now in existence in Pangani before the newly built houses are ready for occupation?

7. What arrangements, if any, have the Government made for the immediate relief of the overcrowding in Pangani and Pumwani to prevent the spreading of plague to the Indian residential areas adjoining Pangani and Pumwani?

Reply:

1. The demolition of houses in Pangani had the effect of removing from Pangani and Pumwani large numbers of natives who had little or no reason to be in Nairobi at all, and who returned to their reserves. This number was in fact considerably greater than those occupying the demolished houses, so that this action relieved rather than increased the overcrowding of the two villages.

2. The answer is in the negative. Full consideration is being given to the numbers who are in occupation of the houses which will be removed as and when a similar number of municipally built new houses are made available in Pangani.

3. The proposal to permit house owners in Pangani to purchase newly built houses by easy hire and purchase system was considered, but was found impracticable, and was therefore abandoned and the present system adopted.

4. Plots of land are now as always available for those natives who are in a position to build their own houses in conformity with the regulations in force, but Government after careful consideration is not prepared to grant any subsidy or loan to be paid by easy instalments for this purpose.

5. The answer is in the affirmative. Steps are being taken to ensure that suit-

able sanitary arrangements will be made before the houses are occupied and the survey and lay-out of the roads is taking place.

6. Arrangements have been made regarding the question of the removal of the mosques between the Native Affairs Officer and the adherents to these mosques, who have expressed their satisfaction with the proposals.

7. The question of overcrowding in Pumwani and Pangani is receiving the active attention of Nairobi Municipal Council. Such immediate steps as are possible, such as reducing to a minimum the number of unemployed in these villages, are being taken in the interests of the general public health of the town.

No. 29—GOVERNMENT INDIAN SECONDARY SCHOOLS

BY DR. THE HON A. C. L. DE SOUSA:

Is it a fact that the matriculation classes have been discontinued in Government Indian Secondary Schools in the Colony and Protectorate? If so—

(a) since when?

(b) were parents of the pupils in these classes informed of the change and, if so, when and in what manner?

(c) have any arrangements been made by Government for pupils from Government Indian Secondary Schools, who took the London Matriculation Examination in June, 1937, and who may be unsuccessful in such examination, to continue their studies in Government schools?

(d) if the reply to (c) is in the negative, will Government give an assurance that unsuccessful candidates in the said tests will be given opportunities in Government schools to continue their studies?

Reply:

The answer to the first part of the question is in the affirmative. In regard to—

(a) May 31st, 1937.

(b) No. The change was recommended by the Advisory Council and approved by the School Committees. The pupils in the two classes concerned were warned during the first term that the London Matriculation Examination would be discontinued after June, 1937.

(c) No arrangements have been made, as the results of the June examination have not yet been published and no applications for re-admission have been received.

(d) No such assurance can be given. Applications for re-admission from unsuccessful candidates, if any, will be treated on their merits when the detailed reports of the examination results have been scrutinized. Should any difficult cases arise they will be referred to the School Committees.

No. 30—EAST AFRICAN CURRENCY BOARD EXCHANGE RATES

BY THE HON. F. A. BEMISTER:

In view of the voluntary action of the Banks in reducing exchange demand rates three-sixteenths on London, is the Currency Board intending to reduce their charges?

Reply:

Government is advised that the East African Currency Board's rates represent limits within which the Banks are in practice obliged to work, and that a change in the rates charged by the Banks within those limits does not in itself afford a reason for a corresponding change in the Board's rates.

No. 48—SHIMO-LA-TEWA FERRY

BY MAJOR THE HON. E. S. GROGAN:

Whereas the comments of the magistrate at the inquest on the fatality at the Shimo-la-Tewa ferry on the 13th March, 1937, would appear to reflect upon the administrative method of the Public Works Department, will the hon. the Director of Public Works provide a short epitome of the relevant facts?

Reply:

1. Yes.

2. Following is a statement of the accident at Shimo-la-Tewa Ferry:—

(a) The cause of the accident was primarily the action of the deceased in overruling the Headman in charge of the Ferry and in persuading him to attempt a crossing against his judgment. A previous attempt had convinced the Headman that with the wind and spring tides then prevailing a crossing with the load on the pontoon at the time was not safe.

(b) The accident was not due to the type or design of pontoon. The new pontoons designed in England are of a similar pattern but larger, in order to cope with the heavier vehicles now in use. The leak was, in itself, not enough to render the pontoon dangerous.

(c) The administration of the ferry services has been unchanged since 1934 and had proved satisfactory in past years. The licensee operated the services under an agreement drawn up in consultation with the Legal Department of Government. This agreement was in the form used since 1933, and the form and contents of this agreement in no way contributed to the accident. Gulam Hoosein Essajee Bhajee had operated these ferries for three years during the period of Railway control as trustee for his son, Noor Abbas Gulam Hoosein Essajee. He had similarly operated them under Public Works Department control in 1934, with completely satisfactory results. In 1937, his was the highest tender and was accepted. He signed the agreement in his son's name, undoubtedly purporting to act as trustee for his son. As the man was well known to the Public Works Department his tender was accepted in good faith.

(d) Maintenance of the craft and gear, with the exception of minor repairs which are carried out by the licencee, had been satisfactorily performed by the Public Works Department. The pontoons were carefully inspected at periodic intervals, and it was decided to replace them early in 1937. Accordingly two new pontoons were ordered from England in July, 1936. Owing to circumstances over which the Public Works Department had no control, such as increased industrial activity, delay in delivery was foreshadowed by the Crown Agents for the Colonies. Eventually these two pontoons were not delivered until March, 1937, and they then had to be erected and towed to the sites.

To meet this situation, two pontoons were ordered locally. The first was delivered in November, 1936, and was put into service at Kilifi where the need was most urgent. Owing to the impossibility of obtaining delivery of materials, the second locally made pontoon was not delivered until 27th March, 1937.

No. 54—INCOME TAX

BY THE HON E. H. WRIGHT:

1. In view of the continued improvement in the finances of Uganda, as disclosed by the Treasurer's 1936 Report, and in view of the Secretary of State's speech on 3rd December last when he made it clear that it was intended to impose income tax in Tanganyika and Uganda at a later date than in Kenya, will Government state whether it is still the intention of His Majesty's Government arbitrarily to impose income tax in Uganda?

2. What organization has been elaborated in the adjoining territories to implement the undertaking by the Secretary of State in respect of the facilities afforded by such neighbouring States for the evasion of Kenya income tax?

3. Are there any provisions in the Zanzibar treaties and the Uganda treaty which preclude or complicate the introduction of the alleged beneficent principle of income tax to the Kenya and Uganda Protectorates?

Reply:

1. The question is disallowed under Standing Rule and Order No. 22, since it relates to matters of fact not within the special cognizance of this Government.

2. The question is disallowed for the same reason under the same Standing Rule and Order.

3. The question, in so far as it relates to the introduction of income tax in Uganda, is similarly disallowed under Standing Rule and Order No. 22.

With regard to that part of the question relating to the Protectorate of Kenya, the Income Tax Ordinance, 1937, applies to the Protectorate as well as to the Colony of Kenya.

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Com.=In Committee. SCR.=Select Committee Report.

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